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## Legislation

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## II

(Non-legislative acts)

## INTERNATIONAL AGREEMENTS

**COUNCIL DECISION (EU) 2016/1749**

**of 17 June 2016**

**on the conclusion, on behalf of the European Union, of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control, with the exception of its provisions falling within the scope of Title V of Part Three of the Treaty on the Functioning of the European Union**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 33, 113, 114 and 207, in conjunction with Article 218(6)(a) and the second subparagraph of Article 218(8) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) The conclusion of the World Health Organisation (WHO) Framework Convention on Tobacco Control (FCTC) was approved on behalf of the Community by Council Decision 2004/513/EC <sup>(1)</sup>.
- (2) In accordance with Council Decisions 2013/744/EU <sup>(2)</sup> and 2013/745/EU <sup>(3)</sup>, the Protocol to Eliminate Illicit Trade in Tobacco Products to the WHO FCTC ('the Protocol') was signed on 20 December 2013, subject to its conclusion at a later date.
- (3) The Protocol represents a significant contribution to the international efforts to eliminate all forms of illicit trade in tobacco products, and thereby fight the circumvention of tax and customs duties obligations and reduce the supply of tobacco products, in line with Article 15 of the WHO FCTC. The Protocol also contributes to the smooth functioning of the internal market for tobacco products whilst ensuring a high level of public health.

<sup>(1)</sup> Council Decision 2004/513/EC of 2 June 2004 concerning the conclusion of the WHO Framework Convention on Tobacco Control (OJ L 213, 15.6.2004, p. 8).

<sup>(2)</sup> Council Decision 2013/744/EU of 9 December 2013 on the signing, on behalf of the European Union, of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control, as regards its provisions on obligations related to judicial cooperation in criminal matters, the definition of criminal offences, and police cooperation (OJ L 333, 12.12.2013, p. 73).

<sup>(3)</sup> Council Decision 2013/745/EU of 9 December 2013 on the signing, on behalf of the European Union, of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control, with the exception of its provisions on obligations related to judicial cooperation in criminal matters, the definition of criminal offences, and police cooperation (OJ L 333, 12.12.2013, p. 75).

- (4) The Union has exclusive competence for a number of provisions of the Protocol which fall within the scope of the Union's common commercial policy or in areas where the Union has established common rules<sup>(1)</sup>. The Protocol may affect such common rules or alter their scope. Therefore, the Protocol should be approved on behalf of the Union as regards matters falling within Union's competence only insofar as the Protocol may affect these common rules or alter their scope.
- (5) By concluding the Protocol, the Union will not be exercising shared competence, therefore Member States retain their competence in the areas covered by the Protocol which do not affect common rules or alter the scope of such common rules.
- (6) Articles 14, 16, 26, 29 and 30 of the Protocol concern judicial cooperation in criminal matters and the definition of criminal offences, and therefore fall within the scope of Title V of Part Three of the Treaty on the Functioning of the European Union. Council Decision (EU) 2016/1750<sup>(2)</sup>, adopted in parallel to this Decision, concerns those provisions.
- (7) The Protocol should be approved as regards matters that fall within the Union's competence,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The Protocol to Eliminate Illicit Trade in Tobacco Products to the WHO Framework Convention on Tobacco Control, with the exception of its provisions falling within the scope of Title V of Part Three of the Treaty on the Functioning of the European Union, in particular Articles 14, 16, 26, 29 and 30, is hereby approved on behalf of the Union.

The text of the Protocol is attached to this Decision.

#### *Article 2*

The President of the Council shall designate the person(s) empowered to deposit, on behalf of the Union:

- (a) the instrument provided for in Article 44(1) of the Protocol;
- (b) the declaration of competences set out in the Annex to this Decision, in accordance with Article 44(3) of the Protocol.

<sup>(1)</sup> Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (OJ L 127, 29.4.2014, p. 1);  
Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15);  
Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1);  
Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ L 9, 14.1.2009, p. 12);  
Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco (OJ L 176, 5.7.2011, p. 24).

<sup>(2)</sup> Council Decision (EU) 2016/1750 of 17 June 2016 on the conclusion, on behalf of the European Union, of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control, as regards its provisions on obligations related to judicial cooperation in criminal matters and the definition of criminal offences (see page 6 of this Official Journal).

*Article 3*

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

Done at Luxembourg, 17 June 2016.

*For the Council*  
*The President*  
J.R.V.A. DIJSSELBLOEM

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## ANNEX

**DECLARATION OF COMPETENCES BY THE EUROPEAN UNION IN RESPECT OF MATTERS COVERED BY THE PROTOCOL TO ELIMINATE ILLICIT TRADE IN TOBACCO PRODUCTS****(PURSUANT TO ARTICLE 44 OF THE PROTOCOL)**

The European Union (EU) submits, in accordance with Article 44 of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control ('FCTC Protocol'), the following Declaration of Competences specifying the categories and policy areas in respect of which the Member States of the EU have conferred competences upon the EU in the areas covered by the FCTC Protocol.

**1. General Principles**

The categories and areas of Union competence are set out in Articles 2 to 6 TFEU. When the Treaties confer on the EU exclusive competence in a specific area, only the EU may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the EU or for the implementation of EU acts. When the Treaties confer on the EU a competence shared with the Member States in a specific area, the EU and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the EU has not exercised its competence. The Member States shall again exercise their competence to the extent that the EU has decided to cease exercising its competence.

As regards the conclusion of international agreements, for the policy areas listed in Article 3(1) TFEU, only the EU has the competence to act. For the policy areas listed in Article 4(2) TFEU the EU and its Member States share competence, but only the EU has the competence to act when the envisaged action is necessary to enable the Union to exercise its internal competence, or insofar as the provisions in the agreement may affect common rules or alter their scope within the meaning of Article 3(2) TFEU; insofar as this is not the case (i.e. the conditions of Article 3(2) TFEU are not met), Member States may exercise their competence to act in these policy areas.

Competences not attributed to the EU by the Treaties fall within the competences of the Member States of the EU.

The EU will duly notify any substantial modification of the extent of its competences, in accordance with Article 44 of the Protocol, without this constituting a prerequisite for the exercise of its competence in matters covered by the FCTC Protocol.

**2. Exclusive competence of the EU**

- 2.1. The EU has exclusive competence to act with respect to the matters covered by the FCTC Protocol that fall under the scope of the common commercial policy of the EU (Article 207 TFEU).
- 2.2. In addition, the EU has exclusive competence to act with regard to matters covered by the FCTC protocol that fall under the scope of customs cooperation (Article 33 TFEU), approximation of laws in the internal market (Articles 113 and 114 TFEU), judicial cooperation in criminal matters (Article 82 TFEU) and definition of criminal offences (Article 83 TFEU), only insofar as the provisions of a Union act establish common rules that may be affected or altered in scope by provisions of the FCTC protocol.

The list of Union acts below illustrates the extent to which the Union has exercised its internal competence in these fields in accordance with the Treaty on the Functioning of the European Union. The extent of Union exclusive competence ensuing from these acts must be assessed by reference to the precise provisions of each measure, and in particular the extent to which these provisions establish common rules that risk to be affected or altered in scope by the provisions of the FCTC Protocol or an act adopted in implementation thereof.

- Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (OJ L 127, 29.4.2014, p. 1);

- Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15);
- Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1);
- Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ L 9, 14.1.2009, p. 12);
- Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco (OJ L 176, 5.7.2011, p. 24);
- Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (OJ L 182, 5.7.2001, p. 1);
- Council Act of 26 July 1995 drawing up the Convention on the protection of the European Communities' financial interests (OJ C 316, 27.11.1995, p. 48).

### 3. Competence of the Member States

For other matters covered by the FCTC Protocol not mentioned in sections 2.1 and 2.2, for which the EU has not exclusive competence to act, the Member States remain competent to act.

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**COUNCIL DECISION (EU) 2016/1750****of 17 June 2016****on the conclusion, on behalf of the European Union, of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control, as regards its provisions on obligations related to judicial cooperation in criminal matters and the definition of criminal offences**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(1) and Article 83, in conjunction with Article 218(6)(a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) The conclusion of the World Health Organisation (WHO) Framework Convention on Tobacco Control (FCTC) was approved on behalf of the Community by Council Decision 2004/513/EC <sup>(1)</sup>.
- (2) In accordance with Council Decisions 2013/744/EU <sup>(2)</sup> and 2013/745/EU <sup>(3)</sup>, the Protocol to Eliminate Illicit Trade in Tobacco Products to the WHO FCTC ('the Protocol') was signed on 20 December 2013, subject to its conclusion at a later date.
- (3) The Protocol represents a significant contribution to the international efforts to eliminate all forms of illicit trade in tobacco products, and thereby fight the circumvention of tax and customs duties obligations and reduce the supply of tobacco products, in line with Article 15 of the WHO FCTC. The Protocol also contributes to the smooth functioning of the internal market for tobacco products whilst ensuring a high level of public health.
- (4) The Protocol covers areas related to judicial cooperation in criminal matters, the definition of criminal offences and police cooperation. To the extent that Articles 14, 16, 19, 23, 26, 27, 29 and 30 of the Protocol may be implemented by measures falling within the scope of those areas, those provisions fall within the scope of Title V of Part Three of the Treaty on the Functioning of the European Union.
- (5) By means of legal acts, the Union has established common rules in the areas of the judicial cooperation on criminal matters and the definition of criminal offences <sup>(4)</sup>. Articles 14, 16, 26, 29 and 30 of the Protocol may affect the common rules or alter their scope. The Protocol should be approved on behalf of the Union as regards matters falling within the Union's competence only insofar as the Protocol may affect such common rules or alter their scope.
- (6) By concluding the Protocol, the Union will not be exercising shared competence, therefore Member States retain their competence in the areas covered by the Protocol which do not affect common rules or alter the scope of such common rules.

<sup>(1)</sup> Council Decision 2004/513/EC of 2 June 2004 concerning the conclusion of the WHO Framework Convention on Tobacco Control (OJ L 213, 15.6.2004, p. 8).

<sup>(2)</sup> Council Decision 2013/744/EU of 9 December 2013 on the signing, on behalf of the European Union, of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control, as regards its provisions on obligations related to judicial cooperation in criminal matters, the definition of criminal offences, and police cooperation (OJ L 333, 12.12.2013, p. 73).

<sup>(3)</sup> Council Decision 2013/745/EU of 9 December 2013 on the signing, on behalf of the European Union, of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control, with the exception of its provisions on obligations related to judicial cooperation in criminal matters, the definition of criminal offences, and police cooperation (OJ L 333, 12.12.2013, p. 75).  
Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (OJ L 182, 5.7.2001, p. 1).

<sup>(4)</sup> Council Act of 26 July 1995 drawing up the Convention on the protection of the European Communities' financial interests (OJ C 316, 27.11.1995, p. 48).

- (7) Ireland is bound by Council Act of 26 July 1995 and by Framework Decision 2001/500/JHA, and is therefore taking part in the adoption of this Decision.
- (8) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom is not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (9) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (10) Council Decision (EU) 2016/1749 <sup>(1)</sup>, adopted in parallel to this Decision, concerns the conclusion, on behalf of the Union, of the Protocol, with the exception of its provisions on obligations related to judicial cooperation in criminal matters and the definition of criminal offences.
- (11) The Protocol should be approved as regards matters that fall within the Union's competence,

HAS ADOPTED THIS DECISION:

*Article 1*

The Protocol to Eliminate Illicit Trade in Tobacco Products to the WHO Framework Convention on Tobacco Control as regards Articles 14, 16, 26, 29 and 30, relating to judicial cooperation in criminal matters and the definition of criminal offences, is hereby approved on behalf of the Union.

The text of the Protocol is attached to this Decision.

*Article 2*

The President of the Council shall designate the person(s) empowered to deposit, on behalf of the Union:

- (a) the instrument provided for in Article 44(1) of the Protocol;
- (b) the declaration of competences set out in the Annex to this Decision, in accordance with Article 44(3) of the Protocol.

*Article 3*

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

Done at Luxembourg, 17 June 2016.

*For the Council*  
*The President*  
J.R.V.A. DIJSSELBLOEM

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<sup>(1)</sup> Council Decision (EU) 2016/1749 of 17 June 2016 on the conclusion, on behalf of the European Union, of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control, with the exception of provisions falling within the scope of Title V of Part Three of the Treaty on the Functioning of the European Union (see page 1 of this Official Journal).

## ANNEX

**DECLARATION OF COMPETENCES BY THE EUROPEAN UNION IN RESPECT OF MATTERS COVERED BY THE PROTOCOL TO ELIMINATE ILLICIT TRADE IN TOBACCO PRODUCTS****(PURSUANT TO ARTICLE 44 OF THE PROTOCOL)**

The European Union (EU) submits, in accordance with Article 44 of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control ('FCTC Protocol'), the following Declaration of Competences specifying the categories and policy areas in respect of which the Member States of the EU have conferred competences upon the EU in the areas covered by the FCTC Protocol.

**1. General Principles**

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As regards the conclusion of international agreements, for the policy areas listed in Article 3(1) TFEU, only the EU has the competence to act. For the policy areas listed in Article 4(2) TFEU the EU and its Member States share competence, but only the EU has the competence to act when the envisaged action is necessary to enable the Union to exercise its internal competence, or insofar as the provisions in the agreement may affect common rules or alter their scope within the meaning of Article 3(2) TFEU; insofar as this is not the case (i.e. the conditions of Article 3(2) TFEU are not met), Member States may exercise their competence to act in these policy areas.

Competences not attributed to the EU by the Treaties fall within the competences of the Member States of the EU.

The EU will duly notify any substantial modification of the extent of its competences, in accordance with Article 44 of the Protocol, without this constituting a prerequisite for the exercise of its competence in matters covered by the FCTC Protocol.

**2. Exclusive competence of the EU**

- 2.1. The EU has exclusive competence to act with respect to the matters covered by the FCTC Protocol that fall under the scope of the common commercial policy of the EU (Article 207 TFEU).
- 2.2. In addition, the EU has exclusive competence to act with regard to matters covered by the FCTC protocol that fall under the scope of customs cooperation (Article 33 TFEU), approximation of laws in the internal market (Articles 113 and 114 TFEU), judicial cooperation in criminal matters (Article 82 TFEU) and definition of criminal offences (Article 83 TFEU), only insofar as the provisions of a Union act establish common rules that may be affected or altered in scope by provisions of the FCTC protocol.

The list of Union acts below illustrates the extent to which the Union has exercised its internal competence in these fields in accordance with the Treaty on the Functioning of the European Union. The extent of Union exclusive competence ensuing from these acts must be assessed by reference to the precise provisions of each measure, and in particular the extent to which these provisions establish common rules that risk to be affected or altered in scope by the provisions of the FCTC Protocol or an act adopted in implementation thereof.

- Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (OJ L 127, 29.4.2014, p. 1).
- Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15).

- Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).
- Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ L 9, 14.1.2009, p. 12).
- Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco (OJ L 176, 5.7.2011, p. 24).
- Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (OJ L 182, 5.7.2001, p. 1).
- Council Act of 26 July 1995 drawing up the Convention on the protection of the European Communities' financial interests (OJ C 316, 27.11.1995, p. 48).

### 3. Competence of the Member States

For other matters covered by the FCTC Protocol not mentioned in sections 2.1 and 2.2, for which the EU has not exclusive competence to act, the Member States remain competent to act.

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**PROTOCOL**  
**to Eliminate Illicit Trade in Tobacco Products**

**Preamble**

THE PARTIES TO THIS PROTOCOL,

CONSIDERING that on 21 May 2003, the Fifty-sixth World Health Assembly adopted by consensus the WHO Framework Convention on Tobacco Control, which came into force on 27 February 2005;

RECOGNIZING that the WHO Framework Convention on Tobacco Control is one of the United Nations' most rapidly ratified treaties and a fundamental tool for attaining the objectives of the World Health Organization;

RECALLING the Preamble to the Constitution of the World Health Organization, which states that the enjoyment of the highest attainable standard of health as a fundamental right of every human being without distinction of race, religion, political belief, economic or social condition;

DETERMINED ALSO to give priority to their right to protect public health;

DEEPLY CONCERNED that the illicit trade in tobacco products is contributing to the spread of the tobacco epidemic, which is a global problem with serious consequences for public health that calls for effective, appropriate and comprehensive domestic and international responses;

RECOGNIZING FURTHER that illicit trade in tobacco products undermines price and tax measures designed to strengthen tobacco control and thereby increases the accessibility and affordability of tobacco products;

SERIOUSLY CONCERNED by the adverse effects that the increase in accessibility and affordability of illicitly traded tobacco products has on public health and the well-being, in particular of young people, the poor and other vulnerable groups;

SERIOUSLY CONCERNED about the disproportionate economic and social implications of illicit trade in tobacco products on developing countries and countries with economies in transition;

AWARE of the need to develop scientific, technical and institutional capacity to plan and implement appropriate national, regional and international measures to eliminate all forms of illicit trade in tobacco products;

ACKNOWLEDGING that access to resources and relevant technologies is of great importance for enhancing the ability of Parties, particularly in developing countries and countries with economies in transition, to eliminate all forms of illicit trade in tobacco products;

ACKNOWLEDGING ALSO that, although free zones are established to facilitate legal trade, they have been used to facilitate the globalization of illicit trade in tobacco products, both in relation to the illicit transit of smuggled products and in the manufacture of illicit tobacco products;

RECOGNIZING ALSO that illicit trade in tobacco products undermines the economies of Parties and adversely affects their stability and security;

ALSO AWARE that illicit trade in tobacco products generates financial profits that are used to fund transnational criminal activity, which interferes with government objectives;

RECOGNIZING that the illicit trade in tobacco products undermines health objectives, imposes additional strain on health systems and causes losses of revenue to the economies of the Parties;

MINDFUL of Article 5.3 of the WHO Framework Convention on Tobacco Control in which Parties agree that in setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law;

EMPHASIZING the need to be alert to any efforts by the tobacco industry to undermine or subvert strategies to combat illicit trade in tobacco products and the need to be informed of activities of the tobacco industry that have a negative impact on strategies to combat illicit trade in tobacco products;

MINDFUL of Article 6.2 of the WHO Framework Convention on Tobacco Control, which encourages Parties to prohibit or restrict, as appropriate, sales to and/or importation by international travellers of tax- and duty-free tobacco products;

RECOGNIZING IN ADDITION that tobacco and tobacco products in international transit and transshipment find a channel for illicit trade;

TAKING INTO ACCOUNT that effective action to prevent and combat illicit trade in tobacco products requires a comprehensive international approach to, and close cooperation on, all aspects of illicit trade, including, as appropriate, illicit trade in tobacco, tobacco products and manufacturing equipment;

RECALLING AND EMPHASIZING the importance of other relevant international agreements such as the United Nations Convention against Transnational Organized Crime, the United Nations Convention against Corruption and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the obligation that Parties to these Conventions have to apply, as appropriate, the relevant provisions of these Conventions to illicit trade in tobacco, tobacco products and manufacturing equipment and ENCOURAGING those Parties that have not yet become Parties to these agreements to consider doing so;

RECOGNIZING the need to build enhanced cooperation between the Convention Secretariat of the WHO Framework Convention on Tobacco Control and the United Nations Office on Drugs and Crime, the World Customs Organization and other bodies, as appropriate;

RECALLING Article 15 of the WHO Framework Convention on Tobacco Control, in which Parties recognize, inter alia, that the elimination of all forms of illicit trade in tobacco products, including smuggling and illicit manufacturing, is an essential component of tobacco control;

CONSIDERING that this Protocol does not seek to address issues concerning intellectual property rights; and

CONVINCED that supplementing the WHO Framework Convention on Tobacco Control by a comprehensive protocol will be a powerful, effective means to counter illicit trade in tobacco products and its grave consequences,

HEREBY AGREE AS FOLLOWS:

## PART I

### INTRODUCTION

#### *Article 1*

#### **Use of terms**

1. 'Brokering' means acting as an agent for others, as in negotiating contracts, purchases, or sales in return for a fee or commission.
2. 'Cigarette' means a roll of cut tobacco for smoking, enclosed in cigarette paper. This excludes specific regional products such as bidis, ang hoon, or other similar products which can be wrapped in paper or leaves. For the purpose of Article 8, 'cigarette' also includes fine cut 'roll your own' tobacco for the purposes of making a cigarette.
3. 'Confiscation', which includes forfeiture where applicable, means the permanent deprivation of property by order of a court or other competent authority.

4. 'Controlled delivery' means the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence.
5. 'Free zone' means a part of the territory of a Party where any goods introduced are generally regarded, in so far as import duties and taxes are concerned, as being outside the Customs territory.
6. 'Illicit trade' means any practice or conduct prohibited by law and which relates to production, shipment, receipt, possession, distribution, sale or purchase, including any practice or conduct intended to facilitate such activity.
7. 'Licence' means permission from a competent authority following submission of the requisite application or other documentation to the competent authority.
8. (a) 'Manufacturing equipment' means machinery which is designed, or adapted, to be used solely for the manufacture of tobacco products and is integral to the manufacturing process <sup>(1)</sup>.  
  
(b) 'Any part thereof' in the context of manufacturing equipment means any identifiable part which is unique to manufacturing equipment used in the manufacture of tobacco products.
9. 'Party' means, unless the context indicates otherwise, a Party to this Protocol.
10. 'Personal data' means any information relating to an identified or identifiable natural person.
11. 'Regional economic integration organization' means an organization that is composed of several sovereign states, and to which its Member States have transferred competence over a range of matters, including the authority to make decisions binding on its Member States in respect of those matters <sup>(2)</sup>.
12. The 'supply chain' covers the manufacture of tobacco products and manufacturing equipment; and import or export of tobacco products and manufacturing equipment; and may be extended, where relevant, to one or more of the following activities when so decided by a Party:
  - (a) retailing of tobacco products;
  - (b) growing of tobacco, except for traditional small-scale growers, farmers and producers;
  - (c) transporting commercial quantities of tobacco products or manufacturing equipment; and
  - (d) wholesaling, brokering, warehousing or distribution of tobacco and tobacco products or manufacturing equipment.
13. 'Tobacco products' means products entirely or partly made of the leaf tobacco as raw material, which are manufactured to be used for smoking, sucking, chewing or snuffing.
14. 'Tracking and tracing' means systematic monitoring and re-creation by competent authorities or any other person acting on their behalf of the route or movement taken by items through the supply chain, as outlined in Article 8.

## Article 2

### **Relationship between this Protocol and other agreements and legal instruments**

1. The provisions of the WHO Framework Convention on Tobacco Control that apply to its protocols shall apply to this Protocol.

<sup>(1)</sup> Parties may include reference to the Harmonized Commodity Description and Coding System of the World Customs Organization for this purpose, wherever applicable.

<sup>(2)</sup> Where appropriate, national or domestic will refer equally to regional economic integration organizations.

2. Parties that have entered into the types of agreements mentioned in Article 2 of the WHO Framework Convention on Tobacco Control shall communicate such agreements to the Meeting of the Parties through the Convention Secretariat.
3. Nothing in this Protocol shall affect the rights and obligations of any Party pursuant to any other international convention, treaty or international agreement in force for that Party that it deems to be more conducive to the achievement of the elimination of illicit trade in tobacco products.
4. Nothing in this Protocol shall affect other rights, obligations and responsibilities of Parties under international law, including the United Nations Convention against Transnational Organized Crime.

### *Article 3*

#### **Objective**

The objective of this Protocol is to eliminate all forms of illicit trade in tobacco products, in accordance with the terms of Article 15 of the WHO Framework Convention on Tobacco Control.

### PART II

#### **GENERAL OBLIGATIONS**

### *Article 4*

#### **General obligations**

1. In addition to the provisions of Article 5 of the WHO Framework Convention on Tobacco Control, Parties shall:
  - (a) adopt and implement effective measures to control or regulate the supply chain of goods covered by this Protocol in order to prevent, deter, detect, investigate and prosecute illicit trade in such goods and shall cooperate with one another to this end;
  - (b) take any necessary measures in accordance with their national law to increase the effectiveness of their competent authorities and services, including customs and police responsible for preventing, deterring, detecting, investigating, prosecuting and eliminating all forms of illicit trade in goods covered by this Protocol;
  - (c) adopt effective measures for facilitating or obtaining technical assistance and financial support, capacity building and international cooperation in order to achieve the objectives of this Protocol and ensure the availability to, and secure exchange with, the competent authorities of information to be exchanged under this Protocol;
  - (d) cooperate closely with one another, consistent with their respective domestic legal and administrative systems, in order to enhance the effectiveness of law enforcement action to combat the unlawful conduct including criminal offences established in accordance with Article 14 of this Protocol;
  - (e) cooperate and communicate, as appropriate, with relevant regional and international intergovernmental organizations in the secure <sup>(1)</sup> exchange of information covered by this Protocol in order to promote the effective implementation of this Protocol; and
  - (f) within the means and resources at their disposal, cooperate to raise financial resources for the effective implementation of this Protocol through bilateral and multilateral funding mechanisms.
2. In implementing their obligations under this Protocol, Parties shall ensure the maximum possible transparency with respect to any interactions they may have with the tobacco industry.

<sup>(1)</sup> A secure exchange of information between two parties is resistant to interception and tampering (falsification). In other words, the information exchanged between the two parties cannot be read or modified by a third party.

*Article 5***Protection of personal data**

Parties shall protect personal data of individuals regardless of nationality or residence, subject to national law, taking into consideration international standards regarding the protection of personal data, when implementing this Protocol.

## PART III

**SUPPLY CHAIN CONTROL***Article 6***Licence, equivalent approval or control system**

1. To achieve the objectives of the WHO Framework Convention on Tobacco Control and with a view to eliminating illicit trade in tobacco products and manufacturing equipment, each Party shall prohibit the conduct of any of the following activities by any natural or legal person except pursuant to a licence or equivalent approval (hereafter 'licence') granted, or control system implemented, by a competent authority in accordance with national law:

- (a) manufacture of tobacco products and manufacturing equipment; and
- (b) import or export of tobacco products and manufacturing equipment.

2. Each Party shall endeavour to license, to the extent considered appropriate, and when the following activities are not prohibited by national law, any natural or legal person engaged in:

- (a) retailing of tobacco products;
- (b) growing of tobacco, except for traditional small-scale growers, farmers and producers;
- (c) transporting commercial quantities of tobacco products or manufacturing equipment; and
- (d) wholesaling, brokering, warehousing or distribution of tobacco and tobacco products or manufacturing equipment.

3. With a view to ensuring an effective licensing system, each Party shall:

- (a) establish or designate a competent authority or authorities to issue, renew, suspend, revoke and/or cancel licences, subject to the provisions of this Protocol, and in accordance with its national law, to conduct the activities specified in paragraph 1;
- (b) require that each application for a licence contains all the requisite information about the applicant, which should include, where applicable:
  - (i) where the applicant is a natural person, information regarding his or her identity, including full name, trade name, business registration number (if any), applicable tax registration numbers (if any) and any other information to allow identification to take place;
  - (ii) when the applicant is a legal person, information regarding its identity, including full legal name, trade name, business registration number, date and place of incorporation, location of corporate headquarters and principal place of business, applicable tax registration numbers, copies of articles of incorporation or equivalent documents, its corporate affiliates, names of its directors and of any designated legal representatives, including any other information to allow identification to take place;
  - (iii) precise business location of the manufacturing unit(s), warehouse location and production capacity of the business run by the applicant;

- (iv) details of the tobacco products and manufacturing equipment covered by the application, such as product description, name, registered trade mark if any, design, brand, model or make and serial number of the manufacturing equipment;
  - (v) description of where manufacturing equipment will be installed and used;
  - (vi) documentation or a declaration regarding any criminal records;
  - (vii) complete identification of the bank accounts intended to be used in the relevant transactions and other relevant payment details; and
  - (viii) a description of the intended use and intended market of sale of the tobacco products, with particular attention to ensuring that tobacco product production or supply is commensurate with reasonably anticipated demand;
- (c) monitor and collect, where applicable, any licence fees that may be levied and consider using them in effective administration and enforcement of the licensing system or for public health or any other related activity in accordance with national law;
- (d) take appropriate measures to prevent, detect and investigate any irregular or fraudulent practices in the operation of the licensing system;
- (e) undertake measures such as periodic review, renewal, inspection or audit of licences where appropriate;
- (f) establish, where appropriate, a time frame for expiration of licences and subsequent requisite reapplication or updating of application information;
- (g) oblige any licensed natural or legal person to inform the competent authority in advance of any change of location of their business or any significant change in information relevant to the activities as licensed;
- (h) oblige any licensed natural or legal person to inform the competent authority, for appropriate action, of any acquisition or disposal of manufacturing equipment; and
- (i) ensure that the destruction of any such manufacturing equipment or any part thereof, shall take place under the supervision of the competent authority.
4. Each Party shall ensure that no licence shall be assigned and/or transferred without receipt from the proposed licensee of the appropriate information contained in paragraph 3, and without prior approval from the competent authority.

5. Five years following the entry into force of this Protocol, the Meeting of the Parties shall ensure at its next session that evidence-based research is conducted to ascertain whether any key inputs exist that are essential to the manufacture of tobacco products, are identifiable and can be subject to an effective control mechanism. On the basis of such research, the Meeting of the Parties shall consider appropriate action.

#### *Article 7*

#### **Due diligence**

1. Each Party shall require, consistent with its national law and the objectives of the WHO Framework Convention on Tobacco Control, that all natural and legal persons engaged in the supply chain of tobacco, tobacco products and manufacturing equipment:
- (a) conduct due diligence before the commencement of and during the course of, a business relationship;

- (b) monitor the sales to their customers to ensure that the quantities are commensurate with the demand for such products within the intended market of sale or use; and
- (c) report to the competent authorities any evidence that the customer is engaged in activities in contravention of its obligations arising from this Protocol.

2. Due diligence pursuant to paragraph 1 shall, as appropriate, consistent with its national law and the objectives of the WHO Framework Convention on Tobacco Control, include, inter alia, requirements for customer identification, such as obtaining and updating information relating to the following:

- (a) establishing that the natural or legal person holds a licence in accordance with Article 6;
- (b) when the customer is a natural person, information regarding his or her identity, including full name, trade name, business registration number (if any), applicable tax registration numbers (if any) and verification of his or her official identification;
- (c) when the customer is a legal person, information regarding its identity, including full name, trade name, business registration number, date and place of incorporation, location of corporate headquarters and principal place of business, applicable tax registration numbers, copies of articles of incorporation or equivalent documents, its corporate affiliates, names of its directors and any designated legal representatives, including the representatives' names and verification of their official identification;
- (d) a description of the intended use and intended market of sale of tobacco, tobacco products or manufacturing equipment; and
- (e) a description of the location where manufacturing equipment will be installed and used.

3. Due diligence pursuant to paragraph 1 may include requirements for customer identification, such as obtaining and updating information relating to the following:

- (a) documentation or a declaration regarding any criminal records; and
- (b) identification of the bank accounts intended to be used in transactions.

4. Each Party shall, on the basis of the information reported in paragraph 1(c), take all necessary measures to ensure compliance with the obligations arising from this Protocol, which may include the designation of a customer within the jurisdiction of the Party to become a blocked customer as defined by national law.

#### *Article 8*

### **Tracking and tracing**

1. For the purposes of further securing the supply chain and to assist in the investigation of illicit trade in tobacco products, the Parties agree to establish within five years of entry into force of this Protocol a global tracking and tracing regime, comprising national and/or regional tracking and tracing systems and a global information sharing focal point located at the Convention Secretariat of the WHO Framework Convention on Tobacco Control and accessible to all Parties, enabling Parties to make enquiries and receive relevant information.

2. Each Party shall establish, in accordance with this Article, a tracking and tracing system, controlled by the Party for all tobacco products that are manufactured in or imported onto its territory taking into account their own national or regional specific needs and available best practice.

3. With a view to enabling effective tracking and tracing, each Party shall require that unique, secure and non-removable identification markings (hereafter called unique identification markings), such as codes or stamps, are affixed to or form part of all unit packets and packages and any outside packaging of cigarettes within a period of five years and other tobacco products within a period of ten years of entry into force of this Protocol for that Party.

4.1 Each Party shall, for purposes of paragraph 3, as part of the global tracking and tracing regime, require that the following information be available, either directly or accessible by means of a link, to assist Parties in determining the origin of tobacco products, the point of diversion where applicable, and to monitor and control the movement of tobacco products and their legal status:

- (a) date and location of manufacture;
- (b) manufacturing facility;
- (c) machine used to manufacture tobacco products;
- (d) production shift or time of manufacture;
- (e) the name, invoice, order number and payment records of the first customer who is not affiliated with the manufacturer;
- (f) the intended market of retail sale;
- (g) product description;
- (h) any warehousing and shipping;
- (i) the identity of any known subsequent purchaser; and
- (j) the intended shipment route, the shipment date, shipment destination, point of departure and consignee.

4.2 The information in subparagraphs (a), (b), (g) and where available (f), shall form part of the unique identification markings.

4.3 Where the information in subparagraph (f) is not available at the time of marking, Parties shall require the inclusion of such information in accordance with Article 15.2(a) of the WHO Framework Convention on Tobacco Control.

5. Each Party shall require, within the time limits specified in this Article, that the information set out in paragraph 4 is recorded, at the time of production, or at the time of first shipment by any manufacturer or at the time of import onto its territory.

6. Each Party shall ensure that the information recorded under paragraph 5 is accessible by that Party by means of a link with the unique identification markings required under paragraphs 3 and 4.

7. Each Party shall ensure that the information recorded in accordance with paragraph 5, as well as the unique identification markings rendering such information accessible in accordance with paragraph 6 shall be included in a format established or authorized by the Party and its competent authorities.

8. Each Party shall ensure that the information recorded under paragraph 5 is accessible to the global information sharing focal point on request, subject to paragraph 9, through a standard electronic secure interface with its national and/or regional central point. The global information sharing focal point shall compile a list of the competent authorities of Parties and make the list available to all Parties.

9. Each Party or the competent authority shall:

- (a) have access to the information outlined in paragraph 4 in a timely manner by making a query to the global information sharing focal point;
- (b) request such information only where it is necessary for the purpose of detection or investigation of illicit trade in tobacco products;
- (c) not unreasonably withhold information;
- (d) answer the information requests in relation to paragraph 4, in accordance with its national law; and
- (e) protect and treat as confidential, as mutually agreed, any information that is exchanged.

10. Each Party shall require the further development and expansion of the scope of the applicable tracking and tracing system up to the point that all duties, relevant taxes, and where appropriate, other obligations have been discharged at the point of manufacture, import or release from customs or excise control.
11. Parties shall cooperate with each other and with competent international organizations, as mutually agreed, in sharing and developing best practices for tracking and tracing systems including:
- (a) facilitation of the development, transfer and acquisition of improved tracking and tracing technology, including knowledge, skills, capacity and expertise;
  - (b) support for training and capacity-building programmes for Parties that express such a need; and
  - (c) further development of the technology to mark and scan unit packets and packages of tobacco products to make accessible the information listed in paragraph 4.
12. Obligations assigned to a Party shall not be performed by or delegated to the tobacco industry.
13. Each Party shall ensure that its competent authorities, in participating in the tracking and tracing regime, interact with the tobacco industry and those representing the interests of the tobacco industry only to the extent strictly necessary in the implementation of this Article.
14. Each Party may require the tobacco industry to bear any costs associated with that Party's obligations under this Article.

#### *Article 9*

#### **Record-keeping**

1. Each Party shall require, as appropriate, that all natural and legal persons engaged in the supply chain of tobacco, tobacco products and manufacturing equipment maintain complete and accurate records of all relevant transactions. Such records must allow for the full accountability of materials used in the production of their tobacco products.
2. Each Party shall, as appropriate, require persons licensed in accordance with Article 6 to provide, on request, the following information to the competent authorities:
- (a) general information on market volumes, trends, forecasts and other relevant information; and
  - (b) the quantities of tobacco products and manufacturing equipment in the licensee's possession, custody or control kept in stock, in tax and customs warehouses under the regime of transit or transshipment or duty suspension as of the date of the request.
3. With respect to tobacco products and manufacturing equipment sold or manufactured on the territory of the Party for export, or subject to duty-suspended movement in transit or transshipment on the territory of the Party, each Party shall, as appropriate, require that persons licensed in accordance with Article 6, provide, on request, to the competent authorities in the country of departure (electronically, where the infrastructure exists) at the time of departure from their control with the following information:
- (a) the date of shipment from the last point of physical control of the products;
  - (b) the details concerning the products shipped (including brand, amount, warehouse);
  - (c) the intended shipping routes and destination;
  - (d) the identity of the natural or legal person(s) to whom the products are being shipped;
  - (e) the mode of transportation, including the identity of the transporter;

- (f) the expected date of arrival of the shipment at the intended shipping destination; and
  - (g) intended market of retail sale or use.
4. If feasible, each Party shall require that retailers and tobacco growers, except for traditional growers working on a non-commercial basis, maintain complete and accurate records of all relevant transactions in which they engage, in accordance with its national law.
5. For the purposes of implementing paragraph 1, each Party shall adopt effective legislative, executive, administrative or other measures to require that all records are:
- (a) maintained for a period of at least four years;
  - (b) made available to the competent authorities; and
  - (c) maintained in a format, as required by the competent authorities.
6. Each Party shall, as appropriate and subject to national law, establish a system for sharing details contained in all records kept in accordance with this Article with other Parties.
7. Parties shall endeavour to cooperate, with each other and with competent international organizations, in progressively sharing and developing improved systems for record-keeping.

#### Article 10

##### **Security and preventive measures**

1. Each Party shall, where appropriate, consistent with its national law and the objectives of the WHO Framework Convention on Tobacco Control, require that all natural and legal persons subject to Article 6 take the necessary measures to prevent the diversion of tobacco products into illicit trade channels, including, inter alia:
- (a) reporting to the competent authorities:
    - (i) the cross-border transfer of cash in amounts stipulated in national law or of cross-border payments in kind; and
    - (ii) all 'suspicious transactions'; and
  - (b) supplying tobacco products or manufacturing equipment only in amounts commensurate with the demand for such products within the intended market of retail sale or use.
2. Each Party shall, where appropriate, consistent with its national law and the objectives of the WHO Framework Convention on Tobacco Control, require that payments for transactions carried out by natural or legal persons subject to Article 6 be allowed only in the currency and in the same amount as the invoice, and only through legal modes of payment from financial institutions located on the territory of the intended market and shall not be operated through any other alternative remittance system.
3. A Party may require that payments carried out by natural or legal persons subject to Article 6 for materials used for the manufacture of tobacco products in its jurisdiction be allowed only in the currency and in the same amount as the invoice, and only through legal modes of payment from financial institutions located on the territory of the intended market and shall not be operated through any other alternative remittance system.
4. Each Party shall ensure that any contravention of the requirements of this Article is subject to appropriate criminal, civil or administrative procedures and effective, proportionate and dissuasive sanctions including, as appropriate, suspension or cancellation of a licence.

*Article 11***Sale by Internet, telecommunication or any other evolving technology**

1. Each Party shall require that all legal and natural persons engaged in any transaction with regard to tobacco products through Internet-, telecommunication- or any other evolving technology-based modes of sale comply with all relevant obligations covered by this Protocol.
2. Each Party shall consider banning retail sales of tobacco product through Internet-, telecommunication- or any other evolving technology-based modes of sale.

*Article 12***Free zones and international transit**

1. Each Party shall, within three years of the entry into force of this Protocol for that Party, implement effective controls on all manufacturing of, and transactions in, tobacco and tobacco products, in free zones, by use of all relevant measures as provided in this Protocol.
2. In addition, the intermingling of tobacco products with non-tobacco products in a single container or any other such similar transportation unit at the time of removal from free zones shall be prohibited.
3. Each Party shall, in accordance with national law, adopt and apply control and verification measures to the international transit or transshipment, within its territory, of tobacco products and manufacturing equipment in conformity with the provisions of this Protocol in order to prevent illicit trade in such products.

*Article 13***Duty free sales**

1. Each Party shall implement effective measures to subject any duty free sales to all relevant provisions of this Protocol, taking into consideration Article 6 of the WHO Framework Convention on Tobacco Control.
2. No later than five years following the entry into force of this Protocol, the Meeting of the Parties shall ensure at its next session that evidence-based research is conducted to ascertain the extent of illicit trade in tobacco products related to duty free sales of such products. On the basis of such research, the Meeting of the Parties shall consider appropriate further action.

## PART IV

**OFFENCES***Article 14***Unlawful conduct including criminal offences**

1. Each Party shall adopt, subject to the basic principles of its domestic law, such legislative and other measures as may be necessary to establish all of the following conduct as unlawful under its domestic law:
  - (a) manufacturing, wholesaling, brokering, selling, transporting, distributing, storing, shipping, importing or exporting tobacco, tobacco products or manufacturing equipment contrary to the provisions of this Protocol;

- (b) (i) manufacturing, wholesaling, brokering, selling, transporting, distributing, storing, shipping, importing or exporting tobacco, tobacco products or manufacturing equipment without the payment of applicable duties, taxes and other levies or without bearing applicable fiscal stamps, unique identification markings, or any other required markings or labels;
- (ii) any other acts of smuggling or attempted smuggling of tobacco, tobacco products or manufacturing equipment not covered by paragraph (b)(i);
- (c) (i) any other form of illicit manufacture of tobacco, tobacco products or manufacturing equipment, or tobacco packaging bearing false fiscal stamps, unique identification markings, or any other required markings or labels;
- (ii) wholesaling, brokering, selling, transporting, distributing, storing, shipping, importing or exporting of illicitly manufactured tobacco, illicit tobacco products, products bearing false fiscal stamps and/or other required markings or labels, or illicit manufacturing equipment;
- (d) mixing of tobacco products with non-tobacco products during progression through the supply chain, for the purpose of concealing or disguising tobacco products;
- (e) intermingling of tobacco products with non-tobacco products in contravention of Article 12.2 of this Protocol;
- (f) using Internet-, telecommunication- or any other evolving technology-based modes of sale of tobacco products in contravention of this Protocol;
- (g) obtaining, by a person licensed in accordance with Article 6, tobacco, tobacco products or manufacturing equipment from a person who should be, but is not, licensed in accordance with Article 6;
- (h) obstructing any public officer or an authorized officer in the performance of duties relating to the prevention, deterrence, detection, investigation or elimination of illicit trade in tobacco, tobacco products or manufacturing equipment;
- (i) (i) making any material statement that is false, misleading or incomplete, or failing to provide any required information to any public officer or an authorized officer in the performance of duties relating to the prevention, deterrence, detection, investigation or elimination of illicit trade in tobacco, tobacco products or manufacturing equipment and when not contrary to the right against self-incrimination;
- (ii) mis-declaring on official forms the description, quantity or value of tobacco, tobacco products or manufacturing equipment or any other information specified in the protocol to:
  - (a) evade the payment of applicable duties, taxes and other levies, or
  - (b) prejudice any control measures for the prevention, deterrence, detection, investigation or elimination of illicit trade in tobacco, tobacco products or manufacturing equipment;
- (iii) failing to create or maintain records covered by this Protocol or maintaining false records; and
- (j) laundering of proceeds of unlawful conduct established as a criminal offence under paragraph 2.

2. Each Party shall, subject to the basic principles of its domestic law, determine which of the unlawful conduct set out in paragraph 1 or any other conduct related to illicit trade in tobacco, tobacco products and manufacturing equipment contrary to the provisions of this Protocol shall be criminal offences and adopt legislative and other measures as may be necessary to give effect to such determination.

3. Each Party shall notify the Secretariat of this Protocol which of the unlawful conduct set out in paragraphs 1 and 2 that the Party has determined to be a criminal offence in accordance with paragraph 2, and shall furnish to the Secretariat copies of its laws, or a description thereof, that give effect to paragraph 2, and of any subsequent changes to such laws.

4. In order to enhance international cooperation in combatting the criminal offences related to illicit trade in tobacco, tobacco products and manufacturing equipment, Parties are encouraged to review their national laws regarding money laundering, mutual legal assistance and extradition, having regard to relevant international conventions to which they are Parties, to ensure that they are effective in the enforcement of the provisions of this Protocol.

#### *Article 15*

##### **Liability of legal persons**

1. Each Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for the unlawful conduct including criminal offences established in accordance with Article 14 of this Protocol.
2. Subject to the legal principles of each Party, the liability of legal persons may be criminal, civil or administrative.
3. Such liability shall be without prejudice to the liability of the natural persons who have engaged in the unlawful conduct or committed the criminal offences established in accordance with national laws and regulations and Article 14 of this Protocol.

#### *Article 16*

##### **Prosecutions and sanctions**

1. Each Party shall adopt such measures as may be necessary, in accordance with national law, to ensure that natural and legal persons held liable for the unlawful conduct including criminal offences established in accordance with Article 14 are subjected to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.
2. Each Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for the unlawful conduct, including criminal offences established in accordance with Article 14, are exercised to maximize the effectiveness of law enforcement measures in respect of such unlawful conduct including criminal offences, and with due regard to the need to deter the commission of such unlawful conduct including offences.
3. Nothing contained in this Protocol shall affect the principle that the description of the unlawful conduct including criminal offences established in accordance with this Protocol and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a Party and that such unlawful conduct including criminal offences shall be prosecuted and sanctioned in accordance with that law.

#### *Article 17*

##### **Seizure payments**

Parties should, in accordance with their domestic law, consider adopting such legislative and other measures as may be necessary to authorize competent authorities to levy an amount proportionate to lost taxes and duties from the producer, manufacturer, distributor, importer or exporter of seized tobacco, tobacco products and/or manufacturing equipment.

*Article 18***Disposal or destruction**

All confiscated tobacco, tobacco products and manufacturing equipment shall be destroyed, using environmentally friendly methods to the greatest extent possible, or disposed of in accordance with national law.

*Article 19***Special investigative techniques**

1. If permitted by the basic principles of its domestic legal system, each Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems it appropriate, for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities on its territory for the purpose of effectively combating illicit trade in tobacco, tobacco products or manufacturing equipment.
2. For the purpose of investigating the criminal offences established in accordance with Article 14, Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using the techniques referred to in paragraph 1 in the context of cooperation at the international level.
3. In the absence of an agreement or arrangement as set forth in paragraph 2, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the Parties concerned.
4. Parties recognize the importance of, and need for, international cooperation and assistance in this area and shall cooperate, with each other and with international organizations, in developing capacity to achieve the goals of this Article.

## PART V

**INTERNATIONAL COOPERATION***Article 20***General information sharing**

1. Parties shall, for the purpose of achieving the objectives of this Protocol, report, as part of the WHO Framework Convention on Tobacco Control reporting instrument relevant information, subject to domestic law, and where appropriate, inter alia, on matters such as:
  - (a) in aggregate form, details of seizures of tobacco, tobacco products or manufacturing equipment, quantity, value of seizures, product descriptions, dates and places of manufacture; and taxes evaded;
  - (b) import, export, transit, tax-paid and duty-free sales and quantity or value of production of tobacco, tobacco products or manufacturing equipment;
  - (c) trends, concealment methods and modi operandi used in illicit trade in tobacco, tobacco products or manufacturing equipment; and
  - (d) any other relevant information, as agreed by the Parties.
2. Parties shall cooperate with each other and with competent international organizations to build the capacity of Parties to collect and exchange information.

3. Parties shall deem the said information to be confidential and for the use of Parties only, unless otherwise stated by the transmitting Party.

#### Article 21

##### **Enforcement information sharing**

1. Parties shall, subject to domestic law or any applicable international treaties, where appropriate, exchange, on their own initiative or on the request of a Party that provides due justification that such information is necessary for the purpose of detection or investigation of illicit trade in tobacco, tobacco products or manufacturing equipment, the following information:

- (a) records of licensing for the natural and legal persons concerned;
- (b) information for identification, monitoring and prosecution of natural or legal persons involved in illicit trade in tobacco, tobacco products or manufacturing equipment;
- (c) records of investigations and prosecutions;
- (d) records of payment for import, export or duty-free sales of tobacco, tobacco products or manufacturing equipment; and
- (e) details of seizures of tobacco, tobacco products or manufacturing equipment (including case reference information where appropriate, quantity, value of seizure, product description, entities involved, date and place of manufacture) and *modi operandi* (including means of transport, concealment, routing and detection).

2. Information received from Parties under this Article shall be used exclusively to meet the objectives of this Protocol. Parties may specify that such information may not be passed on without the agreement of the Party which provided the information.

#### Article 22

##### **Information sharing: confidentiality and protection of information**

1. Each Party shall designate the competent national authorities to which data referred to in Articles 20, 21 and 24 are supplied and notify Parties of such designation through the Convention Secretariat.

2. The exchange of information under this Protocol shall be subject to domestic law regarding confidentiality and privacy. Parties shall protect, as mutually agreed, any confidential information that is exchanged.

#### Article 23

##### **Assistance and cooperation: training, technical assistance and cooperation in scientific, technical and technological matters**

1. Parties shall cooperate, with each other and/or through competent international and regional organizations in providing training, technical assistance and cooperation in scientific, technical and technological matters, in order to achieve the objectives of this Protocol, as mutually agreed. Such assistance may include the transfer of expertise or appropriate technology in the areas of information gathering, law enforcement, tracking and tracing, information management, protection of personal data, interdiction, electronic surveillance, forensic analysis, mutual legal assistance and extradition.

2. Parties may, as appropriate, enter into bilateral, multilateral or any other agreements or arrangements in order to promote training, technical assistance and cooperation in scientific, technical and technological matters taking into account the needs of developing-country Parties and Parties with economies in transition.
3. Parties shall cooperate, as appropriate, to develop and research the possibilities of identifying the exact geographical origin of seized tobacco and tobacco products.

#### Article 24

### **Assistance and cooperation: investigation and prosecution of offences**

1. Parties shall, in accordance with their domestic law, take all necessary measures, where appropriate, to strengthen cooperation by multilateral, regional or bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of natural or legal persons engaged in illicit trade in tobacco, tobacco products or manufacturing equipment.
2. Each Party shall ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating illicit trade in tobacco, tobacco products or manufacturing equipment (including, where permitted under domestic law, judicial authorities) cooperate and exchange relevant information at national and international levels within the conditions prescribed by its domestic law.

#### Article 25

### **Protection of sovereignty**

1. Parties shall carry out their obligations under this Protocol in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.
2. Nothing in this Protocol entitles a Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

#### Article 26

### **Jurisdiction**

1. Each Party shall adopt such measures as may be necessary to establish its jurisdiction over the criminal offences established in accordance with Article 14 when:
  - (a) the offence is committed in the territory of that Party; or
  - (b) the offence is committed on board a vessel that is flying the flag of that Party or an aircraft that is registered under the laws of that Party at the time that the offence is committed.
2. Subject to Article 25, a Party may also establish its jurisdiction over any such criminal offence when:
  - (a) the offence is committed against that Party;
  - (b) the offence is committed by a national of that Party or a stateless person who has his or her habitual residence on its territory; or
  - (c) the offence is one of those established in accordance with Article 14 and is committed outside its territory with a view to the commission of an offence established in accordance with Article 14 within its territory.

3. For the purposes of Article 30, each Party shall adopt such measures as may be necessary to establish its jurisdiction over the criminal offences established in accordance with Article 14 when the alleged offender is present on its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.
4. Each Party may also adopt such measures as may be necessary to establish its jurisdiction over the criminal offences established in accordance with Article 14 when the alleged offender is present on its territory and it does not extradite him or her.
5. If a Party exercising its jurisdiction under paragraph 1 or 2 has been notified, or has otherwise learnt, that one or more other Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those Parties shall, as appropriate, consult one another with a view to coordinating their actions.
6. Without prejudice to norms of general international law, this Protocol does not exclude the exercise of any criminal jurisdiction established by a Party in accordance with its domestic law.

#### Article 27

### Law enforcement cooperation

1. Each Party shall adopt, consistent with their respective domestic legal and administrative systems, effective measures to:
  - (a) enhance and, where necessary, establish channels of communication between the competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the criminal offences established in accordance with Article 14;
  - (b) ensure effective cooperation among the competent authorities, agencies, customs, police and other law enforcement agencies;
  - (c) cooperate with other Parties in conducting enquiries in specific cases with respect to criminal offences established in accordance with Article 14 concerning:
    - (i) the identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;
    - (ii) the movement of proceeds of crime or property derived from the commission of such offences; and
    - (iii) the movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;
  - (d) provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;
  - (e) facilitate effective coordination among its competent authorities, agencies and services and promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the Parties concerned, the posting of liaison officers;
  - (f) exchange relevant information with other Parties on specific means and methods used by natural or legal persons in committing such offences, including, where applicable, routes and conveyances and the use of false identities, altered or false documents or other means of concealing their activities; and
  - (g) exchange relevant information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the criminal offences established in accordance with Article 14.

2. With a view to giving effect to this Protocol, Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them accordingly. In the absence of such agreements or arrangements between the Parties concerned, the Parties may consider this Protocol as the basis for mutual law enforcement cooperation in respect of the offences covered by this Protocol. Whenever appropriate, Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.
3. Parties shall endeavour to cooperate within their means to respond to transnational illicit trade of tobacco products committed through the use of modern technology.

#### Article 28

##### **Mutual administrative assistance**

Consistent with their respective domestic legal and administrative systems, Parties shall provide each other, either on request or on their own initiative, with information to ensure proper application of customs and other relevant law in the prevention, detection, investigation, prosecution and combating of illicit trade in tobacco, tobacco products or manufacturing equipment. The Parties shall deem the said information to be confidential and for restricted use, unless otherwise stated by the transmitting Party. Such information may include:

- (a) new customs and other enforcement techniques of demonstrated effectiveness;
- (b) new trends, means or methods of engaging in illicit trade in tobacco, tobacco products and manufacturing equipment;
- (c) goods known to be the subject of illicit trade in tobacco, tobacco products and manufacturing equipment as well as details of description, packaging, transport and storage and methods used in respect of those goods;
- (d) natural or legal persons known to have committed or to be a party to an offence established in accordance with Article 14; and
- (e) any other data that would assist designated agencies in risk assessment for control and other enforcement purposes.

#### Article 29

##### **Mutual legal assistance**

1. Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to criminal offences established in accordance with Article 14 of this Protocol.
2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which legal persons may be held liable in accordance with Article 15 of this Protocol in the requesting Party.
3. Mutual legal assistance to be afforded in accordance with this Article may be requested for any of the following purposes:
  - (a) taking evidence or statements from persons;
  - (b) effecting service of judicial documents;
  - (c) executing searches and seizures, and freezing;

- (d) examining objects and sites;
- (e) providing information, evidentiary items and expert evaluations;
- (f) providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
- (g) identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
- (h) facilitating the voluntary appearance of persons in the requesting Party; and
- (i) any other type of assistance that is not contrary to the domestic law of the requested Party.

4. This Article shall not affect the obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual legal assistance.

5. Paragraphs 6 to 24 shall, on the basis of reciprocity, apply to requests made pursuant to this Article if the Parties in question are not bound by a treaty or intergovernmental agreement of mutual legal assistance. If the Parties are bound by such a treaty or intergovernmental agreement, the corresponding provisions of that treaty or intergovernmental agreement shall apply unless the Parties agree to apply paragraphs 6 to 24 in lieu thereof. Parties are strongly encouraged to apply these paragraphs if they facilitate cooperation.

6. Parties shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to their respective competent authorities for execution. When a Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. Each Party shall notify the Head of the Convention Secretariat at the time of accession, acceptance, approval, formal confirmation or ratification of this Protocol of the central authority designated for this purpose. Transmission of requests for mutual legal assistance and any communication related thereto shall be effected between the central authorities designated by the Parties. This requirement shall be without prejudice to the right of a Party to require that such requests and communications be addressed to it through the diplomatic channel and, in urgent circumstances, where the Parties agree, through appropriate international organizations, if possible.

7. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested Party under conditions allowing the Party to establish authenticity. The language or languages acceptable to each Party shall be notified to the Head of the Convention Secretariat at the time of accession, acceptance, approval, formal confirmation or ratification of this Protocol. In urgent circumstances, and where agreed by the Parties, requests may be made orally, but shall be confirmed in writing forthwith.

8. A request for mutual legal assistance shall contain:

- (a) the identity of the authority making the request;
- (b) the subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates, and the name and the functions of the authority conducting such investigation, prosecution or judicial proceeding;
- (c) a summary of the relevant facts, except in respect of requests for the purpose of service of judicial documents;
- (d) a description of the assistance sought and details of any particular procedure that the requesting Party wishes to be followed;
- (e) where possible, the identity, location and nationality of any person concerned;
- (f) the purpose for which the evidence, information or action is sought; and
- (g) the provisions of the domestic law relevant to the criminal offence and the punishment therefore.

9. The requested Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.
10. A request shall be executed in accordance with the domestic law of the requested Party and, to the extent not contrary to the domestic law of the requested Party and where possible, in accordance with the procedures specified in the request.
11. The requesting Party shall not transmit or use information or evidence furnished by the requested Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested Party. Nothing in this paragraph shall prevent the requesting Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting Party shall notify the requested Party prior to the disclosure and, if so requested, consult with the requested Party. If, in an exceptional case, advance notice is not possible, the requesting Party shall inform the requested Party of the disclosure without delay.
12. The requesting Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.
13. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a Party and has to be heard as a witness or expert by the judicial authorities of another Party, the first Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting Party. Parties may agree that the hearing shall be conducted by a judicial authority of the requesting Party and attended by a judicial authority of the requested Party.
14. Mutual legal assistance may be refused:
- (a) if the request is not made in conformity with this Article;
  - (b) if the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;
  - (c) if the authorities of the requested Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;
  - (d) where the request involves a crime where the maximum penalty in the requested Party is less than two years of imprisonment or other forms of deprivation of liberty or, if, in the judgment of the requested Party, the provision of the assistance would impose a burden on its resources that is disproportionate to the seriousness of the crime; or
  - (e) if it would be contrary to the legal system of the requested Party relating to mutual legal assistance for the request to be granted.
15. Reasons shall be given for any refusal of mutual legal assistance.
16. A Party shall not decline to render mutual legal assistance under this Article on the ground of bank secrecy.
17. Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.
18. Parties may decline to render mutual legal assistance pursuant to this Article on the ground of absence of dual criminality. However, the requested Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested Party.
19. The requested Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting Party and for which reasons are given, preferably in the request. The requested Party shall respond to reasonable requests by the requesting Party regarding progress in its handling of the request. The requesting Party shall promptly inform the requested Party when the assistance sought is no longer required.

20. Mutual legal assistance may be postponed by the requested Party on the ground that it interferes with an on-going investigation, prosecution or judicial proceeding.

21. Before refusing a request pursuant to paragraph 14 or postponing its execution pursuant to paragraph 20, the requested Party shall consult with the requesting Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting Party accepts assistance subject to those conditions, it shall comply with the conditions.

22. The ordinary costs of executing a request shall be borne by the requested Party, unless otherwise agreed by the Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.

23. In the event of a request, the requested Party:

- (a) shall provide to the requesting Party copies of government records, documents or information in its possession that under its domestic law are available to the general public; and
- (b) may, at its discretion, provide to the requesting Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

24. Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to, or enhance the provisions of this Article.

#### Article 30

### Extradition

1. This Article shall apply to the criminal offences established in accordance with Article 14 of this Protocol when:

- (a) the person who is the subject of the request for extradition is located in the territory of the requested Party;
- (b) the criminal offence for which extradition is sought is punishable under the domestic law of both the requesting Party and the requested Party; and
- (c) the offence is punishable by a maximum period of imprisonment or other forms of deprivation of liberty of at least four years or by a more severe penalty or such lesser period as agreed by the Parties concerned pursuant to bilateral and multilateral treaties or other international agreements.

2. Each of the criminal offences to which this Article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

3. If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Protocol as the legal basis for extradition in respect of any criminal offence to which this Article applies.

4. Parties that do not make extradition conditional on the existence of a treaty shall recognize the criminal offences to which this Article applies as extraditable offences between themselves.

5. Extradition shall be subject to the conditions provided for by the domestic law of the requested Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested Party may refuse extradition.

6. Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any criminal offences to which this Article applies.

7. A Party in whose territory an alleged offender is present, if it does not extradite such person in respect of a criminal offence to which this Article applies solely on the ground that he or she is one of its nationals, shall, at the request of the Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a similar nature under the domestic law of that Party. The Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

8. Whenever a Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that Party and the Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 7.

9. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested Party, the requested Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the domestic law of the requesting Party or the remainder thereof.

10. Any person regarding whom proceedings are being carried out in connection with any of the criminal offences to which this Article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the Party in the territory of which that person is present.

11. Nothing in this Protocol shall be interpreted as imposing an obligation to extradite if the requested Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

12. Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

13. Before refusing extradition, the requested Party shall, where appropriate, consult with the requesting Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

14. Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition. Where Parties are bound by an existing treaty or intergovernmental arrangement the corresponding provisions of that treaty or intergovernmental arrangement shall apply unless the Parties agree to apply paragraph 1 to 13 in lieu thereof.

#### *Article 31*

#### **Measures to ensure extradition**

1. Subject to its domestic law and its extradition treaties, the requested Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

2. Measures taken in accordance with paragraph 1 shall be notified, in conformity with national law, as appropriate and without delay, to the requesting Party.

3. Any person regarding whom the measures in accordance with paragraph 1 are being taken, shall be entitled to:
  - (a) communicate without delay with the nearest appropriate representative of the State of which that person is a national or, if that person is a stateless person, the State in the territory of which that person habitually resides; and
  - (b) be visited by a representative of that State.

#### PART VI

### REPORTING

#### *Article 32*

### **Reporting and exchange of information**

1. Each Party shall submit to the Meeting of the Parties, through the Convention Secretariat, periodic reports on its implementation of this Protocol.
2. The format and content of such reports shall be determined by the Meeting of the Parties. These reports shall form part of the regular WHO Framework Convention on Tobacco Control reporting instrument.
3. The content of the periodic reports referred to in paragraph 1, shall be determined having regard, inter alia, to the following:
  - (a) information on legislative, executive, administrative or other measures taken to implement this Protocol;
  - (b) information, as appropriate, on any constraints or barriers encountered in the implementation of this Protocol and on the measures taken to overcome those barriers;
  - (c) information, as appropriate, on financial and technical assistance provided, received, or requested for activities related to the elimination of illicit trade in tobacco products; and
  - (d) the information specified in Article 20.

In those cases when relevant data are already being collected as part of the Conference of the Parties reporting mechanism, the Meeting of the Parties shall not duplicate these efforts.

4. The Meeting of the Parties, pursuant to Articles 33 and 36, shall consider arrangements to assist developing-country Parties and Parties with economies in transition, at their request, in meeting their obligations under this Article.
5. The reporting of information under those Articles shall be subject to national law regarding confidentiality and privacy. Parties shall protect, as mutually agreed, any confidential information that is reported or exchanged.

#### PART VII

### INSTITUTIONAL ARRANGEMENTS AND FINANCIAL RESOURCES

#### *Article 33*

### **Meeting of the Parties**

1. A Meeting of the Parties is hereby established. The first session of the Meeting of the Parties shall be convened by the Convention Secretariat immediately before or immediately after the next regular session of the Conference of the Parties following the entry into force of this Protocol.

2. Thereafter, regular sessions of the Meeting of the Parties shall be convened by the Convention Secretariat, immediately before or immediately after regular sessions of the Conference of the Parties.
3. Extraordinary sessions of the Meeting of the Parties shall be held at such other times as may be deemed necessary by the Meeting or at the written request of any Party, provided that, within six months of the request being communicated to them by the Convention Secretariat, it is supported by at least one third of the Parties.
4. The Rules of Procedure and the Financial Rules of the Conference of the Parties to the WHO Framework Convention on Tobacco Control shall apply, *mutatis mutandis*, to the Meeting of the Parties unless the Meeting of the Parties decides otherwise.
5. The Meeting of the Parties shall keep under regular review the implementation of the Protocol and take the decisions necessary to promote its effective implementation.
6. The Meeting of the Parties shall decide on the scale and mechanism of the voluntary assessed contributions from the Parties to the Protocol for the operation of this Protocol as well as other possible resources for its implementation.
7. At each ordinary session, the Meeting of the Parties shall by consensus adopt a budget and workplan for the financial period until the next ordinary session, which shall be distinct from the WHO Framework Convention on Tobacco Control budget and workplan.

#### *Article 34*

#### **Secretariat**

1. The Convention Secretariat shall be the Secretariat of this Protocol.
2. The functions of the Convention Secretariat with regard to its role as the secretariat of this Protocol shall be to:
  - (a) make arrangements for sessions of the Meeting of the Parties and any subsidiary bodies as well as working groups and other bodies established by the Meeting of the Parties and provide them with services as required;
  - (b) receive, analyse, transmit and provide feedback to Parties concerned as needed and to the Meeting of the Parties on reports received by it pursuant to this Protocol and facilitate the exchange of information among Parties;
  - (c) provide support to the Parties, particularly developing country Parties and Parties with economies in transition, on request, in the compilation, communication, and exchange of information required in accordance with the provisions of this Protocol, and assistance in the identification of available resources to facilitate implementation of the obligations under this Protocol;
  - (d) prepare reports on its activities under this Protocol under the guidance of and for submission to the Meeting of the Parties;
  - (e) ensure, under the guidance of the Meeting of the Parties, the necessary coordination with the competent international and regional intergovernmental organizations and other bodies;
  - (f) enter, under the guidance of the Meeting of the Parties, into such administrative or contractual arrangements as may be required for the effective discharge of its functions as secretariat to this Protocol;
  - (g) receive and review applications by intergovernmental and nongovernmental organizations wishing to be accredited as observers to the Meeting of the Parties, while ensuring that they are not affiliated with the tobacco industry, and present the reviewed applications to the Meeting of the Parties for its consideration; and
  - (h) perform other secretariat functions specified by this Protocol and such other functions as may be determined by the Meeting of the Parties.

*Article 35***Relations between the Meeting of the Parties and intergovernmental organizations**

In order to provide technical and financial cooperation for achieving the objective of this Protocol, the Meetings of the Parties may request the cooperation of competent international and regional intergovernmental organizations, including financial and development institutions.

*Article 36***Financial resources**

1. Parties recognize the important role that financial resources play in achieving the objective of this Protocol, and acknowledge the importance of Article 26 of the WHO Framework Convention on Tobacco Control in achieving the objectives of the Convention.
2. Each Party shall provide financial support in respect of its national activities intended to achieve the objective of this Protocol, in accordance with its national plans, priorities and programmes.
3. Parties shall promote, as appropriate, the utilization of bilateral, regional, subregional and other multilateral channels to provide funding for strengthening the capacity of developing-country Parties and Parties with economies in transition in order to meet the objectives of this Protocol.
4. Without prejudice to Article 18, Parties are encouraged, subject to national laws and policies and where appropriate, to use any confiscated proceeds of crime deriving from the illicit trade in tobacco, tobacco products and manufacturing equipment to achieve the objectives set out in this Protocol.
5. Parties represented in relevant regional and international intergovernmental organizations and financial and development institutions shall encourage these entities to provide financial assistance for developing-country Parties and for Parties with economies in transition to assist them in meeting their obligations under this Protocol, without limiting the rights of participation within these organizations.
6. Parties agree that:
  - (a) to assist Parties in meeting their obligations under this Protocol, all relevant potential and existing resources available for activities related to the objective of this Protocol should be mobilized and utilized for the benefit of all Parties, especially developing-country Parties and Parties with economies in transition; and
  - (b) the Convention Secretariat shall advise developing-country Parties and Parties with economies in transition, upon request, on available sources of funding to facilitate implementation of their obligations under this Protocol.
7. Parties may require the tobacco industry to bear any costs associated with a Party's obligations to achieve the objectives of this Protocol, in compliance with Article 5.3 of the WHO Framework Convention on Tobacco Control.
8. Parties shall endeavour, subject to their domestic law, to achieve self-financing of the implementation of the Protocol including through the levying of taxes and other forms of charges on tobacco products.

## PART VIII

**SETTLEMENT OF DISPUTES***Article 37***Settlement of disputes**

The settlement of disputes between Parties concerning the interpretation or application of this Protocol is governed by Article 27 of the WHO Framework Convention on Tobacco Control.

## PART IX

**DEVELOPMENT OF THE PROTOCOL***Article 38***Amendments to this Protocol**

1. Any Party may propose amendments to this Protocol.
2. Amendments to this Protocol shall be considered and adopted by the Meeting of the Parties. The text of any proposed amendment to this Protocol shall be communicated to the Parties by the Convention Secretariat at least six months before the session at which it is proposed for adoption. The Convention Secretariat shall also communicate proposed amendments to the signatories of this Protocol and, for information, to the Depositary.
3. The Parties shall make every effort to reach agreement by consensus on any proposed amendment to this Protocol. If all efforts at consensus have been exhausted and no agreement reached, the amendment shall as a last resort be adopted by a three-quarters majority vote of the Parties present and voting at the session. For purposes of this Article, 'Parties present and voting' means Parties present and casting an affirmative or negative vote. Any adopted amendment shall be communicated by the Convention Secretariat to the Depositary, who shall circulate it to all Parties for acceptance.
4. Instruments of acceptance in respect of an amendment shall be deposited with the Depositary. An amendment adopted in accordance with paragraph 3 shall enter into force for those Parties having accepted it on the 90th day after the date of receipt by the Depositary of an instrument of acceptance by at least two thirds of the Parties.
5. The amendment shall enter into force for any other Party on the 90th day after the date on which that Party deposits with the Depositary its instrument of acceptance of the said amendment.

*Article 39***Adoption and amendment of annexes to this Protocol**

1. Any Party may make proposals for an annex to this Protocol and may propose amendments to annexes to this Protocol.
2. Annexes shall be restricted to lists, forms and any other descriptive material relating to procedural, scientific, technical or administrative matters.
3. Annexes to this Protocol and amendments thereto shall be proposed, adopted and enter into force in accordance with the procedure set forth in Article 38.

## PART X

**FINAL PROVISIONS***Article 40***Reservations**

No reservations may be made to this Protocol.

*Article 41***Withdrawal**

1. At any time after two years from the date on which this Protocol has entered into force for a Party, that Party may withdraw from the Protocol by giving written notification to the Depositary.
2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal or on such later date as may be specified in the notification of withdrawal.
3. Any Party that withdraws from the WHO Framework Convention on Tobacco Control shall also be considered as having withdrawn from this Protocol, with effect as of the date of its withdrawal from the WHO Framework Convention on Tobacco Control.

*Article 42***Right to vote**

1. Each Party to this Protocol shall have one vote, except as provided for in paragraph 2.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their Member States that are Parties to the Protocol. Such an organization shall not exercise its right to vote if any of its Member States exercises its right, and vice versa.

*Article 43***Signature**

The Protocol shall be open for signature by all Parties to the WHO Framework Convention on Tobacco Control at World Health Organization Headquarters in Geneva from 10 to 11 January 2013, and thereafter at United Nations Headquarters in New York until 9 January 2014.

*Article 44***Ratification, acceptance, approval, formal confirmation or accession**

1. This Protocol shall be subject to ratification, acceptance, approval or accession by States and to formal confirmation or accession by regional economic integration organizations that are Party to the WHO Framework Convention on Tobacco Control. It shall be open for accession from the day after the date on which the Protocol is closed for signature. Instruments of ratification, acceptance, approval, formal confirmation or accession shall be deposited with the Depositary.
2. Any regional economic integration organization that becomes a Party without any of its Member States being a Party shall be bound by all the obligations under this Protocol. In the case of organizations one or more of whose Member States is a Party, the organization and its Member States shall decide on their respective responsibilities for the performance of their obligations under this Protocol. In such cases, the organization and the Member States shall not be entitled to exercise rights under this Protocol concurrently.
3. Regional economic integration organizations shall, in their instruments relating to formal confirmation or in their instruments of accession, declare the extent of their competence with respect to the matters governed by this Protocol. These organizations shall also inform the Depositary, who shall in turn inform the Parties, of any substantial modification to the extent of their competence.

*Article 45***Entry into force**

1. This Protocol shall enter into force on the 90th day following the date of deposit of the 40th instrument of ratification, acceptance, approval, formal confirmation or accession with the Depositary.
2. For each Party to the WHO Framework Convention on Tobacco Control that ratifies, accepts, approves or formally confirms this Protocol or accedes thereto after the conditions set out in paragraph 1 for entry into force have been fulfilled, this Protocol shall enter into force on the ninetieth day following the date of deposit of its instrument of ratification, acceptance, approval, accession or formal confirmation.
3. For the purposes of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States Members of that organization.

*Article 46***Depositary**

The Secretary-General of the United Nations shall be the Depositary of this Protocol.

*Article 47***Authentic texts**

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

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**COUNCIL DECISION (EU) 2016/1751****of 20 September 2016****on the conclusion, on behalf of the European Union, of the Amending Protocol to the Agreement between the European Community and the Principality of Andorra providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Whereas:

- (1) In accordance with Council Decision (EU) 2016/242 <sup>(2)</sup>, the Amending Protocol to the Agreement between the European Community and the Principality of Andorra providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments was signed on 12 February 2016, subject to its conclusion at a later date.
- (2) The text of the Amending Protocol, which is the result of the negotiations, duly reflects the negotiating directives issued by the Council as it aligns the Agreement with the latest developments at international level concerning automatic exchange of information, namely with the Global Standard for automatic exchange of financial account information in tax matters developed by the Organisation for Economic Cooperation and Development (OECD). The Union, its Member States and the Principality of Andorra have actively participated in the work of the Global Forum of the OECD for supporting the development and implementation of that Global Standard. The text of the Agreement, as amended by the Amending Protocol, is the legal basis for implementing the Global Standard in the relations between the European Union and the Principality of Andorra.
- (3) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 <sup>(3)</sup>.
- (4) The Amending Protocol should be approved on behalf of the Union,

HAS ADOPTED THIS DECISION:

*Article 1*

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

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

<sup>(1)</sup> Opinion of 9 March 2016 (not yet published in the Official Journal).

<sup>(2)</sup> Council Decision (EU) 2016/242 of 12 February 2016 on the signing, on behalf of the European Union, of the Amending Protocol to the Agreement between the European Community and the Principality of Andorra providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments (OJ L 45, 20.2.2016, p. 10).

<sup>(3)</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

*Article 2*

1. The President of the Council shall, on behalf of the Union, give the notification provided for in Article 2(1) of the Amending Protocol <sup>(1)</sup>.
2. The Commission shall inform the Principality of Andorra and the Member States of the notifications given in accordance with Article 1(l)(d) of the Agreement between the European Union and the Principality of Andorra on the automatic exchange of financial account information to improve international tax compliance as resulting from the Amending Protocol.

*Article 3*

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

Done at Brussels, 20 September 2016.

*For the Council*  
*The President*  
I. KORČOK

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<sup>(1)</sup> The date of entry into force of the Amending Protocol will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

**AMENDING PROTOCOL****to the Agreement between the European Community and the Principality of Andorra providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments**

THE EUROPEAN UNION,

and

THE PRINCIPALITY OF ANDORRA, hereinafter referred to as 'Andorra',

both hereinafter referred to as 'Contracting Party' or, jointly, as 'Contracting Parties',

With a view to implementing the OECD Standard for Automatic Exchange of Financial Account Information, hereinafter referred to as 'Global Standard', within a framework of cooperation between the Contracting Parties,

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

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

WHEREAS Article 12 of the Agreement between the European Community and the Principality of Andorra providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments <sup>(2)</sup>, hereinafter referred to as 'Agreement', in the form prior to its amendment by this Amending Protocol, which currently provides for exchange of information upon request limited to conduct constituting tax fraud and the like, should be aligned to the OECD standard on transparency and exchange of information in tax matters,

WHEREAS the Contracting Parties will apply their respective data protection laws and practices to the processing of personal data exchanged in accordance with the Agreement as amended by this Amending Protocol and undertake to notify each other without undue delay in the event of any change in the substance of those laws and practices,

WHEREAS Commission Decision 2010/625/EU of 19 October 2010 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data provided in Andorra <sup>(3)</sup> stated that for all the activities falling within the scope of that Directive, Andorra is considered as providing an adequate level of protection of personal data transferred from the European Union,

WHEREAS the Member States and Andorra will have in place by the date of entry into force of this Amending Protocol (i) appropriate safeguards to ensure that the information received pursuant to the Agreement as amended by this Amending Protocol remains confidential and is used solely for the purposes of, and by the persons or authorities concerned with, the assessment or collection or recovery of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, taxes, or the oversight of these, as well as for other authorised purposes, and (ii) the infrastructure for an effective exchange relationship (including established processes for ensuring timely, accurate, secure and confidential information exchanges, effective and reliable communications, and capabilities to promptly resolve questions and concerns about exchanges or requests for exchanges and to administer the provisions of Article 4 of the Agreement as amended by this Amending Protocol),

<sup>(1)</sup> OJ EUL 157, 26.6.2003, p. 38.

<sup>(2)</sup> OJ EUL 359, 4.12.2004, p. 33.

<sup>(3)</sup> OJ EUL 277, 21.10.2010, p. 27.

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

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

HAVE AGREED AS FOLLOWS:

#### *Article 1*

The Agreement between the European Community and the Principality of Andorra providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments (hereinafter referred to as the 'Agreement') shall be amended as follows:

(1) The title shall be replaced by:

'Agreement between the European Union and the Principality of Andorra on the automatic exchange of financial account information to improve international tax compliance';

(2) Articles 1 to 19 shall be replaced by:

'*Article 1*

#### **Definitions**

1. For the purposes of this Agreement:

- (a) "European Union" means the Union as established by the Treaty on European Union and includes the territories in which the Treaty on the Functioning of the European Union is applied under the conditions laid down in that latter Treaty.
- (b) "Member State" means a Member State of the European Union.
- (c) "Andorra" means the Principality of Andorra.
- (d) "Competent Authorities of Andorra" and "Competent Authorities of the Member States" means the authorities listed in Annex III, under (a) and under (b) to (ac) respectively. Annex III shall form an integral part of this Agreement. The list of Competent Authorities in Annex III may be amended by simple notification of the other Contracting Party by Andorra for the authority referred to in (a) therein and by the European Union for the authorities referred to in (b) to (ac) therein.
- (e) "Member State Financial Institution" means (i) any Financial Institution that is resident in a Member State, excluding any branch of that Financial Institution that is located outside that Member State, and (ii) any branch of a Financial Institution that is not resident in that Member State, if that branch is located in that Member State.
- (f) "Andorra Financial Institution" means (i) any Financial Institution that is resident in Andorra, excluding any branch of that Financial Institution that is located outside Andorra, and (ii) any branch of a Financial Institution that is not resident in Andorra, if that branch is located in Andorra.

- (g) "Reporting Financial Institution" means any Member State Financial Institution or Andorra Financial Institution, as the context requires, that is not a Non-Reporting Financial Institution.
- (h) "Reportable Account" means a Member State Reportable Account or a Andorra Reportable Account, as the context requires, provided it has been identified as such pursuant to due diligence procedures, consistent with Annexes I and II, in place in that Member State or Andorra.
- (i) "Member State Reportable Account" means a Financial Account that is maintained by an Andorra Reporting Financial Institution and held by one or more Member State Persons that are Reportable Persons or by a Passive NFE with one or more Controlling Persons that is a Member State Reportable Person.
- (j) "Andorra Reportable Account" means a Financial Account that is maintained by a Member State Reporting Financial Institution and held by one or more Andorra Persons that are Reportable Persons or by a Passive NFE with one or more Controlling Persons that is an Andorra Reportable Person.
- (k) "Member State Person" means an individual or Entity that is identified by an Andorra Reporting Financial Institution as resident in a Member State pursuant to due diligence procedures consistent with Annexes I and II, or an estate of a decedent that was a resident of a Member State.
- (l) "Andorra Person" means an individual or Entity that is identified by a Member State Reporting Financial Institution as resident in Andorra pursuant to due diligence procedures consistent with Annexes I and II, or an estate of a decedent that was a resident of Andorra.

2. Any capitalised term not otherwise defined in this Agreement will have the meaning that it has at that time, (i) for Member States, under Council Directive 2011/16/EU on administrative cooperation in the field of taxation <sup>(1)</sup> or, where applicable, the domestic law of the Member State applying this Agreement, and (ii) for Andorra, under its domestic law, such meaning being consistent with the meaning set forth in Annexes I and II.

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

## Article 2

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

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

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

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

<sup>(1)</sup> OJ EUL 64, 11.3.2011, p. 1.

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

#### Article 3

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

1. For the purposes of the exchange of information in Article 2, the amount and characterisation of payments made with respect to a Reportable Account may be determined in accordance with the principles of the tax laws of the jurisdiction (being a Member State or Andorra) exchanging the information.
2. For the purposes of the exchange of information in Article 2, the information exchanged shall identify the currency in which each relevant amount is denominated.
3. With respect to paragraph 2 of Article 2, information is to be exchanged with respect to the first year as from the entry into force of the Amending Protocol signed on 12 February 2016 and all subsequent years and will be exchanged within nine months after the end of the calendar year to which the information relates.
4. The Competent Authorities will automatically exchange the information described in Article 2 in a common reporting standard schema in Extensible Markup Language.
5. The Competent Authorities will agree on one or more methods for data transmission including encryption standards.

#### Article 4

##### **Cooperation on Compliance and Enforcement**

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

## Article 5

### Exchange of Information upon Request

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

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

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

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

4. In no case shall the provisions of paragraph 2 be construed to permit Andorra or a Member State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

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

## Article 6

### Confidentiality and Data Safeguards

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

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

3. Such information shall in any case be disclosed only to persons or authorities (including courts and administrative or supervisory bodies) concerned with the assessment, collection or recovery of, the enforcement or prosecution in respect of, or the determination of appeals in relation to taxes of that jurisdiction (being a Member State or Andorra), or the oversight of these. Only the persons or authorities mentioned above may use the information and then only for purposes spelled out in the preceding sentence. They may, notwithstanding the provisions of paragraph 1, disclose it in public court proceedings or in judicial decisions relating to such taxes.

4. Notwithstanding the provisions of the preceding paragraphs, information received by a jurisdiction (being a Member State or Andorra) may be used for other purposes when such information may so be used under the laws of the supplying jurisdiction (being, respectively, Andorra or a Member State) and the Competent Authority of that jurisdiction authorises such use. Information provided by a jurisdiction (being a Member State or Andorra) to another jurisdiction (being, respectively, Andorra or a Member State) may be transmitted by the latter to a third jurisdiction (being another Member State), subject to prior authorisation by the Competent Authority of the first-mentioned jurisdiction, from which the information originated.

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

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

#### Article 7

### Consultations and suspension of this Agreement

1. If any difficulties in the implementation or interpretation of this Agreement arise, any of the Competent Authorities of Andorra or a Member State may request consultations between the Competent Authority of Andorra and one or more of the Competent Authorities of Member States to develop appropriate measures to ensure that this Agreement is fulfilled. Those Competent Authorities shall immediately notify the European Commission and the Competent Authorities of the other Member States of the results of their consultations. In relation to issues of interpretation the European Commission may take part in consultations at the request of any of the Competent Authorities.

2. If the consultation relates to significant non-compliance with the provisions of this Agreement, and the procedure described in paragraph 1 does not provide for an adequate settlement, the Competent Authority of a Member State or Andorra may suspend the exchange of information under this Agreement towards, respectively, Andorra or a specific Member State, by giving notice in writing to the other Competent Authority concerned. Such suspension will have immediate effect. For the purposes of this paragraph, significant non-compliance includes, but is not limited to, non-compliance with the confidentiality and data safeguard provisions of this Agreement, a failure by the Competent Authority of a Member State or Andorra to provide timely or adequate information as required under this Agreement or defining the status of Entities or accounts as Non-Reporting Financial Institutions and Excluded Accounts in a manner that frustrates the purposes of this Agreement.

#### Article 8

### Amendments

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

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

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

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

#### Article 9

#### Termination

Either Contracting Party may terminate this Agreement by giving notice of termination in writing to the other Contracting Party. Such termination will become effective on the first day of the month following the expiration of a period of 12 months after the date of the notice of termination. In the event of termination, all information previously received under this Agreement will remain confidential and subject to Article 6 of this Agreement.

#### Article 10

#### Territorial Scope

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

(3) the Annexes shall be replaced by:

'ANNEX I

#### COMMON STANDARD ON REPORTING AND DUE DILIGENCE FOR FINANCIAL ACCOUNT INFORMATION ("COMMON REPORTING STANDARD")

#### SECTION I

#### GENERAL REPORTING REQUIREMENTS

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

1. the name, address, jurisdiction(s) of residence (being a Member State or Andorra), TIN(s) and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder of the account and, in the case of any Entity that is an Account Holder and that, after application of the due diligence procedures consistent with Sections V, VI and VII, is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, jurisdiction(s) (being a Member State, Andorra or other jurisdiction) of residence and TIN(s) of the Entity and the name, address, jurisdiction(s) (being a Member State or Andorra) of residence, TIN(s) and date and place of birth of each Reportable Person;
2. the account number (or functional equivalent in the absence of an account number);
3. the name and identifying number (if any) of the Reporting Financial Institution;
4. the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account;
5. in the case of any Custodial Account:
  - (a) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and

- (b) the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;
6. in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and
7. in the case of any account not described in subparagraph A(5) or (6), the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.
- B. The information reported must identify the currency in which each amount is denominated.
- C. Notwithstanding subparagraph A(1), with respect to each Reportable Account that is a Preexisting Account, the TIN(s) or date of birth is not required to be reported if such TIN(s) or date of birth is not in the records of the Reporting Financial Institution and is not otherwise required to be collected by such Reporting Financial Institution under domestic law or any European Union legal instrument (if applicable). However, a Reporting Financial Institution is required to use reasonable efforts to obtain the TIN(s) and date of birth with respect to Preexisting Accounts by the end of the second calendar year following the year in which Preexisting Accounts were identified as Reportable Accounts.
- D. Notwithstanding subparagraph A(1), the TIN is not required to be reported if a TIN is not issued by the relevant Member State, Andorra or other jurisdiction of residence.
- E. Notwithstanding subparagraph A(1), the place of birth is not required to be reported unless the Reporting Financial Institution is otherwise required to obtain and report it under domestic law and it is available in the electronically searchable data maintained by the Reporting Financial Institution.

## SECTION II

### GENERAL DUE DILIGENCE REQUIREMENTS

- A. An account is treated as a Reportable Account beginning as of the date it is identified as such pursuant to the due diligence procedures in Sections II to VII and, unless otherwise provided, information with respect to a Reportable Account must be reported annually in the calendar year following the year to which the information relates.
- B. The balance or value of an account is determined as of the last day of the calendar year or other appropriate reporting period.
- C. Where a balance or value threshold is to be determined as of the last day of a calendar year, the relevant balance or value must be determined as of the last day of the reporting period that ends with or within that calendar year.
- D. Each Member State or Andorra may allow Reporting Financial Institutions to use service providers to fulfil the reporting and due diligence obligations imposed on such Reporting Financial Institutions, as contemplated in domestic law, but those obligations shall remain the responsibility of the Reporting Financial Institutions.
- E. Each Member State or Andorra may allow Reporting Financial Institutions to apply the due diligence procedures for New Accounts to Preexisting Accounts, and the due diligence procedures for High Value Accounts to Lower Value Accounts. Where a Member State or Andorra allows New Account due diligence procedures to be used for Preexisting Accounts, the rules otherwise applicable to Preexisting Accounts continue to apply.

## SECTION III

## DUE DILIGENCE FOR PREEXISTING INDIVIDUAL ACCOUNTS

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

- A. Accounts Not Required to be Reviewed, Identified, or Reported. A Preexisting Individual Account that is a Cash Value Insurance Contract or an Annuity Contract is not required to be reviewed, identified or reported, provided the Reporting Financial Institution is effectively prevented by law from selling such Contract to residents of a Reportable Jurisdiction.
- B. Lower Value Accounts. The following procedures apply with respect to Lower Value Accounts.
1. Residence Address. If the Reporting Financial Institution has in its records a current residence address for the individual Account Holder based on Documentary Evidence, the Reporting Financial Institution may treat the individual Account Holder as being a resident for tax purposes of the Member State or Andorra or other jurisdiction in which the address is located for purposes of determining whether such individual Account Holder is a Reportable Person.
  2. Electronic Record Search. If the Reporting Financial Institution does not rely on a current residence address for the individual Account Holder based on Documentary Evidence as set forth in subparagraph B(1), the Reporting Financial Institution must review electronically searchable data maintained by the Reporting Financial Institution for any of the following indicia and apply subparagraphs B(3) to (6):
    - (a) identification of the Account Holder as a resident of a Reportable Jurisdiction;
    - (b) current mailing or residence address (including a post office box) in a Reportable Jurisdiction;
    - (c) one or more telephone numbers in a Reportable Jurisdiction and no telephone number in Andorra or the Member State of the Reporting Financial Institution, as the context requires;
    - (d) standing instructions (other than with respect to a Depository Account) to transfer funds to an account maintained in a Reportable Jurisdiction;
    - (e) currently effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction; or
    - (f) a "hold mail" instruction or "in-care-of" address in a Reportable Jurisdiction if the Reporting Financial Institution does not have any other address on file for the Account Holder.
  3. If none of the indicia listed in subparagraph B(2) are discovered in the electronic search, then no further action is required until there is a change in circumstances that results in one or more indicia being associated with the account, or the account becomes a High Value Account.
  4. If any of the indicia listed in subparagraphs B(2)(a) to (e) are discovered in the electronic search, or if there is a change in circumstances that results in one or more indicia being associated with the account, then the Reporting Financial Institution must treat the Account Holder as a resident for tax purposes of each Reportable Jurisdiction for which an indicium is identified, unless it elects to apply subparagraph B(6) and one of the exceptions in that subparagraph applies with respect to that account.
  5. If a "hold mail" instruction or "in-care-of" address is discovered in the electronic search and no other address and none of the other indicia listed in subparagraphs B(2)(a) to (e) are identified for the Account Holder, the Reporting Financial Institution must, in the order most appropriate to the circumstances, apply the paper

record search described in subparagraph C(2), or seek to obtain from the Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of such Account Holder. If the paper search fails to establish an indicium and the attempt to obtain the self-certification or Documentary Evidence is not successful, the Reporting Financial Institution must report the account to the Competent Authority of its Member State or Andorra, as the context requires, as an undocumented account.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Exception To The Extent Databases Contain Sufficient Information. A Reporting Financial Institution is not required to perform the paper record search described in subparagraph C(2) to the extent the Reporting Financial Institution's electronically searchable information includes the following:
  - (a) the Account Holder's residence status;
  - (b) the Account Holder's residence address and mailing address currently on file with the Reporting Financial Institution;
  - (c) the Account Holder's telephone number(s) currently on file, if any, with the Reporting Financial Institution;
  - (d) in the case of Financial Accounts other than Depository Accounts, whether there are standing instructions to transfer funds in the account to another account (including an account at another branch of the Reporting Financial Institution or another Financial Institution);
  - (e) whether there is a current "in-care-of" address or "hold mail" instruction for the Account Holder; and
  - (f) whether there is any power of attorney or signatory authority for the account.
4. Relationship Manager Inquiry for Actual Knowledge. In addition to the electronic and paper record searches described in subparagraphs C(1) and (2), the Reporting Financial Institution must treat as a Reportable Account any High Value Account assigned to a relationship manager (including any Financial Accounts aggregated with that High Value Account) if the relationship manager has actual knowledge that the Account Holder is a Reportable Person.
5. Effect of Finding Indicia.
  - (a) If none of the indicia listed in subparagraph B(2) are discovered in the enhanced review of High Value Accounts described in paragraph C, and the account is not identified as held by a Reportable Person in subparagraph C(4), then further action is not required until there is a change in circumstances that results in one or more indicia being associated with the account.
  - (b) If any of the indicia listed in subparagraphs B(2)(a) to (e) are discovered in the enhanced review of High Value Accounts described in paragraph C, or if there is a subsequent change in circumstances that results in one or more indicia being associated with the account, then the Reporting Financial Institution must treat the account as a Reportable Account with respect to each Reportable Jurisdiction for which an indicium is identified unless it elects to apply subparagraph B(6) and one of the exceptions in that subparagraph applies with respect to that account.
  - (c) If a "hold mail" instruction or "in-care-of" address is discovered in the enhanced review of High Value Accounts described in paragraph C, and no other address and none of the other indicia listed in subparagraphs B(2)(a) to (e) are identified for the Account Holder, the Reporting Financial Institution must obtain from such Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of the Account Holder. If the Reporting Financial Institution cannot obtain such self-certification or Documentary Evidence, it must report the account to the Competent Authority of its Member State or Andorra, as the context requires, as an undocumented account.
6. If a Preexisting Individual Account is not a High Value Account as of 31 December preceding the entry into force of the Amending Protocol signed on 12 February 2016, but becomes a High Value Account as of the last day of a subsequent calendar year, the Reporting Financial Institution must complete the enhanced review procedures described in paragraph C with respect to such account within the calendar year following the year in which the account becomes a High Value Account. If, based on that review such account is identified as a Reportable Account, the Reporting Financial Institution must report the required information about such account with respect to the year in which it is identified as a Reportable Account and subsequent years on an annual basis, unless the Account Holder ceases to be a Reportable Person.

7. Once a Reporting Financial Institution applies the enhanced review procedures described in paragraph C to a High Value Account, the Reporting Financial Institution is not required to re-apply such procedures, other than the relationship manager inquiry described in subparagraph C(4), to the same High Value Account in any subsequent year unless the account is undocumented where the Reporting Financial Institution should re-apply them annually until such account ceases to be undocumented.
  8. If there is a change of circumstances with respect to a High Value Account that results in one or more indicia described in subparagraph B(2) being associated with the account, then the Reporting Financial Institution must treat the account as a Reportable Account with respect to each Reportable Jurisdiction for which an indicium is identified unless it elects to apply subparagraph B(6) and one of the exceptions in that subparagraph applies with respect to that account.
  9. A Reporting Financial Institution must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account. For example, if a relationship manager is notified that the Account Holder has a new mailing address in a Reportable Jurisdiction, the Reporting Financial Institution is required to treat the new address as a change in circumstances and, if it elects to apply subparagraph B(6), is required to obtain the appropriate documentation from the Account Holder.
- D. Review of Preexisting High Value Individual Accounts must be completed within one year of the entry into force of the Amending Protocol signed on 12 February 2016 Review of Preexisting Lower Value Individual Accounts must be completed within two years of the entry into force of the Amending Protocol signed on 12 February 2016.
- E. Any Preexisting Individual Account that has been identified as a Reportable Account under this Section must be treated as a Reportable Account in all subsequent years, unless the Account Holder ceases to be a Reportable Person.

#### SECTION IV

##### DUE DILIGENCE FOR NEW INDIVIDUAL ACCOUNTS

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

- A. With respect to New Individual Accounts, upon account opening, the Reporting Financial Institution must obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Financial Institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.
- B. If the self-certification establishes that the Account Holder is resident for tax purposes in a Reportable Jurisdiction, the Reporting Financial Institution must treat the account as a Reportable Account and the self-certification must also include the Account Holder's TIN with respect to such Reportable Jurisdiction (subject to paragraph D of Section I) and date of birth.
- C. If there is a change of circumstances with respect to a New Individual Account that causes the Reporting Financial Institution to know, or have reason to know, that the original self-certification is incorrect or unreliable, the Reporting Financial Institution cannot rely on the original self-certification and must obtain a valid self-certification that establishes the residence(s) for tax purposes of the Account Holder.

#### SECTION V

##### DUE DILIGENCE FOR PREEXISTING ENTITY ACCOUNTS

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

- A. Entity Accounts Not Required to Be Reviewed, Identified or Reported. Unless the Reporting Financial Institution elects otherwise, either with respect to all Preexisting Entity Accounts or, separately, with respect to any clearly

identified group of such accounts, a Preexisting Entity Account with an aggregate account balance or value that does not exceed USD 250 000 or an equivalent amount denominated in the domestic currency of each Member State or Andorra, as of 31 December preceding the entry into force of the Amending Protocol signed on 12 February 2016, is not required to be reviewed, identified, or reported as a Reportable Account until the aggregate account balance or value exceeds that amount as of the last day of any subsequent calendar year.

- B. Entity Accounts Subject to Review. A Preexisting Entity Account that has an aggregate account balance or value that exceeds USD 250 000 or an equivalent amount denominated in the domestic currency of each Member State or Andorra, as of 31 December preceding the entry into force of the Amending Protocol signed on 12 February 2016, and a Preexisting Entity Account that does not exceed, as of 31 December preceding the entry into force of the Amending Protocol signed on 12 February 2016, that amount but the aggregate account balance or value of which exceeds such amount as of the last day of any subsequent calendar year, must be reviewed in accordance with the procedures set forth in paragraph D.
- C. Entity Accounts With Respect to Which Reporting Is Required. With respect to Preexisting Entity Accounts described in paragraph B, only accounts that are held by one or more Entities that are Reportable Persons, or by Passive NFEs with one or more Controlling Persons who are Reportable Persons, shall be treated as Reportable Accounts.
- D. Review Procedures for Identifying Entity Accounts With Respect to Which Reporting Is Required. For Preexisting Entity Accounts described in paragraph B, a Reporting Financial Institution must apply the following review procedures to determine whether the account is held by one or more Reportable Persons, or by Passive NFEs with one or more Controlling Persons who are Reportable Persons:
1. Determine Whether the Entity Is a Reportable Person.
    - (a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine whether the information indicates that the Account Holder is resident in a Reportable Jurisdiction. For this purpose, information indicating that the Account Holder is resident in a Reportable Jurisdiction includes a place of incorporation or organisation, or an address in a Reportable Jurisdiction.
    - (b) If the information indicates that the Account Holder is resident in a Reportable Jurisdiction, the Reporting Financial Institution must treat the account as a Reportable Account unless it obtains a self-certification from the Account Holder, or reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person.
  2. Determine Whether the Entity is a Passive NFE with One or More Controlling Persons Who Are Reportable Persons. With respect to an Account Holder of a Preexisting Entity Account (including an Entity that is a Reportable Person), the Reporting Financial Institution must determine whether the Account Holder is a Passive NFE with one or more Controlling Persons who are Reportable Persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account. In making these determinations the Reporting Financial Institution must follow the guidance in subparagraphs D(2)(a) to (c) in the order most appropriate under the circumstances.
    - (a) Determining whether the Account Holder is a Passive NFE. For purposes of determining whether the Account Holder is a Passive NFE, the Reporting Financial Institution must obtain a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution other than an Investment Entity described in subparagraph A(6)(b) of Section VIII that is not a Participating Jurisdiction Financial Institution.
    - (b) Determining the Controlling Persons of an Account Holder. For the purposes of determining the Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.
    - (c) Determining whether a Controlling Person of a Passive NFE is a Reportable Person. For the purposes of determining whether a Controlling Person of a Passive NFE is a Reportable Person, a Reporting Financial Institution may rely on:
      - (i) information collected and maintained pursuant to AML/KYC Procedures in the case of a Preexisting Entity Account held by one or more NFEs with an aggregate account balance or value that does not exceed USD 1 000 000 or an equivalent amount denominated in the domestic currency of each Member State or Andorra; or

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

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

1. Review of Preexisting Entity Accounts with an aggregate account balance or value that exceeds USD 250 000 or an equivalent amount denominated in the domestic currency of each Member State or Andorra, as of 31 December preceding the entry into force of the Amending Protocol signed on 12 February 2016, must be completed within two years of the entry into force.
2. Review of Preexisting Entity Accounts with an aggregate account balance or value that does not exceed USD 250 000 or an equivalent amount denominated in the domestic currency of each Member State or Andorra, as of 31 December preceding the entry into force of the Amending Protocol signed on 12 February 2016, but exceeds that amount as of 31 December of a subsequent year, must be completed within the calendar year following the year in which the aggregate account balance or value exceeds such amount.
3. If there is a change of circumstances with respect to a Preexisting Entity Account that causes the Reporting Financial Institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Reporting Financial Institution must re-determine the status of the account in accordance with the procedures set forth in paragraph D.

SECTION VI

DUE DILIGENCE FOR NEW ENTITY ACCOUNTS

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

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

1. Determine Whether the Entity Is a Reportable Person.
  - (a) Obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Financial Institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures. If the Entity certifies that it has no residence for tax purposes, the Reporting Financial Institution may rely on the address of the principal office of the Entity to determine the residence of the Account Holder.
  - (b) If the self-certification indicates that the Account Holder is resident in a Reportable Jurisdiction, the Reporting Financial Institution must treat the account as a Reportable Account unless it reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person with respect to such Reportable Jurisdiction.
2. Determine Whether the Entity is a Passive NFE with One or More Controlling Persons Who Are Reportable Persons. With respect to an Account Holder of a New Entity Account (including an Entity that is a Reportable Person), the Reporting Financial Institution must determine whether the Account Holder is a Passive NFE with one or more Controlling Persons who are Reportable Persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account. In making these determinations the Reporting Financial Institution must follow the guidance in subparagraphs A(2)(a) to (c) in the order most appropriate under the circumstances.
  - (a) Determining whether the Account Holder is a Passive NFE. For purposes of determining whether the Account Holder is a Passive NFE, the Reporting Financial Institution must rely on a self-certification from

the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution other than an Investment Entity described in subparagraph A(6)(b) of Section VIII that is not a Participating Jurisdiction Financial Institution.

- (b) Determining the Controlling Persons of an Account Holder. For purposes of determining the Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.
- (c) Determining whether a Controlling Person of a Passive NFE is a Reportable Person. For purposes of determining whether a Controlling Person of a Passive NFE is a Reportable Person, a Reporting Financial Institution may rely on a self-certification from the Account Holder or such Controlling Person.

## SECTION VII

### SPECIAL DUE DILIGENCE RULES

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

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

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

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

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

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

Before the entry into force of the Amending Protocol signed on 12 February 2016, Member States shall communicate to Andorra and Andorra shall communicate to the European Commission whether they have exercised the option provided for in this paragraph. The European Commission may coordinate the transmission of the communication from Member States to Andorra and the European Commission shall transmit the communication from Andorra to all Member States. All further changes to the exercise of that option by a Member State or Andorra shall be communicated in the same manner.

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

1. **Aggregation of Individual Accounts.** For purposes of determining the aggregate balance or value of Financial Accounts held by an individual, a Reporting Financial Institution is required to aggregate all Financial Accounts maintained by the Reporting Financial Institution, or by a Related Entity, but only to the extent that the Reporting Financial Institution’s computerised systems link the Financial Accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this subparagraph.
2. **Aggregation of Entity Accounts.** For purposes of determining the aggregate balance or value of Financial Accounts held by an Entity, a Reporting Financial Institution is required to take into account all Financial Accounts that are maintained by the Reporting Financial Institution, or by a Related Entity, but only to the extent that the Reporting Financial Institution’s computerised systems link the Financial Accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this subparagraph.
3. **Special Aggregation Rule Applicable to Relationship Managers.** For purposes of determining the aggregate balance or value of Financial Accounts held by a person to determine whether a Financial Account is a High Value Account, a Reporting Financial Institution is also required, in the case of any Financial Accounts that a relationship manager knows, or has reason to know, are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, to aggregate all such accounts.
4. **Amounts Read to Include Equivalent in Other Currencies.** All dollar amounts or amounts denominated in the domestic currency of each Member State or Andorra shall be read to include equivalent amounts in other currencies, as determined by domestic law.

## SECTION VIII

### DEFINED TERMS

The following terms have the meanings set forth below:

#### A. *Reporting Financial Institution*

1. The term “Reporting Financial Institution” means any Member State Financial Institution or Andorra Financial Institution, as the context requires, that is not a Non-Reporting Financial Institution.
2. The term “Participating Jurisdiction Financial Institution” means (i) any Financial Institution that is resident in a Participating Jurisdiction, but excludes any branch of that Financial Institution that is located outside such Participating Jurisdiction, and (ii) any branch of a Financial Institution that is not resident in a Participating Jurisdiction, if that branch is located in such Participating Jurisdiction.
3. The term “Financial Institution” means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.

4. The term “Custodial Institution” means any Entity that holds, as a substantial portion of its business, Financial Assets for the account of others. An Entity holds Financial Assets for the account of others as a substantial portion of its business if the Entity’s gross income attributable to the holding of Financial Assets and related financial services equals or exceeds 20 % of the Entity’s gross income during the shorter of: (i) the three-year period that ends on 31 December (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the Entity has been in existence.
5. The term “Depository Institution” means any Entity that accepts deposits in the ordinary course of a banking or similar business.
6. The term “Investment Entity” means any Entity:
  - (a) which primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:
    - (i) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
    - (ii) individual and collective portfolio management; or
    - (iii) otherwise investing, administering, or managing Financial Assets or money on behalf of other persons; or
  - (b) the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in subparagraph A(6)(a).

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

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

7. The term “Financial Asset” includes a security (for example, a share of stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness), partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements), Insurance Contract or Annuity Contract, or any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, Insurance Contract, or Annuity Contract. The term “Financial Asset” does not include a non-debt, direct interest in real property.
8. The term “Specified Insurance Company” means any Entity that is an insurance company (or the holding company of an insurance company) which issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.

#### B. *Non-Reporting Financial Institution*

1. The term “Non-Reporting Financial Institution” means any Financial Institution which is:
  - (a) a Governmental Entity, International Organisation or Central Bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution;

- (b) a Broad Participation Retirement Fund; a Narrow Participation Retirement Fund; a Pension Fund of a Governmental Entity, International Organisation or Central Bank; or a Qualified Credit Card Issuer;
  - (c) any other Entity that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the Entities described in subparagraphs B(1)(a) and (b), and is defined in domestic law as a Non-Reporting Financial Institution, and, for Member States, is provided for in paragraph 7a of Article 8 of Council Directive 2011/16/EU on administrative cooperation in the field of taxation and communicated to Andorra, and for Andorra, is communicated to the European Commission, provided that the status of such Entity as a Non-Reporting Financial Institution does not frustrate the purposes of the Agreement;
  - (d) an Exempt Collective Investment Vehicle; or
  - (e) a trust to the extent that the trustee of the trust is a Reporting Financial Institution and reports all information required to be reported pursuant to Section I with respect to all Reportable Accounts of the trust.
2. The term “Governmental Entity” means the government of a Member State, Andorra or other jurisdiction, any political subdivision of a Member State, Andorra or other jurisdiction (which, for the avoidance of doubt, includes a state, province, county, or municipality), or any wholly owned agency or instrumentality of a Member State, Andorra or other jurisdiction or of any one or more of the foregoing (each, a “Governmental Entity”). This category is comprised of the integral parts, controlled entities, and political subdivisions of a Member State, Andorra or other jurisdiction.
- (a) An “integral part” of a Member State, Andorra or other jurisdiction means any person, organisation, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of a Member State, Andorra or other jurisdiction. The net earnings of the governing authority must be credited to its own account or to other accounts of the Member State, Andorra or other jurisdiction, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity.
  - (b) A controlled entity means an Entity which is separate in form from the Member State, Andorra or other jurisdiction or which otherwise constitutes a separate juridical entity, provided that:
    - (i) the Entity is wholly owned and controlled by one or more Governmental Entities directly or through one or more controlled entities;
    - (ii) the Entity's net earnings are credited to its own account or to the accounts of one or more Governmental Entities, with no portion of its income inuring to the benefit of any private person; and
    - (iii) the Entity's assets vest in one or more Governmental Entities upon dissolution.
  - (c) Income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental programme, and the programme activities are performed for the general public with respect to the common welfare or relate to the administration of some phase of government. Notwithstanding the foregoing, however, income is considered to inure to the benefit of private persons if the income is derived from the use of a Governmental Entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons.
3. The term “International Organisation” means any international organisation or wholly owned agency or instrumentality thereof. This category includes any intergovernmental organisation (including a supranational organisation) (i) that is comprised primarily of governments; (ii) that has in effect a headquarters or substantially similar agreement with the Member State, Andorra or the other jurisdiction; and (iii) the income of which does not inure to the benefit of private persons.
4. The term “Central Bank” means an institution that is by law or government sanction the principal authority, other than the government of the Member State, Andorra or the other jurisdiction itself, issuing instruments intended to circulate as currency. Such an institution may include an instrumentality that is separate from the government of the Member State, Andorra or the other jurisdiction, whether or not owned in whole or in part by the Member State, Andorra or the other jurisdiction.

5. The term “Broad Participation Retirement Fund” means a fund established to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries who are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that the fund:
- (a) does not have a single beneficiary with a right to more than 5 % of the fund’s assets;
  - (b) is subject to government regulation and provides information reporting to the tax authorities; and
  - (c) satisfies at least one of the following requirements:
    - (i) the fund is generally exempt from tax on investment income, or taxation of such income is deferred or taxed at a reduced rate, due to its status as a retirement or pension plan;
    - (ii) the fund receives at least 50 % of its total contributions (other than transfers of assets from other plans described in subparagraphs B(5) to (7) or from retirement and pension accounts described in subparagraph C(17)(a)) from the sponsoring employers;
    - (iii) distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death (except rollover distributions to other retirement funds described in subparagraphs B(5) to (7) or retirement and pension accounts described in subparagraph C(17)(a)), or penalties apply to distributions or withdrawals made before such specified events; or
    - (iv) contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed annually USD 50 000 or an equivalent amount denominated in the domestic currency of each Member State or Andorra applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.
6. The term “Narrow Participation Retirement Fund” means a fund established to provide retirement, disability, or death benefits to beneficiaries who are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that:
- (a) the fund has fewer than 50 participants;
  - (b) the fund is sponsored by one or more employers that are not Investment Entities or Passive NFEs;
  - (c) the employee and employer contributions to the fund (other than transfers of assets from retirement and pension accounts described in subparagraph C(17)(a)) are limited by reference to earned income and compensation of the employee, respectively;
  - (d) participants that are not residents of the jurisdiction (being a Member State or Andorra) in which the fund is established are not entitled to more than 20 % of the fund’s assets; and
  - (e) the fund is subject to government regulation and provides information reporting to the tax authorities.
7. The term “Pension Fund of a Governmental Entity, International Organisation or Central Bank” means a fund established by a Governmental Entity, International Organisation or Central Bank to provide retirement, disability, or death benefits to beneficiaries or participants who are current or former employees (or persons designated by such employees), or who are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the Governmental Entity, International Organisation or Central Bank.
8. The term “Qualified Credit Card Issuer” means a Financial Institution satisfying the following requirements:
- (a) the Financial Institution is a Financial Institution solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer; and

- (b) beginning on or before the entry into force of the Amending Protocol signed on 12 February 2016, the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of USD 50 000 or an equivalent amount denominated in the domestic currency of each Member State or Andorra or to ensure that any customer overpayment in excess of that amount, is refunded to the customer within 60 days, in each case applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.
9. The term “Exempt Collective Investment Vehicle” means an Investment Entity that is regulated as a collective investment vehicle, provided that all of the interests in the collective investment vehicle are held by or through individuals or Entities that are not Reportable Persons, except a Passive NFE with Controlling Persons who are Reportable Persons.

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

- (a) the collective investment vehicle has not issued, and does not issue, any physical shares in bearer form after 31 December preceding the entry into force of the Amending Protocol signed on 12 February 2016;
- (b) the collective investment vehicle retires all such shares upon surrender;
- (c) the collective investment vehicle performs the due diligence procedures set forth in Sections II to VII and reports any information required to be reported with respect to any such shares when such shares are presented for redemption or other payment; and
- (d) the collective investment vehicle has in place policies and procedures to ensure that such shares are redeemed or immobilised as soon as possible and in any event within two years of the entry into force of the Amending Protocol signed on 12 February 2016.

#### C. *Financial Account*

1. The term “Financial Account” means an account maintained by a Financial Institution, and includes a Depository Account, a Custodial Account and:
- (a) in the case of an Investment Entity, any equity or debt interest in the Financial Institution. Notwithstanding the foregoing, the term “Financial Account” does not include any equity or debt interest in an Entity that is an Investment Entity solely because it (i) renders investment advice to, and acts on behalf of, or (ii) manages portfolios for, and acts on behalf of, a customer for the purpose of investing, managing, or administering Financial Assets deposited in the name of the customer with a Financial Institution other than such Entity;
- (b) in the case of a Financial Institution not described in subparagraph C(1)(a), any equity or debt interest in the Financial Institution, if the class of interests was established with a purpose of avoiding reporting in accordance with Section I; and
- (c) any Cash Value Insurance Contract and any Annuity Contract issued or maintained by a Financial Institution, other than a non-investment-linked, non-transferable immediate life annuity that is issued to an individual and monetises a pension or disability benefit provided under an account that is an Excluded Account.

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

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

3. The term “Custodial Account” means an account (other than an Insurance Contract or Annuity Contract) which holds one or more Financial Assets for the benefit of another person.
4. The term “Equity Interest” means, in the case of a partnership that is a Financial Institution, either a capital or profits interest in the partnership. In the case of a trust that is a Financial Institution, an Equity Interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. A Reportable Person will be treated as being a beneficiary of a trust if such Reportable Person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust.
5. The term “Insurance Contract” means a contract (other than an Annuity Contract) under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk.
6. The term “Annuity Contract” means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals. The term also includes a contract that is considered to be an Annuity Contract in accordance with the law, regulation, or practice of the jurisdiction (being a Member State, Andorra or other jurisdiction) in which the contract was issued, and under which the issuer agrees to make payments for a term of years.
7. The term “Cash Value Insurance Contract” means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value.
8. The term “Cash Value” means the greater of (i) the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan), and (ii) the amount the policyholder can borrow under or with regard to the contract. Notwithstanding the foregoing, the term “Cash Value” does not include an amount payable under an Insurance Contract:
  - (a) solely by reason of the death of an individual insured under a life insurance contract;
  - (b) as a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;
  - (c) as a refund of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an Insurance Contract (other than an investment-linked life insurance or annuity contract) due to cancellation or termination of the contract, decrease in risk exposure during the effective period of the contract, or arising from the correction of a posting or similar error with regard to the premium for the contract;
  - (d) as a policyholder dividend (other than a termination dividend) provided that the dividend relates to an Insurance Contract under which the only benefits payable are described in subparagraph C(8)(b); or
  - (e) as a return of an advance premium or premium deposit for an Insurance Contract for which the premium is payable at least annually if the amount of the advance premium or premium deposit does not exceed the next annual premium that will be payable under the contract.
9. The term “Preexisting Account” means:
  - (a) a Financial Account maintained by a Reporting Financial Institution as of 31 December preceding the entry into force of the Amending Protocol signed on 12 February 2016;
  - (b) a Member State or Andorra shall have the option of extending the term “Preexisting Account” to mean also any Financial Account of an Account Holder, regardless of the date such Financial Account was opened, if:
    - (i) the Account Holder also holds with the Reporting Financial Institution, or with a Related Entity within the same jurisdiction (being a Member State or Andorra) as the Reporting Financial Institution, a Financial Account that is a Preexisting Account under subparagraph C(9)(a);

- (ii) the Reporting Financial Institution, and, as applicable, the Related Entity within the same jurisdiction (being a Member State or Andorra) as the Reporting Financial Institution, treats both of the aforementioned Financial Accounts, and any other Financial Accounts of the Account Holder that are treated as Preexisting Accounts under point (b), as a single Financial Account for purposes of satisfying the standards of knowledge requirements set forth in paragraph A of Section VII, and for purposes of determining the balance or value of any of the Financial Accounts when applying any of the account thresholds;
- (iii) with respect to a Financial Account that is subject to AML/KYC Procedures, the Reporting Financial Institution is permitted to satisfy such AML/KYC Procedures for the Financial Account by relying upon the AML/KYC Procedures performed for the Preexisting Account described in subparagraph C(9)(a); and
- (iv) the opening of the Financial Account does not require the provision of new, additional or amended customer information by the Account Holder other than for the purposes of this Agreement.

Before the entry into force of the Amending Protocol signed on 12 February 2016, Member States shall communicate to Andorra and Andorra shall communicate to the European Commission whether they have exercised the option provided for in this point. The European Commission may coordinate the transmission of the communication from Member States to Andorra and the European Commission shall transmit the communication from Andorra to all Member States. All further changes to the exercise of that option by a Member State or Andorra shall be communicated in the same manner.

10. The term "New Account" means a Financial Account maintained by a Reporting Financial Institution opened on or after the entry into force of the Amending Protocol signed on 12 February 2016, unless it is treated as a Preexisting Account under the extended definition of Preexisting Account in subparagraph C(9).
11. The term "Preexisting Individual Account" means a Preexisting Account held by one or more individuals.
12. The term "New Individual Account" means a New Account held by one or more individuals.
13. The term "Preexisting Entity Account" means a Preexisting Account held by one or more Entities.
14. The term "Lower Value Account" means a Preexisting Individual Account with an aggregate balance or value, as of 31 December preceding the entry into force of the Amending Protocol signed on 12 February 2016, that does not exceed USD 1 000 000 or an equivalent amount denominated in the domestic currency of each Member State or Andorra.
15. The term "High Value Account" means a Preexisting Individual Account with an aggregate balance or value that exceeds USD 1 000 000 or an equivalent amount denominated in the domestic currency of each Member State or Andorra, as of 31 December preceding the entry into force of the Amending Protocol signed on 12 February 2016 or 31 December of any subsequent year.
16. The term "New Entity Account" means a New Account held by one or more Entities.
17. The term "Excluded Account" means any of the following accounts:
  - (a) a retirement or pension account that satisfies the following requirements:
    - (i) the account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);
    - (ii) the account is tax-favoured (i.e., contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the Account Holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);
    - (iii) information reporting is required to the tax authorities with respect to the account;

- (iv) withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and
- (v) either (i) annual contributions are limited to USD 50 000 or an equivalent amount denominated in the domestic currency of each Member State or Andorra or less, or (ii) there is a maximum lifetime contribution limit to the account of USD 1 000 000 or an equivalent amount denominated in the domestic currency of each Member State or Andorra or less, in each case applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.

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

(b) an account that satisfies the following requirements:

- (i) the account is subject to regulation as an investment vehicle for purposes other than for retirement and is regularly traded on an established securities market, or the account is subject to regulation as a savings vehicle for purposes other than for retirement;
- (ii) the account is tax-favoured (i.e., contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the Account Holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);
- (iii) withdrawals are conditioned on meeting specific criteria related to the purpose of the investment or savings account (for example, the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met; and
- (iv) annual contributions are limited to USD 50 000 or an equivalent amount denominated in the domestic currency of each Member State or Andorra or less, applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.

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

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

- (i) periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter;
- (ii) the contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;
- (iii) the amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and
- (iv) the contract is not held by a transferee for value;

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

- (e) an account established in connection with any of the following:
- (i) a court order or judgment;
  - (ii) a sale, exchange, or lease of real or personal property, provided that the account satisfies the following requirements:
    - the account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a Financial Asset that is deposited in the account in connection with the sale, exchange, or lease of the property;
    - the account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;
    - the assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee (including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates;
    - the account is not a margin or similar account established in connection with a sale or exchange of a Financial Asset; and
    - the account is not associated with an account described in subparagraph C(17)(f);
  - (iii) an obligation of a Financial Institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time;
  - (iv) an obligation of a Financial Institution solely to facilitate the payment of taxes at a later time;
- (f) a Depository Account that satisfies the following requirements:
- (i) the account exists solely because a customer makes a payment in excess of a balance due with respect to a credit card or other revolving credit facility and the overpayment is not immediately returned to the customer; and
  - (ii) beginning on or before the entry into force of the Amending Protocol signed on 12 February 2016, the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of USD 50 000 or an equivalent amount denominated in the domestic currency of each Member State or Andorra, or to ensure that any customer overpayment in excess of that amount is refunded to the customer within 60 days, in each case applying the rules set forth in paragraph C of Section VII for currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns;
- (g) any other account that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the accounts described in subparagraphs C(17)(a) to (f), and is defined in domestic law as an Excluded Account and, for Member States, is provided for in paragraph 7a of Article 8 of Council Directive 2011/16/EU on administrative cooperation in the field of taxation and communicated to Andorra, and for Andorra, is communicated to the European Commission, provided that the status of such account as an Excluded Account does not frustrate the purposes of this Agreement.

#### D. Reportable Account

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

2. The term “Reportable Person” means a Reportable Jurisdiction Person other than: (i) a corporation the stock of which is regularly traded on one or more established securities markets; (ii) any corporation that is a Related Entity of a corporation described in clause (i); (iii) a Governmental Entity; (iv) an International Organisation; (v) a Central Bank; or (vi) a Financial Institution.
3. The term “Reportable Jurisdiction Person” means an individual or Entity that is resident in a Reportable Jurisdiction under the tax laws of such jurisdiction, or an estate of a decedent that was a resident of a Reportable Jurisdiction. For this purpose, an Entity such as a partnership, limited liability partnership or similar legal arrangement, which has no residence for tax purposes shall be treated as resident in the jurisdiction in which its place of effective management is situated.
4. The term “Reportable Jurisdiction” means Andorra with regard to a Member State or a Member State with regard to Andorra in the context of the obligation to provide the information specified in Section I.
5. The term “Participating Jurisdiction” with regard to a Member State or Andorra means:
  - (a) any Member State with regard to reporting to Andorra, or
  - (b) Andorra with regard to reporting to a Member State, or
  - (c) any other jurisdiction (i) with which the relevant Member State or Andorra, as the context requires, has an agreement in place pursuant to which that other jurisdiction will provide the information specified in Section I, and (ii) which is identified in a list published by that Member State or Andorra and notified to Andorra, respectively to the European Commission;
  - (d) with regard to Member States, any other jurisdiction (i) with which the European Union has an agreement in place pursuant to which that other jurisdiction will provide the information specified in Section I, and (ii) which is identified in a list published by the European Commission.
6. The term “Controlling Persons” means the natural persons who exercise control over an Entity. In the case of a trust, that term means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term “Controlling Persons” must be interpreted in a manner consistent with the Financial Action Task Force Recommendations.
7. The term “NFE” means any Entity that is not a Financial Institution.
8. The term “Passive NFE” means any: (i) NFE that is not an Active NFE; or (ii) an Investment Entity described in subparagraph A(6)(b) that is not a Participating Jurisdiction Financial Institution.
9. The term “Active NFE” means any NFE that meets any of the following criteria:
  - (a) less than 50 % of the NFE’s gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 % of the assets held by the NFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
  - (b) the stock of the NFE is regularly traded on an established securities market or the NFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;
  - (c) the NFE is a Governmental Entity, an International Organisation, a Central Bank, or an Entity wholly owned by one or more of the foregoing;

- (d) substantially all of the activities of the NFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an Entity does not qualify for this status if the Entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
- (e) the NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFE does not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFE;
- (f) the NFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of a Financial Institution;
- (g) the NFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution; or
- (h) the NFE meets all of the following requirements:
  - (i) it is established and operated in its jurisdiction of residence (being a Member State, Andorra or other jurisdiction) exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence (being a Member State, Andorra or other jurisdiction) and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;
  - (ii) it is exempt from income tax in its jurisdiction of residence (being a Member State, Andorra or other jurisdiction);
  - (iii) it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
  - (iv) the applicable laws of the NFE's jurisdiction of residence (being a Member State, Andorra or other jurisdiction) or the NFE's formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; and
  - (v) the applicable laws of the NFE's jurisdiction of residence (being a Member State, Andorra or other jurisdiction) or the NFE's formation documents require that, upon the NFE's liquidation or dissolution, all of its assets be distributed to a Governmental Entity or other non-profit organisation, or escheat to the government of the NFE's jurisdiction of residence (being a Member State, Andorra or other jurisdiction) or any political subdivision thereof.

#### E. Miscellaneous

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

2. The term “AML/KYC Procedures” means the customer due diligence procedures of a Reporting Financial Institution pursuant to the anti-money laundering or similar requirements to which such Reporting Financial Institution is subject.
3. The term “Entity” means a legal person or a legal arrangement, such as a corporation, partnership, trust, or foundation.
4. An Entity is a “Related Entity” of another Entity if either Entity controls the other Entity or the two Entities are under common control. For this purpose control includes direct or indirect ownership of more than 50 % of the vote and value in an Entity. A Member State or Andorra shall have the option of defining an Entity as a “Related Entity” of another Entity if (a) either Entity controls the other Entity; (b) the two Entities are under common control; or (c) the two Entities are Investment Entities described in subparagraph A(6)(b), are under common management, and such management fulfils the due diligence obligations of such Investment Entities. For this purpose, control includes direct or indirect ownership of more than 50 % of the vote and value in an Entity.

Before the entry into force of the Amending Protocol signed on 12 February 2016, Member States shall communicate to Andorra and Andorra shall communicate to the European Commission whether they have exercised the option provided for in this subparagraph. The European Commission may coordinate the transmission of the communication from Member States to Andorra and the European Commission shall transmit the communication from Andorra to all Member States. All further changes to the exercise of that option by a Member State or Andorra shall be communicated in the same manner.

5. The term “TIN” means Taxpayer Identification Number (or functional equivalent in the absence of a Taxpayer Identification Number).
6. The term “Documentary Evidence” includes any of the following:
  - (a) a certificate of residence issued by an authorised government body (for example, a government or agency thereof, or a municipality) of the jurisdiction (being a Member State, Andorra or other jurisdiction) in which the payee claims to be a resident;
  - (b) with respect to an individual, any valid identification issued by an authorised government body (for example, a government or agency thereof, or a municipality), that includes the individual’s name and is typically used for identification purposes;
  - (c) with respect to an Entity, any official documentation issued by an authorised government body (for example, a government or agency thereof, or a municipality) that includes the name of the Entity and either the address of its principal office in the jurisdiction (being a Member State, Andorra or other jurisdiction) in which it claims to be a resident or the jurisdiction (being a Member State, Andorra or other jurisdiction) in which the Entity was incorporated or organised;
  - (d) any audited financial statement, third-party credit report, bankruptcy filing, or securities regulator’s report.

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

Before the entry into force of the Amending Protocol signed on 12 February 2016, Member States shall communicate to Andorra and Andorra shall communicate to the European Commission whether they have exercised the option provided for in this subparagraph. The European Commission may coordinate the transmission of the communication from Member States to Andorra and the European Commission shall transmit the communication from Andorra to all Member States. All further changes to the exercise of that option by a Member State or Andorra shall be communicated in the same manner.

## SECTION IX

## EFFECTIVE IMPLEMENTATION

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

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

## ANNEX II

**COMPLEMENTARY REPORTING AND DUE DILIGENCE RULES FOR FINANCIAL ACCOUNT INFORMATION****1. Change in circumstances**

A "change in circumstances" includes any change that results in the addition of information relevant to a person's status or otherwise conflicts with such person's status. In addition, a change in circumstances includes any change or addition of information to the Account Holder's account (including the addition, substitution, or other change of an Account Holder) or any change or addition of information to any account associated with such account (applying the account aggregation rules described in subparagraphs C(1) to (3) of Section VII of Annex I) if such change or addition of information affects the status of the Account Holder.

If a Reporting Financial Institution has relied on the residence address test described in subparagraph B(1) of Section III of Annex I and there is a change in circumstances that causes the Reporting Financial Institution to know or have reason to know that the original Documentary Evidence (or other equivalent documentation) is incorrect or unreliable, the Reporting Financial Institution must, by the later of the last day of the relevant calendar year or other appropriate reporting period, or 90 calendar days following the notice or discovery of such change in circumstances, obtain a self-certification and new Documentary Evidence to establish the residence(s) for tax purposes of the Account Holder. If the Reporting Financial Institution cannot obtain the self-certification and new Documentary Evidence by such date, the Reporting Financial Institution must apply the electronic record search procedure described in subparagraphs B(2) to (6) of Section III of Annex I.

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

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

**3. Residence of a Financial Institution**

A Financial Institution is "resident" in a Member State, Andorra or another Participating Jurisdiction if it is subject to the jurisdiction of such Member State, Andorra or another Participating Jurisdiction (i.e., the Participating Jurisdiction is able to enforce reporting by the Financial Institution). In general, where a Financial Institution is resident for tax purposes in a Member State, Andorra or another Participating Jurisdiction, it is subject to the

jurisdiction of such Member State, Andorra or another Participating Jurisdiction and it is, thus, a Member State Financial Institution, Andorra Financial Institution or another Participating Jurisdiction Financial Institution. In the case of a trust that is a Financial Institution (irrespective of whether it is resident for tax purposes in a Member State, Andorra or another Participating Jurisdiction), the trust is considered to be subject to the jurisdiction of a Member State, Andorra or another Participating Jurisdiction if one or more of its trustees are resident in such Member State, Andorra or another Participating Jurisdiction except if the trust reports all the information required to be reported pursuant to this Agreement or another agreement implementing the Global Standard with respect to Reportable Accounts maintained by the trust to another Participating Jurisdiction (being a Member State, Andorra or another Participating Jurisdiction), because it is resident for tax purposes in such other Participating Jurisdiction. However, where a Financial Institution (other than a trust) does not have a residence for tax purposes (e.g., because it is treated as fiscally transparent, or it is located in a jurisdiction that does not have an income tax), it is considered to be subject to the jurisdiction of a Member State, Andorra or another Participating Jurisdiction and it is, thus, a Member State, Andorra or another Participating Jurisdiction Financial Institution if:

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

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

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

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

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

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

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

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

One of the requirements described in subparagraph E(6)(c) of Section VIII of Annex I is that, with respect to an Entity, the official documentation includes either the address of the Entity's principal office in the Member State, Andorra or other jurisdiction in which it claims to be a resident or the Member State, Andorra or other jurisdiction

in which the Entity was incorporated or organised. The address of the Entity's principal office is generally the place in which its place of effective management is situated. The address of a Financial Institution with which the Entity maintains an account, a post office box, or an address used solely for mailing purposes is not the address of the Entity's principal office unless such address is the only address used by the Entity and appears as the Entity's registered address in the Entity's organisational documents. Further, an address that is provided subject to instructions to hold all mail to that address is not the address of the Entity's principal office.

### ANNEX III

#### LIST OF COMPETENT AUTHORITIES OF THE CONTRACTING PARTIES

The Competent Authorities for the purposes of this Agreement are:

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

- (w) in the Portuguese Republic: O Ministro das Finanças or an authorised representative,
- (x) in Romania: Preşedintele Agenţiei Naţionale de Administrare Fiscală or an authorised representative,
- (y) in the Republic of Slovenia: Minister za finance or an authorised representative,
- (z) in the Slovak Republic: Minister financií or an authorised representative,
- (aa) in the Republic of Finland: Valtiovarainministeriö/Finansministeriet or an authorised representative,
- (ab) in the Kingdom of Sweden: Chefen för Finansdepartementet or an authorised representative,
- (ac) in the United Kingdom of Great Britain and Northern Ireland and in the European territories for whose external relations the United Kingdom is responsible: the Commissioners of Inland Revenue or their authorised representative and the competent authority in Gibraltar, which the United Kingdom will designate in accordance with the Agreed Arrangements relating to Gibraltar authorities in the context of EU and EC instruments and related treaties notified to the Member States and institutions of the European Union of 19 April 2000, a copy of which shall be notified to Andorra by the Secretary General of the Council of the European Union, and which shall apply to this Agreement.’.

## Article 2

### Entry into force and application

1. This Amending Protocol requires ratification or approval by the Contracting Parties in accordance with their own procedures. The Contracting Parties shall notify each other of the completion of these procedures. The Amending Protocol shall enter into force on the first day of January following the final notification.
2. In respect of information exchange upon request, the exchange of information provided for in this Amending Protocol shall be applicable to requests made on or after the date of its entry into force for information that relates to fiscal years beginning on or after the first day of January of the year of the entry into force of this Amending Protocol. Article 12 of the Agreement in the form prior to its amendment by this Amending Protocol shall continue to apply unless Article 5 of the Agreement as amended by this Amending Protocol applies.
3. The claims of individuals in accordance with Article 10 of the Agreement in the form prior to its amendment by this Amending Protocol shall remain unaffected after the entry into force of this Amending Protocol.
4. The Principality of Andorra shall establish a final account by the end of the period of applicability of the Agreement in the form prior to its amendment by this Amending Protocol, make a final payment to the Member States and report the information that it received from paying agents established in the Principality of Andorra, in accordance with Article 9 of the Agreement in the form prior to its amendment by this Amending Protocol with respect to the last year of applicability of the Agreement in the form prior to its amendment by this Amending Protocol, or to any preceding year, if applicable.

## Article 3

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

‘Protocol to the Agreement between the European Union and the Principality of Andorra on the automatic exchange of financial account information to improve international tax compliance.

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

1. It is understood that an exchange of information under Article 5 of this Agreement will only be requested once the requesting State (being a Member State or Andorra) has exhausted all regular sources of information available under the internal taxation procedure.

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

#### *Article 4*

#### **Languages**

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

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

Съставено в Брюксел на дванадесети февруари през две хиляди и шестнадесета година.

Hecho en Bruselas, el doce de febrero de dos mil dieciséis.

V Bruselu dne dvanáctého února dva tisíce šestnáct.

Udfærdiget i Bruxelles den tolvte februar to tusind og seksten.

Geschehen zu Brüssel am zwölften Februar zweitausendsechzehn.

Kahe tuhanda kuueteistkümnenda aasta veebruarikuu kaheteistkümnendal päeval Brüsselis.

Έγινε στις Βρυξέλλες, στις δώδεκα Φεβρουαρίου δύο χιλιάδες δεκαέξι.

Done at Brussels on the twelfth day of February in the year two thousand and sixteen.

Fait à Bruxelles, le douze février deux mille seize.

Sastavljeno u Bruxellesu dvanaestog veljače godine dvije tisuće šesnaeste.

Fatto a Bruxelles, addì dodici febbraio duemilasedici.

Briselē, divi tūkstoši sešpadsmitā gada divpadsmitajā februārī.

Priimta du tūkstančiai šešioliktų metų vasario dvyliktą dieną Briuselyje.

Kelt Brüsszelben, a kétézer-tizenhatodik év február havának tizenkettedik napján.

Magħmul fi Brussell, fit-tnax-il jum ta' Frar fis-sena elfejn u sittax.

Gedaan te Brussel, twaalf februari tweeduizend zestien.

Sporządzono w Brukseli dnia dwunastego lutego roku dwa tysiące szesnastego.

Feito em Bruxelas, em doze de fevereiro de dois mil e dezasseis.

Íntocmit la Bruxelles la doisprezece februarie două mii șaisprezece.

V Bruseli dvanásteho februára dvetisícšestnásť.

V Bruslju, dne dvanajstega februarja leta dva tisoč šestnajst.

Tehty Brysselissä kahdententoista päivänä helmikuuta vuonna kaksituhattakuusitoista.

Som skedde i Bryssel den tolfte februari år tjugohundrasexton.

Fet a Brussel-les el dia dotze de febrer de l'any dos mil setze.

За Европейския съюз

Por la Unión Europea

Za Evropskou unii

For Den Europæiske Union

Für die Europäische Union

Euroopa Liidu nimel

Για την Ευρωπαϊκή Ένωση

For the European Union

Pour l'Union européenne

Za Evropsku uniju

Per l'Unione europea

Eiropas Savienības vārdā –

Eiropos Sąjungos vardu

Az Európai Unió részéről

Għall-Unjoni Ewropea

Voor de Europese Unie

W imieniu Unii Europejskiej

Pela União Europeia

Pentru Uniunea Europeană

Za Európsku úniu

Za Evropsko unijo

Euroopan unionin puolesta

För Europeiska unionen

Per la Unió Europea

За Княжество Андора  
Por el Principado de Andorra  
Za Andorrské knížectví  
For Fyrstendømmet Andorra  
Für das Fürstentum Andorra  
Andorra Vürstiriigi nimel  
Για το Πριγκιπάτο της Ανδόρας  
For the Principality of Andorra  
Pour la Principauté d'Andorre  
Za Kneževinu Andoru  
Per il Principato di Andorra  
Andoras Firstistes vārdā –  
Andoros Kunigaikštystės vardu  
Az Andorrai Hercegség részéről  
Ghall-Princípat ta' Andorra  
Voor het Vorstendom Andorra  
W imieniu Księstwa Andory  
Pelo Principado de Andorra  
Pentru Principatul Andorra  
Za Andorské kniežatstvo  
Za Kneževino Andoro  
Andorran ruhtinaskunnan puolesta  
För Furstendömet Andorra  
Pel Principat d'Andorra

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## DECLARATIONS OF THE CONTRACTING PARTIES

### JOINT DECLARATION OF THE CONTRACTING PARTIES ON THE ENTRY INTO FORCE OF THE AMENDING PROTOCOL

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

### JOINT DECLARATION OF THE CONTRACTING PARTIES ON THE AGREEMENT AND THE ANNEXES

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

### JOINT DECLARATION OF THE CONTRACTING PARTIES ON ARTICLE 5 OF THE AGREEMENT

The Contracting Parties agree, regarding the implementation of Article 5 on Exchange of Information upon Request, that the commentary to Article 26 of the OECD Model Tax Convention on Income and on Capital should be a source of interpretation.

### JOINT DECLARATION OF THE CONTRACTING PARTIES ON SECTION III(A) OF ANNEX I OF THE AGREEMENT

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

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

In this context, each Member State will inform the European Commission, which will in turn notify Andorra, in case Reporting Financial Institutions in Andorra are prevented by law from selling such Contracts, regardless of where they are finalised, to its residents based on applicable European Union law and domestic law of that Member State. Accordingly, Andorra will notify the European Commission, which will in turn inform Member States, in case Reporting Financial Institutions of one or more Member States are prevented by law from selling such Contracts, regardless of where they are finalised, to Andorra residents based on Andorran law. These notifications will be made prior to the entry into force of the Amending Protocol regarding the foreseen legal situation as of the entry into force. In the absence of such notification it will be considered that Reporting Financial Institutions are not effectively prevented by the law of the Reportable Jurisdiction in one or more circumstances from selling Cash Value Insurance Contracts or Annuity Contracts to residents of that Reportable Jurisdiction.

In addition, each Member State will inform the European Commission, which will in turn notify Andorra, in case Reporting Financial Institutions in that Member State are prevented by law from selling such Contracts, regardless of where they are finalised, to Andorra residents based on applicable European Union law and domestic law of that Member State. Accordingly, Andorra will notify the European Commission, which will in turn inform Member States, in case Reporting Financial Institutions in Andorra are prevented by law from selling such Contracts, regardless of where they are finalised, to residents of one or more Member States based on Andorran law. These notifications will be made prior to the entry into force of the Amending Protocol regarding the foreseen legal situation as of the entry into force. In the absence of such notification it will be considered that Reporting Financial Institutions are not effectively prevented by the law of the Jurisdiction of the Financial Institution in one or more circumstances from selling Cash Value Insurance Contracts or Annuity Contracts to residents of the Reportable Jurisdiction.

In the absence of a notification from the Jurisdiction of the Reporting Financial Institution and from the Reportable Jurisdiction with regard to the relevant Reporting Financial Institution and Contract, Section III (A) of Annex I shall not apply to that Reporting Financial Institution and Contract.

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**DECLARATION OF ANDORRA ON ARTICLE 5 OF THE AGREEMENT**

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

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# REGULATIONS

## COUNCIL IMPLEMENTING REGULATION (EU) 2016/1752

of 30 September 2016

**implementing Article 21(2) of Regulation (EU) 2016/44 concerning restrictive measures in view of the situation in Libya**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EU) 2016/44 of 18 January 2016 concerning restrictive measures in view of the situation in Libya and repealing Regulation (EU) No 204/2011 <sup>(1)</sup>, and in particular Article 21(2) thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) On 18 January 2016 the Council adopted Regulation (EU) 2016/44.
- (2) On 31 March 2016 the Council added three persons to the list of persons subject to restrictive measures as set out in Annex III to Regulation (EU) 2016/44. The information concerning, and the reasons for three of those persons should be amended.
- (3) Regulation (EU) 2016/44 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

### *Article 1*

Annex III to Regulation (EU) 2016/44 is amended as set out in the Annex to this Regulation.

### *Article 2*

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 30 September 2016.

*For the Council*  
*The President*  
M. LAJČÁK

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<sup>(1)</sup> OJ L 12, 19.1.2016, p. 1.

## ANNEX

The entries concerning the persons listed below, as set out in Annex III to Regulation (EU) 2016/44, are replaced by the following entries:

## 'ANNEX III

**LIST OF NATURAL AND LEGAL PERSONS, ENTITIES OR BODIES REFERRED TO IN ARTICLE 6(2)**

## A. Persons

	Name	Identifying information	Reasons	Date of listing
21.	SALEH ISSA GWAIDER, Agila	d.o.b. 1 June 1942  Place of birth: Elgubba, Libya.  Passport: D001001 (Li- bya), issued 22 January 2015.	<p>Agila Saleh has been the President of the Libyan House of Representatives since 5 August 2014.</p> <p>On 17 December 2015 Saleh stated his opposition to the Libya Political Agreement signed on 17 December 2015.</p> <p>As the President of the Council of Deputies, Saleh has obstructed and undermined the Libyan political transition, including by refusing several times to call a vote on the Government of National Accord ("GNA").</p> <p>On 23 August 2016, Saleh addressed a letter to the Secretary-General of the United Nations, in which he criticised the United Nations' support to the GNA which he described as the imposition "of a group of individuals on the Libyan people (...) in breach of the Constitution and the United Nations Charter". He criticised the adoption of United Nations Security Council Resolution 2259(2015) which endorsed the Skhirat Agreement, and he threatened to bring the United Nations, which he holds responsible for "unconditional and unjustified" support to an incomplete Presidency Council, as well as the UN Secretary-General, before the International Criminal Court for violating the UN Charter, the Libyan Constitution and the sovereignty of Libya. Those statements undermine the support for mediation by the UN and the UN Support Mission in Libya (UNSMIL), as expressed by all relevant UN Security Council Resolutions, notably Resolution 2259(2015).</p> <p>On 6 September 2016, Saleh paid an official visit to Niger with Abdullah al-Thani, "Prime Minister" of the non-recognised government of Tobruk, even though Resolution 2259(2015) calls for the ceasing of support to and official contact with parallel institutions which claim to represent the legitimate authority but are not parties to the Agreement.</p>	1.4.2016

	Name	Identifying information	Reasons	Date of listing
22.	<p>GHWELL, Khalifa</p> <p>a.k.a. AL GHWEIL, Khalifa</p> <p>AL-GHAWAIL, Khalifa</p>	<p>d.o.b. 1 January 1956</p> <p>Place of birth: Misurata, Libya</p> <p>Nationality: Libya</p> <p>Passport: A005465 (Libya), issued 12 April 2015, expires 11 April 2017</p>	<p>Khalifa Ghwell was the so-called “Prime Minister and Defence Minister” of the internationally unrecognised General National Congress (“GNC”) (also known as the “National Salvation Government”), and as such was responsible for their activities.</p> <p>On 7 July 2015 Khalifa Ghwell showed his support for the Steadfastness Front (Alsomood), a new military force of 7 brigades to prevent a unity government from forming in Tripoli, by attending the signing ceremony to inaugurate the force with GNC “President” Nuri Abu Sahmain.</p> <p>As GNC “Prime Minister”, Ghwell has played a central role in obstructing the establishment of the GNA established under the Libya Political Agreement.</p> <p>On 15 January 2016, in his capacity as the Tripoli GNC’s “Prime Minister and Minister of Defence”, Ghwell ordered the arrest of any members of the new Security Team, appointed by the Prime Minister Designate of the Government of National Accord, who set foot in Tripoli.</p> <p>On 31 August 2016 he ordered the “Prime Minister” and the “Defence Minister” of the “National Salvation Government” to return to work after the HoR had rejected the GNA.</p>	1.4.2016
23.	<p>ABU SAHMAIN, Nuri</p> <p>a.k.a. BOSAMIN, Nori</p> <p>BO SAMIN, Nuri</p>	<p>d.o.b. 16.5.1956</p> <p>Place of birth: Zouara/Zuwara, Libya</p>	<p>Nuri Abu Sahmain used to be the so-called “President” of the internationally unrecognised General National Congress (“GNC”) (also known as the “National Salvation Government”), and as such is responsible for their activities.</p> <p>As GNC “President”, Nuri Abu Sahmain has played a central role in obstructing and opposing the Libyan Political Agreement and the establishment of the Government of National Accord (“GNA”).</p> <p>On 15 December 2015 Sahmain called for the postponement of the Libya Political Agreement scheduled to be agreed at a meeting on 17 December.</p> <p>On 16 December 2015 Sahmain issued a statement that the GNC did not authorise any of its members to participate in the meeting or sign the Libya Political Agreement.</p> <p>On 1 January 2016 Sahmain rejected the Libyan Political Agreement in talks with the United Nations Special Representative.</p>	1.4.2016'

**COMMISSION IMPLEMENTING REGULATION (EU) 2016/1753****of 30 September 2016****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 <sup>(1)</sup>,

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors <sup>(2)</sup>, and in particular Article 136(1) thereof,

Whereas:

- (1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.
- (2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

*Article 1*

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

*Article 2*

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 30 September 2016.

*For the Commission,  
On behalf of the President,  
Jerzy PLEWA*

*Director-General for Agriculture and Rural Development*

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<sup>(1)</sup> OJ L 347, 20.12.2013, p. 671.

<sup>(2)</sup> OJ L 157, 15.6.2011, p. 1.

## ANNEX

## Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)		
CN code	Third country code <sup>(1)</sup>	Standard import value
0702 00 00	MA	173,3
	ZZ	173,3
0707 00 05	TR	128,9
	ZZ	128,9
0709 93 10	TR	135,5
	ZZ	135,5
0805 50 10	AR	94,1
	CL	118,2
	TR	85,3
	UY	93,3
	ZA	103,0
	ZZ	98,8
	0806 10 10	EG
0808 10 80	TR	124,2
	US	194,0
	ZZ	194,3
	AR	110,6
0808 30 90	BR	97,9
	CL	122,7
	NZ	133,6
	ZA	115,9
	ZZ	116,1
	CL	126,9
	TR	132,1
0808 30 90	ZA	155,4
	ZZ	138,1

<sup>(1)</sup> Nomenclature of countries laid down by Commission Regulation (EU) No 1106/2012 of 27 November 2012 implementing Regulation (EC) No 471/2009 of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries, as regards the update of the nomenclature of countries and territories (OJ L 328, 28.11.2012, p. 7). Code 'ZZ' stands for 'of other origin'.

# DECISIONS

## COUNCIL DECISION (EU) 2016/1754

of 29 September 2016

### amending Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(3) thereof,

Having regard to the proposal from the European Commission,

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

Whereas:

- (1) On the basis of Article 78(3) of the Treaty on the Functioning of the European Union (TFEU), the Council adopted two Decisions establishing provisional measures in the area of international protection for the benefit of Italy and Greece. Under Council Decision (EU) 2015/1523 <sup>(2)</sup>, 40 000 applicants for international protection are to be relocated from Italy and Greece to the other Member States. Under Council Decision (EU) 2015/1601 <sup>(3)</sup>, 120 000 applicants for international protection are to be relocated from Italy and Greece to other Member States.
- (2) In accordance with Article 4(2) of Decision (EU) 2015/1601, from 26 September 2016, 54 000 applicants are to be relocated from Italy and Greece to the territory of other Member States, unless, pursuant to Article 4(3) of that Decision, by that date the Commission makes a proposal to allocate them to a particular beneficiary Member State confronted with an emergency situation characterised by a sudden inflow of persons.
- (3) Article 1(2) of Decision (EU) 2015/1601 provides that the Commission is to keep under constant review the situation regarding massive inflows of third country nationals into Member States. The Commission is to submit, as appropriate, proposals to amend that Decision in order to take into account the evolution of the situation on the ground and its impact upon the relocation mechanism, as well as the evolving pressure on Member States, in particular frontline Member States.
- (4) With the aim of ending irregular migration from Turkey to the EU, on 18 March 2016 <sup>(4)</sup>, the EU and Turkey agreed on a number of action points, including to resettle, for every Syrian readmitted by Turkey from Greek islands, another Syrian from Turkey to the Member States, within the framework of the existing commitments. Resettlement under that mechanism will take place, in the first instance, by honouring the commitments taken by Member States in the conclusions of Representatives of the Governments of Member States meeting within the Council on 20 July 2015. Any further need for resettlement is to be carried out through a similar voluntary arrangement up to a limit of an additional 54 000 persons by allowing for any resettlement commitment undertaken in the framework of that arrangement to be offset against non-allocated places under Decision (EU) 2015/1601.

<sup>(1)</sup> Not yet published in the Official Journal.

<sup>(2)</sup> Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece (OJ L 239, 15.9.2015, p. 146).

<sup>(3)</sup> Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece (OJ L 248, 24.9.2015, p. 80).

<sup>(4)</sup> EU-Turkey Statement of 18 March 2016.

- (5) Resettlement, humanitarian admission or other forms of legal admission from Turkey under national and multi-lateral schemes can be expected to relieve the migratory pressure on Member States which are beneficiaries of relocation under Decision (EU) 2015/1601 by providing a legal and safe pathway to enter the Union and by discouraging irregular entries. Therefore, the solidarity efforts of Member States consisting in voluntarily admitting to their territory Syrian nationals present in Turkey who are in clear need of international protection should be taken into account in relation to the 54 000 applicants for international protection referred to above. The number of persons so admitted from Turkey by a Member State should be deducted from the number of persons to be relocated to that Member State under Decision (EU) 2015/1601 in relation to those 54 000 applicants.
- (6) Mechanisms for admission may include resettlement, humanitarian admission or other legal pathways for admission of Syrian nationals present in Turkey who are in clear need of international protection, such as humanitarian visa programmes, humanitarian transfer, family reunification programmes, private sponsorship projects, scholarship programmes, labour mobility schemes, and others.
- (7) The commitments that Member States undertook as part of the resettlement scheme agreed in the Conclusions of the Representatives of the Governments of the Member States meeting within the Council of 20 July 2015 should not be affected by this Decision and should not count towards meeting the obligations under Decision (EU) 2015/1601. Therefore, a Member State which chooses to meet its obligations under Decision (EU) 2015/1601 by admitting Syrians present in Turkey through resettlement, should not be able to count that effort as constituting part of its commitment under the 20 July 2015 resettlement scheme.
- (8) To ensure a proper monitoring of the situation, a Member State should, once it chooses to use this option, report on a monthly basis to the Commission on Syrians present in Turkey admitted to its territory under the option provided for in this amendment specifying under which scheme, national or multilateral, the person has been admitted and the form of legal admission.
- (9) Since the objectives of this Decision cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the action, 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 (TEU). In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary in order to achieve those objectives.
- (10) This Decision respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union.
- (11) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, the United Kingdom is not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (12) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Articles 4 and 4a of that Protocol, Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (13) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (14) In view of the urgency of the situation, this Decision should enter into force on the day following that of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS DECISION:

*Article 1*

In Article 4 of Decision (EU) 2015/1601, the following paragraph is inserted:

'3a. In relation to the relocation of applicants referred to in point (c) of paragraph 1, Member States may choose to meet their obligation by admitting to their territory Syrian nationals present in Turkey under national or multilateral legal admission schemes for persons in clear need of international protection, other than the resettlement scheme which was the subject of the Conclusions of the Representatives of the Governments of the Member States meeting within the Council of 20 July 2015. The number of persons so admitted by a Member State shall lead to a corresponding reduction of the obligation of the respective Member State.

Article 10 shall apply *mutatis mutandis* for every such legal admission leading to a reduction of the relocation obligation.

Member States, which choose to use the option provided in this paragraph, shall report monthly to the Commission on the number of persons legally admitted for the purposes of this paragraph, indicating the type of scheme under which the admission has taken place and the form of legal admission used.'

*Article 2*

1. This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.
2. This Decision shall apply until 26 September 2017.
3. This Decision shall apply to all the persons who, for the purposes of paragraph 3a of Article 4 of Decision (EU) 2015/1601, have been admitted from the territory of Turkey by the Member States as from 1 May 2016.

Done at Brussels, 29 September 2016.

For the Council  
The President  
P. ŽIGA

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**COUNCIL DECISION (CFSP) 2016/1755**  
**of 30 September 2016**  
**amending Decision (CFSP) 2015/1333 concerning restrictive measures in view of the situation in Libya**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29 thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) On 31 July 2015 the Council adopted Decision (CFSP) 2015/1333 <sup>(1)</sup>.
- (2) On 31 March 2016 the Council adopted Decision (CFSP) 2016/478 <sup>(2)</sup> adding three persons for a period of 6 months to the list of persons subject to restrictive measures as set out in Annexes II and IV to Decision (CFSP) 2015/1333.
- (3) In view of the gravity of the situation the Council has decided that the restrictive measures should be maintained for a further period of 6 months and that the reasons for three persons should be amended.
- (4) Decision (CFSP) 2015/1333 should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

*Article 1*

Decision (CFSP) 2015/1333 is amended as follows:

- (1) in Article 17, paragraphs 3 and 4 are replaced by the following:

‘3. The measures referred to in Article 8(2) shall apply with regard to entry numbers 16, 17 and 18 in Annex II until 2 April 2017.

4. The measures referred to in Article 9(2) shall apply with regard to entry numbers 21, 22 and 23 in Annex IV until 2 April 2017.’;

- (2) Annexes II and IV to Decision (CFSP) 2015/1333 are amended as set out in the Annex to this Decision.

*Article 2*

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

Done at Brussels, 30 September 2016.

*For the Council*  
*The President*  
M. LAJČÁK

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<sup>(1)</sup> Council Decision (CFSP) 2015/1333 of 31 July 2015 concerning restrictive measures in view of the situation in Libya, and repealing Decision 2011/137/CFSP (OJ L 206, 1.8.2015, p. 34).

<sup>(2)</sup> Council Decision (CFSP) 2016/478 of 31 March 2016 amending Decision (CFSP) 2015/1333 concerning restrictive measures in view of the situation in Libya (OJ L 85, 1.4.2016, p. 48).

## ANNEX

The entries concerning the persons listed below, as set out in Annexes II and IV to Decision (CFSP) 2015/1333, are replaced by the following entries:

## 'ANNEX II

## LIST OF PERSONS AND ENTITIES REFERRED TO IN ARTICLE 8(2)

## A. Persons

	Name	Identifying information	Reasons	Date of listing
16.	SALEH ISSA GWAIDER, Agila	d.o.b. 1 June 1942  Place of birth: Elgubba, Libya.  Passport: D001001 (Li- bya), issued 22 January 2015.	<p>Agila Saleh has been the President of the Libyan House of Representatives since 5 August 2014.</p> <p>On 17 December 2015 Saleh stated his opposition to the Libya Political Agreement signed on 17 December 2015.</p> <p>As the President of the Council of Deputies, Saleh has obstructed and undermined the Libyan political transition, including by refusing several times to call a vote on the Government of National Accord ("GNA").</p> <p>On 23 August 2016, Saleh addressed a letter to the Secretary-General of the United Nations, in which he criticised the United Nations' support to the GNA which he described as the imposition "of a group of individuals on the Libyan people (...) in breach of the Constitution and the United Nations Charter". He criticised the adoption of United Nations Security Council Resolution 2259(2015) which endorsed the Skhirat Agreement, and he threatened to bring the United Nations, which he holds responsible for "unconditional and unjustified" support to an incomplete Presidency Council, as well as the UN Secretary-General, before the International Criminal Court for violating the UN Charter, the Libyan Constitution and the sovereignty of Libya. Those statements undermine the support for mediation by the UN and the UN Support Mission in Libya (UNSMIL), as expressed by all relevant UN Security Council Resolutions, notably Resolution 2259(2015).</p> <p>On 6 September 2016, Saleh paid an official visit to Niger with Abdullah al-Thani, "Prime Minister" of the non-recognised government of Tobruk, even though Resolution 2259(2015) calls for the ceasing of support to and official contact with parallel institutions which claim to represent the legitimate authority but are not parties to the Agreement.</p>	1.4.2016

	Name	Identifying information	Reasons	Date of listing
17.	<p>GHWELL, Khalifa</p> <p>a.k.a. AL GHWEIL, Khalifa</p> <p>AL-GHAWAIL, Khalifa</p>	<p>d.o.b. 1 January 1956</p> <p>Place of birth: Misurata, Libya</p> <p>Nationality: Libya</p> <p>Passport: A005465 (Li- bya), issued 12 April 2015, expires 11 April 2017</p>	<p>Khalifa Ghwell was the so-called “Prime Minister and Defence Minister” of the internationally unrecognised General National Congress (“GNC”) (also known as the “National Salvation Government”), and as such was responsible for their activities.</p> <p>On 7 July 2015 Khalifa Ghwell showed his support for the Steadfastness Front (Alsomood), a new military force of 7 brigades to prevent a unity government from forming in Tripoli, by attending the signing ceremony to inaugurate the force with GNC “President” Nuri Abu Sahmain.</p> <p>As GNC “Prime Minister”, Ghwell has played a central role in obstructing the establishment of the GNA established under the Libya Political Agreement.</p> <p>On 15 January 2016, in his capacity as the Tripoli GNC’s “Prime Minister and Minister of Defence”, Ghwell ordered the arrest of any members of the new Security Team, appointed by the Prime Minister Designate of the Government of National Accord, who set foot in Tripoli.</p> <p>On 31 August 2016 he ordered the “Prime Minister” and the “Defence Minister” of the “National Salvation Government” to return to work after the HoR had rejected the GNA.</p>	1.4.2016
18.	<p>ABU SAHMAIN, Nuri</p> <p>a.k.a. BOSAMIN, Nori</p> <p>BO SAMIN, Nuri</p>	<p>d.o.b. 16.5.1956</p> <p>Place of birth: Zouara/ Zuwara, Libya</p>	<p>Nuri Abu Sahmain used to be the so-called “President” of the internationally unrecognised General National Congress (“GNC”) (also known as the “National Salvation Government”), and as such is responsible for their activities.</p> <p>As GNC “President”, Nuri Abu Sahmain has played a central role in obstructing and opposing the Libyan Political Agreement and the establishment of the Government of National Accord (“GNA”).</p> <p>On 15 December 2015 Sahmain called for the postponement of the Libya Political Agreement scheduled to be agreed at a meeting on 17 December.</p> <p>On 16 December 2015 Sahmain issued a statement that the GNC did not authorise any of its members to participate in the meeting or sign the Libya Political Agreement.</p> <p>On 1 January 2016 Sahmain rejected the Libyan Political Agreement in talks with the United Nations Special Representative.</p>	1.4.2016'

## ‘ANNEX IV

## LIST OF PERSONS AND ENTITIES REFERRED TO IN ARTICLE 9(2)

## A. Persons

	Name	Identifying information	Reasons	Date of listing
21.	SALEH ISSA GWAIDER, Agila	d.o.b. 1 June 1942  Place of birth: Elgubba, Libya.  Passport: D001001 (Li- bya), issued 22 January 2015.	<p>Agila Saleh has been the President of the Libyan House of Representatives since 5 August 2014.</p> <p>On 17 December 2015 Saleh stated his opposition to the Libya Political Agreement signed on 17 December 2015.</p> <p>As the President of the Council of Deputies, Saleh has obstructed and undermined the Libyan political transition, including by refusing several times to call a vote on the Government of National Accord (“GNA”).</p> <p>On 23 August 2016, Saleh addressed a letter to the Secretary-General of the United Nations, in which he criticised the United Nations’ support to the GNA which he described as the imposition “of a group of individuals on the Libyan people (...) in breach of the Constitution and the United Nations Charter”. He criticised the adoption of United Nations Security Council Resolution 2259(2015) which endorsed the Skhirat Agreement, and he threatened to bring the United Nations, which he holds responsible for “unconditional and unjustified” support to an incomplete Presidency Council, as well as the UN Secretary-General, before the International Criminal Court for violating the UN Charter, the Libyan Constitution and the sovereignty of Libya. Those statements undermine the support for mediation by the UN and the UN Support Mission in Libya (UNSMIL), as expressed by all relevant UN Security Council Resolutions, notably Resolution 2259(2015).</p> <p>On 6 September 2016, Saleh paid an official visit to Niger with Abdullah al-Thani, “Prime Minister” of the non-recognised government of Tobruk, even though Resolution 2259(2015) calls for the ceasing of support to and official contact with parallel institutions which claim to represent the legitimate authority but are not parties to the Agreement.</p>	1.4.2016

	Name	Identifying information	Reasons	Date of listing
22.	<p>GHWELL, Khalifa</p> <p>a.k.a. AL GHWEL, Khalifa</p> <p>AL-GHAWAIL, Khalifa</p>	<p>d.o.b. 1 January 1956</p> <p>Place of birth: Misurata, Libya</p> <p>Nationality: Libya</p> <p>Passport: A005465 (Li- bya), issued 12 April 2015, expires 11 April 2017</p>	<p>Khalifa Ghwell was the so-called “Prime Minister and Defence Minister” of the internationally unrecognised General National Congress (“GNC”) (also known as the “National Salvation Government”), and as such was responsible for their activities.</p> <p>On 7 July 2015 Khalifa Ghwell showed his support for the Steadfastness Front (Alsomood), a new military force of 7 brigades to prevent a unity government from forming in Tripoli, by attending the signing ceremony to inaugurate the force with GNC “President” Nuri Abu Sahmain.</p> <p>As GNC “Prime Minister”, Ghwell has played a central role in obstructing the establishment of the GNA established under the Libya Political Agreement.</p> <p>On 15 January 2016, in his capacity as the Tripoli GNC’s “Prime Minister and Minister of Defence”, Ghwell ordered the arrest of any members of the new Security Team, appointed by the Prime Minister Designate of the Government of National Accord, who set foot in Tripoli.</p> <p>On 31 August 2016 he ordered the “Prime Minister” and the “Defence Minister” of the “National Salvation Government” to return to work after the HoR had rejected the GNA.</p>	1.4.2016
23.	<p>ABU SAHMAIN, Nuri</p> <p>a.k.a. BOSAMIN, Nori</p> <p>BO SAMIN, Nuri</p>	<p>d.o.b. 16.5.1956</p> <p>Place of birth: Zouara/ Zuwara, Libya</p>	<p>Nuri Abu Sahmain used to be the so-called “President” of the internationally unrecognised General National Congress (“GNC”) (also known as the “National Salvation Government”), and as such is responsible for their activities.</p> <p>As GNC “President”, Nuri Abu Sahmain has played a central role in obstructing and opposing the Libyan Political Agreement and the establishment of the Government of National Accord (“GNA”).</p> <p>On 15 December 2015 Sahmain called for the postponement of the Libya Political Agreement scheduled to be agreed at a meeting on 17 December.</p> <p>On 16 December 2015 Sahmain issued a statement that the GNC did not authorise any of its members to participate in the meeting or sign the Libya Political Agreement.</p> <p>On 1 January 2016 Sahmain rejected the Libyan Political Agreement in talks with the United Nations Special Representative.</p>	1.4.2016'

**COMMISSION DECISION (EU) 2016/1756****of 28 September 2016****determining the European Union position with regard to a decision of the management entities under the Agreement between the Government of the United States of America and the European Union on the coordination of energy-efficiency labelling programmes for office equipment, on the revision of specifications for displays included in Annex C to the Agreement****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Decision 2013/107/EU of 13 November 2012 on the signing and conclusion of the Agreement between the Government of the United States of America and the European Union on the coordination of energy-efficiency labelling programmes for office equipment, <sup>(1)</sup> and in particular Article 4 thereof,

Whereas:

- (1) The Agreement allows the European Commission, together with the United States Environmental Protection Agency, to develop and periodically revise common specifications for office equipment, thereby amending Annex C to the Agreement.
- (2) The Commission determines the position to be adopted by the European Union on the amendment of the specifications.
- (3) The measures provided for in this Decision take account of the European Union Energy Star Board opinion referred to in Article 8 of Regulation (EC) No 106/2008 of the European Parliament and of the Council <sup>(2)</sup>.
- (4) The specification for displays provided in Part I. of Annex C should be repealed and replaced by the specifications annexed to this Decision,

HAS ADOPTED THIS DECISION:

*Sole Article*

Under the Agreement between the Government of the United States of America and the European Union on the coordination of energy-efficiency labelling programmes for office equipment, a decision on revising the specifications provided in Annex C to that Agreement is to be taken by the management entities. The position to be adopted by the European Union with regard to this decision on the specifications for displays in Annex C to the Agreement shall be based on the attached draft decision.

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

Done at Brussels, 28 September 2016.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

<sup>(1)</sup> OJ L 63, 6.3.2013, p. 5.

<sup>(2)</sup> Regulation (EC) No 106/2008 of the European Parliament and of the Council of 15 January 2008 on a Union energy-efficiency labelling programme for office equipment (OJ L 39, 13.2.2008, p. 1).

## ANNEX I

**DRAFT DECISION**

of ...

**the Management entities under the Agreement between the Government of the United States of America and the European Union on the coordination of energy-efficiency labelling programmes for office equipment on the revision of specifications for displays included in Annex C of the Agreement**

THE MANAGEMENT ENTITIES,

Having regard to the Agreement between the Government of the United States and the European Union on the coordination of energy-efficiency labelling programmes for office equipment, and in particular Article XII thereof,

Whereas specifications for 'displays' should be revised,

HAVE DECIDED AS FOLLOWS:

Part I. 'Displays' currently included in Annex C of the Agreement between the Government of the United States and the European Union on the coordination of energy-efficiency labelling programmes for office equipment shall be replaced by Part I. 'Displays' as laid down thereafter.

The Decision shall enter into force on the twentieth day following its publication. The Decision, done in duplicate, shall be signed by the Co-chairs.

Signed in Washington DC on the [...] [...]

Signed in Brussels on the [...] [...]

*on behalf of the United States Environmental Protection  
Agency*

*on behalf of the European Union*

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## ANNEX II

## ANNEX C

**PART II TO THE AGREEMENT**

## I. DISPLAY SPECIFICATIONS (Version 7.0)

**1. Definitions**

## (A) Product Types:

## (1) Electronic Display (Display):

A product with a display screen and associated electronics, often encased in a single housing, that as its primary function produces visual information from (1) a computer, workstation, or server via one or more inputs (e.g. VGA, DVI, HDMI, DisplayPort, IEEE 1394, USB), (2) external storage (e.g. USB flash drive, memory card), or (3) a network connection.

(a) Monitor: An Electronic Display intended for one person to view in a desk-based environment.

(b) Signage Display: An Electronic Display intended for multiple people to view in non-desk-based environments, such as retail or department stores, restaurants, museums, hotels, outdoor venues, airports, conference rooms or classrooms. For the purposes of this specification, a Display shall be classified as a Signage Display if it meets two or more criteria listed below:

- (1) Diagonal screen size is greater than 30 inches;
- (2) Maximum Reported Luminance is greater than 400 candelas per square metre;
- (3) Pixel density is less than or equal to 5 000 pixels per square inch; or
- (4) Ships without a mounting stand.

## (B) Operational Modes:

(1) On Mode: The mode in which the Display has been activated, and is providing the primary function.

(2) Sleep Mode: A low-power mode in which the Display provides one or more non-primary protective functions or continuous functions.

*Note:* Sleep Mode may serve the following functions: facilitate the activation of On Mode via remote switch, Touch Technology, internal sensor, or timer; provide information or status displays including clocks; support sensor-based functions; or maintain a network presence.

(3) Off Mode: The mode where the Display is connected to a power source, produces no visual information, and cannot be switched into any other mode with the remote control unit, an internal signal, or an external signal.

*Note:* The Display may only exit this mode by direct user actuation of an integrated power switch or control. Some products may not have an Off Mode.

## (C) Visual Characteristics:

(1) Ambient Light Conditions: The combination of light illuminances in the environment surrounding a Display, such as a living room or an office.

(2) Automatic Brightness Control (ABC): The self-acting mechanism that controls the brightness of a Display as a function of Ambient Light Conditions.

*Note:* ABC functionality must be enabled to control the brightness of a Display.

- (3) Colour Gamut: Colour gamut area shall be reported as a percentage of the CIE LUV 1976  $u'$   $v'$  colour space and calculated as per Section 5.18 Gamut Area of the Information Display Measurements Standard Version 1.03.

*Note:* Any gamut support in non-visible/invisible colour areas is not to be counted. The gamut's size must be expressed as a percentage of area of the visible CIE LUV colour space only.

- (4) Luminance:

The photometric measure of the luminous intensity per unit area of light travelling in a given direction, expressed in candelas per square metre ( $\text{cd}/\text{m}^2$ ).

- (a) Maximum Reported Luminance: The maximum luminance the Display may attain at an On Mode preset setting, and as specified by the manufacturer, for example, in the user manual.
- (b) Maximum Measured Luminance: The maximum measured luminance the Display may attain by manually configuring its controls, such as brightness and contrast.
- (c) As-shipped Luminance: The luminance of the Display at the factory default preset setting the manufacturer selects for normal home or applicable market use.

- (5) Native Vertical Resolution: The number of physical lines along the vertical axis of the Display within the visible area of the Display.

*Note:* A Display with a screen resolution of  $1\ 920 \times 1\ 080$  (horizontal  $\times$  vertical) would have a Native Vertical Resolution of 1 080.

- (6) Screen Area: The visible area of the Display that produces images.

*Note:* Screen Area is calculated by multiplying the viewable image width by the viewable image height. For curved screens, measure the width and height along the arc of the Display.

(D) Additional Functions and Features:

- (1) Bridge Connection: A physical connection between two hub controllers (i.e. USB, FireWire).

*Note:* Bridge Connections allow for expansion of ports typically for the purpose of relocating the ports to a more convenient location or increasing the number of available ports.

- (2) Full Network Connectivity: The ability of the Display to maintain network presence while in Sleep Mode. Presence of the Display, its network services, and its applications, is maintained even if some components of the Display are powered down. The Display can elect to change power states based on receipt of network data from remote network devices, but should otherwise stay in Sleep Mode absent a demand for services from a remote network device.

*Note:* Full Network Connectivity is not limited to a specific set of protocols. Also referred to as 'network proxy' functionality and described in the Ecma-393 standard.

- (3) Occupancy Sensor: A device used to detect human presence in front of or in the area surrounding a Display.

*Note:* An Occupancy Sensor is typically used to switch a Display between On Mode and Sleep Mode.

- (4) Touch Technology: Enables the user to interact with a product by touching areas on the Display screen.

- (5) Plug-in Module: A modular plugin device that provides one or more of the following functions without the explicit purpose of providing general computing function:

(a) Display images, mirror remote content streamed to it, or otherwise render content on the screen from local or remote sources; or

(b) Process touch signals.

*Note:* Modules providing any other additional input options are not considered Plug-in Modules for the purposes of this specification.

- (E) Product Family: A group of product models that: (1) are made by the same manufacturer; (2) share the same Screen Area, Resolution, and Maximum Reported Luminance; and (3) are of a common basic screen design. Models within a Product Family may differ from each other according to one or more characteristics or features. For Displays, acceptable variations within a Product Family include:
- (1) External housing;
  - (2) Number and types of interfaces;
  - (3) Number and types of data, network, or peripheral ports; and
  - (4) Processing and memory capability.
- (F) Representative Model: The product configuration that is tested for Energy Star qualification and is intended to be marketed and labelled as ENERGY STAR.
- (G) Power Source
- (1) External Power Supply (EPS): An external power supply circuit that is used to convert household electric current into DC current or lower-voltage AC current to operate a consumer product.
  - (2) Standard DC: A method for transmitting DC power defined by a well-known technology standard, enabling plug-and-play interoperability.
- Note:* Common examples are USB and Power-over-Ethernet. Usually Standard DC includes both power and communications over the same cable, but as with the 380 V DC standard, that is not required.

## 2. Scope

### 2.1. Included products

2.1.1. Products that meet the definition of a Display as specified herein and are powered directly from AC mains, an External Power Supply, or Standard DC are eligible for Energy Star qualification, with the exception of products listed in Section 2.2. Typical products that would be eligible for qualification under this specification include:

- (i) Monitors;
- (ii) Monitors with keyboard, video, and mouse (KVM) switch functionality;
- (iii) Signage Displays; and
- (iv) Signage Displays and Monitors with Plug-in Modules.

### 2.2. Excluded products

2.2.1. Products that are covered under other Energy Star product specifications are not eligible for qualification under this specification including Televisions and Computers (Thin Clients, Slates/Tablets, Portable All-in-one Computers, Integrated Desktops). The list of specifications currently in effect can be found at <http://www.energystar.org/specifications.htm>

2.2.2. The following products are not eligible for qualification under this specification:

- (i) Products with an integrated television tuner;
- (ii) Displays with integrated or replaceable batteries designed to support primary operation without AC mains or external DC power, or device mobility (e.g. electronic readers, battery-powered digital picture frames); and
- (iii) Products that must meet EU regulations for medical devices that prohibit power management capabilities and/or do not have a power state meeting the definition of Sleep Mode.

### 3. Qualification criteria

#### 3.1. Significant digits and rounding

3.1.1. All calculations shall be carried out with directly measured (unrounded) values.

3.1.2. Unless otherwise specified, compliance with specification requirements shall be evaluated using directly measured or calculated values without any benefit from rounding.

3.1.3. Directly measured or calculated values that are submitted for reporting to the European Commission shall be rounded to the nearest significant digit as expressed in the corresponding specification requirements.

#### 3.2. General requirements for Monitors and Signage Displays

3.2.1. External power supplies (EPSs): Single- and Multiple-voltage EPSs shall meet the Level VI or higher performance requirements under the International Efficiency Marking Protocol when tested according to the Uniform Test Method for Measuring the Energy Consumption of External Power Supplies, Appendix Z to 10 CFR Part 430.

(i) Single- and Multiple-voltage EPSs shall include the Level VI or higher marking.

(ii) Additional information on the Marking Protocol is available at <http://www.regulations.gov/#!documentDetail;D=EERE-2008-BT-STD-0005-0218>

#### 3.2.2. Power management:

(i) Products shall offer at least one power management feature that is enabled by default, and that can be used to automatically transition from Sleep Mode to On Mode either by a connected host device or internally (e.g. support for VESA Display Power Management Signalling (DPMS), enabled by default).

(ii) Products that generate content for display from one or more internal sources shall have a sensor or timer enabled by default to automatically engage Sleep or Off Mode.

(iii) For products that have an internal default delay time after which the product transitions from On Mode to Sleep Mode or Off Mode, the delay time shall be reported.

(iv) Monitors shall automatically enter Sleep Mode or Off Mode within 5 minutes of being disconnected from a host computer.

3.2.3. Signage Displays shall have a true power factor in On Mode of 0,7 or greater as per Section 5.2(F) in the Energy Star Test Method.

#### 3.3. Energy requirements for computer monitors

3.3.1. The Total Energy Consumption (TEC) in kWh shall be calculated as per Equation 1 based on measured values.

*Equation 1*

#### **Total Energy Consumption Calculation**

$$E_{TEC} = 8,76 \times (0,35 \times P_{ON} + 0,65 \times P_{SLEEP})$$

Where:

—  $E_{TEC}$  is the Total Energy Consumption calculation in kWh,

—  $P_{ON}$  is Measured On Mode Power in watts,

—  $P_{SLEEP}$  is Measured Sleep Mode Power in watts, and

— The result shall be rounded to the nearest tenth of a kWh for reporting.

3.3.2. The Maximum TEC ( $E_{TEC\_MAX}$ ) in kWh for Monitors shall be calculated as per Table 1.

Table 1

**Calculation of Maximum TEC ( $E_{TEC\_MAX}$ ) for Monitors in kWh**

Area (in <sup>2</sup> )	$E_{TEC}$ Max (kWh) Where: A = Viewable screen area in in <sup>2</sup> r = Screen resolution in megapixels The result shall be rounded to the nearest tenth of a kWh for reporting
$A < 130$	$(6,13 \times r) + (0,06 \times A) + 9$
$130 \leq A < 150$	$(6,13 \times r) + (0,69 \times A) - 72,38$
$150 \leq A < 180$	$(6,13 \times r) + (0,21 \times A) - 0,50$
$180 \leq A < 200$	$(6,13 \times r) + (0,05 \times A) + 28$
$200 \leq A < 230$	$(6,13 \times r) + (0,03 \times A) + 31,33$
$230 \leq A < 280$	$(6,13 \times r) + (0,2 \times A) - 7$
$280 \leq A < 300$	$(6,13 \times r) + 49$
$300 \leq A < 500$	$(6,13 \times r) + (0,2 \times A) - 11$
$A \geq 500$	$(6,13 \times r) + 89$

3.3.3. For all Monitors, Calculated TEC ( $E_{TEC}$ ) in kWh shall be less than or equal to the calculation of Maximum TEC ( $E_{TEC\_MAX}$ ) with the applicable allowances and adjustments (applied at most once) as per Equation 2.

Equation 2

**Total Energy Consumption Requirement for Monitors**

$$E_{TEC} \leq (E_{TEC\_MAX} + E_{EP} + E_{ABC} + E_N + E_{OS} + E_T) \times eff_{AC\_DC}$$

Where:

- $E_{TEC}$  is TEC in kWh calculated as per Equation 1,
- $E_{TEC\_MAX}$  is the Maximum TEC requirement in kWh calculated as per Table 1,
- $E_{EP}$  is the enhanced performance display allowance in kWh as per Section 3.3.4,
- $E_{ABC}$  is the Automatic Brightness Control allowance in kWh as per Equation 4,
- $E_N$  is the Full Network Connectivity allowance in kWh as per Table 3,
- $E_{OS}$  is the Occupancy Sensor allowance in kWh as per Table 4,
- $E_T$  is the Touch Technology allowance in kWh as per Equation 5, and
- $eff_{AC\_DC}$  is the standard adjustment for AC-DC power conversion losses that occur at the device powering the Display, and is 1,0 for AC-powered Displays and 0,85 for Displays with Standard DC.

3.3.4. For Monitors meeting the enhanced performance display (EPD) requirements below, only one of the following Table 2 allowances shall be used in Equation 2:

- (i) Contrast ratio of at least 60:1 measured at a horizontal viewing angle of at least 85° from the perpendicular on a flat screen and at least 83° from the perpendicular on a curved screen, with or without a screen cover glass;
- (ii) A native resolution greater than or equal to 2,3 megapixels (MP); and
- (iii) Colour Gamut greater than or equal to 32,9 % of CIE LUV.

Table 2

#### Calculation of Energy Allowance for Enhanced Performance Displays

Colour Gamut Criteria	$E_{EP}$ (kWh) Where: — $E_{TEC\_MAX}$ is the Maximum TEC requirement in kWh, and — $r$ is screen resolution in megapixels
Colour Gamut support is 32,9 % of CIE LUV or greater.	$0,15 \times (E_{TEC\_MAX} - 6,13 \times r)$
Colour Gamut support is 38,4 % of CIE LUV or greater.	$0,65 \times (E_{TEC\_MAX} - 6,13 \times r)$

Note: A model supporting greater than 99 % of the sRGB colour space translates to 32,9 % of CIE LUV and a model supporting greater than 99 % of Adobe RGB translates to 38,4 % of CIE LUV.

3.3.5. For monitors with Automatic Brightness Control (ABC) enabled by default, an energy allowance ( $E_{ABC}$ ), as calculated per Equation 4, shall be added to  $E_{TEC\_MAX}$  in Equation 2, if the On Mode power reduction ( $R_{ABC}$ ), as calculated per Equation 3, is greater than or equal to 20 %.

Equation 3

#### Calculation of On Mode Reduction with ABC Enabled by Default

$$R_{ABC} = 100 \% \times \left( \frac{P_{300} - P_{12}}{P_{300}} \right)$$

Where:

- $R_{ABC}$  is the On Mode percent power reduction due to ABC,
- $P_{300}$  is the On Mode power in watts, as measured at an ambient light level of 300 lux in Section 6.4 of the Test Method, and
- $P_{12}$  is the On Mode power in watts, as measured at an ambient light level of 12 lux in Section 6.4 of the Test Method.

Equation 4

#### Monitor ABC Energy Allowance ( $E_{ABC}$ ) for Monitors

$$E_{ABC} = 0,05 \times E_{TEC\_MAX}$$

Where:

- $E_{ABC}$  is the energy allowance for Automatic Brightness Control in kWh, and
- $E_{TEC\_MAX}$  is the Maximum TEC in kWh, as per Table 1.

- 3.3.6. Products with Full Network Connectivity confirmed in Section 6.7 of the Energy Star Test Method shall apply the allowance specified in Table 3.

Table 3

**Full Network Connectivity Energy Allowance ( $E_N$ ) for Monitors**

$E_N$ (kWh)
2,9

- 3.3.7. Products tested with an Occupancy Sensor active shall apply the allowance specified in Table 4.

Table 4

**Additional Functions Energy Allowance ( $E_{OS}$ ) for Monitors**

Type	Allowance (kWh)
Occupancy Sensor $E_{OS}$	1,7

- 3.3.8. Products tested with Touch Technology active in On Mode shall apply the allowance specified in Equation 5.

Equation 5

**Energy Allowance for Touch Technology ( $E_T$ ) for Monitors**

$$E_T = 0,15 \times E_{TEC\_MAX}$$

Where:

- $E_T$  is the energy allowance for Touch Technology in kWh, and
- $E_{TEC\_MAX}$  is the Maximum TEC in kWh, as per Table 1.

- 3.4. On Mode requirements for Signage Displays

- 3.4.1. The Maximum On Mode Power ( $P_{ON\_MAX}$ ) in watts shall be calculated as per Equation 6.

Equation 6

**Calculation of Maximum On Mode Power ( $P_{ON\_MAX}$ ) in Watts for Signage Displays**

$$P_{ON\_MAX} = (4,0 \times 10^{-5} \times \ell \times A) + 119 \times \tanh(0,0008 \times (A - 200,0) + 0,11) + 6$$

Where:

- $P_{ON\_MAX}$  is the Maximum On Mode Power, in watts,
- $A$  is the Screen Area in square inches,
- $\ell$  is the Maximum Measured Luminance of the Display in candelas per square metre, as measured in Section 6.2 of the test method,
- $\tanh$  is the hyperbolic tangent function, and
- the result shall be rounded to the nearest tenth of a watt for reporting.

## Equation 7

**On Mode Power Requirement for Signage Displays**

$$P_{ON} \leq P_{ON\_MAX} + P_{ABC}$$

Where:

- $P_{ON}$  is On Mode Power in watts, as measured in Section 6.3 or 6.4 of the Test Method,
  - $P_{ON\_MAX}$  is the Maximum On Mode Power in watts, as per Equation 6, and
  - $P_{ABC}$  is the On Mode power allowance for ABC in watts, as per Equation 8.
- 3.4.2. For Signage Displays with ABC enabled by default, a power allowance ( $P_{ABC}$ ), as calculated per Equation 8, shall be added to  $P_{ON\_MAX}$ , as calculated per Equation 6, if the On Mode power reduction ( $R_{ABC}$ ), as calculated per Equation 3, is greater than or equal to 20 per cent.

## Equation 8

**Calculation of On Mode Power Allowance for Signage Displays with ABC Enabled by Default**

$$P_{ABC} = 0,05 \times P_{ON\_MAX}$$

Where:

- $P_{ABC}$  is the Measured On Mode Power allowance for ABC in watts, and
  - $P_{ON\_MAX}$  is the Maximum On Mode Power requirement in watts.
- 3.5. Sleep Mode requirements for Signage Displays
- 3.5.1. Measured Sleep Mode Power ( $P_{SLEEP}$ ) in watts shall be less than or equal to the sum of the Maximum Sleep Mode Power Requirement ( $P_{SLEEP\_MAX}$ ) and any allowances (applied at most once) as per Equation 9.

## Equation 9

**Sleep Mode Power Requirement for Signage Displays**

$$P_{SLEEP} \leq P_{SLEEP\_MAX} + P_N + P_{OS} + P_T$$

Where:

- $P_{SLEEP}$  is Measured Sleep Mode Power in watts,
- $P_{SLEEP\_MAX}$  is the Maximum Sleep Mode Power requirement in watts as per Table 5,
- $P_N$  is the Full Network Connectivity allowance in watts as per Table 6,
- $P_{OS}$  is the Occupancy Sensor allowance in watts as per Table 7, and
- $P_T$  is the Touch allowance in watts as per Table 7.

Table 5

**Maximum Sleep Mode Power Requirement ( $P_{\text{SLEEP\_MAX}}$ ) for Signage Displays**

$P_{\text{SLEEP\_MAX}}$ (watts)
0,5

- 3.5.2. Products with Full Network Connectivity confirmed in Section 6.7 of the Energy Star Test Method shall apply the allowance specified in Table 6.

Table 6

**Full Network Connectivity Allowance for Signage Displays**

$P_{\text{N}}$ (watts)
3,0

- 3.5.3. Products tested with an Occupancy Sensor or Touch Technology active in Sleep Mode shall apply the allowances specified in Table 7.

Table 7

**Additional Functions Sleep Mode Power Allowance for Signage Displays**

Type	Screen Size (in)	Allowance (watts)
Occupancy Sensor $P_{\text{OS}}$	All	0,3
Touch Functionality $P_{\text{T}}$ (applicable only to Signage Displays where screen size is greater than 30 inches)	$\leq 30$	0,0
	$> 30$	1,5

- 3.6. Off Mode requirements for all displays

- 3.6.1. A product need not have an Off Mode to be eligible for qualification. For products that do offer an Off Mode, measured Off Mode power ( $P_{\text{OFF}}$ ) shall be less than or equal to the Maximum Off Mode Power Requirement ( $P_{\text{OFF\_MAX}}$ ) in Table 8.

Table 8

**Maximum Off Mode Power Requirement ( $P_{\text{OFF\_MAX}}$ )**

$P_{\text{OFF\_MAX}}$ (watts)
0,5

- 3.7. Luminance reporting requirements

- 3.7.1. Maximum Reported and Maximum Measured Luminance shall be reported for all products; As-Shipped Luminance shall be reported for all products except those with ABC enabled by default.

#### 4. Test requirements

##### 4.1. Test methods

4.1.1. Test methods identified in Table 9 shall be used to determine qualification for Energy Star.

Table 9

#### Test Methods for Energy Star Qualification

Product Type	Test Method
All Product Types and Screen Sizes	Energy Star Test Method for Determining Display Energy
Enhanced Performance Displays	International Committee for Display Metrology (ICDM) Information Display Measurements Standard — Version 1.03
Displays Claiming Full Network Connectivity	CEA-2037-A, Determination of Television Set Power Consumption

##### 4.2. Number of units required for testing

4.2.1. One unit of a Representative Model, as defined in Section 1, shall be selected for testing.

4.2.2. For qualification of a Product Family, the product configuration that represents the worst-case power demand for each product category within the Product Family shall be considered the Representative Model.

#### 5. User interface

5.1. Manufacturers are encouraged to design products in accordance with the user interface standard, IEEE P1621: Standard for User Interface Elements in Power Control of Electronic Devices Employed in Office/Consumer Environments. For details, see <http://energy.lbl.gov/controls/>

#### 6. Effective date

6.1. Effective Date: The Version 7.0 Energy Star Display specification shall take effect on the effective date of the Agreement. To qualify for Energy Star, a product model shall meet the Energy Star specification in effect on its date of manufacture. The date of manufacture is specific to each unit and is the date on which a unit is considered to be completely assembled.

6.2. Future Specification Revisions: The European Commission reserves the right to change this specification should technological and/or market changes affect its usefulness to consumers, industry, or the environment. In keeping with current policy, revisions to the specification are arrived at through stakeholder discussions. In the event of a specification revision, please note Energy Star qualification is not automatically granted for the life of a model.

#### 7. Considerations for future revisions

7.1. On Mode DC Power Limit: EPA and the European Commission are interested in considering a separate On Mode Power Maximum requirement for Standard DC products that does not necessitate an AC-DC conversion calculation. EPA and the European Commission anticipate these products will become more popular on the market with the latest USB standard and look forward to receiving additional direct DC-tested data for these products.

### FINAL TEST METHOD FOR DISPLAYS

Rev. Sep-2015

#### 1. Overview

The following test method shall be used for determining product compliance with requirements in the Energy Star Specification for Displays.

## 2. Applicability

The following test method is applicable to all products eligible for qualification under the Energy Star Product Specification for Displays.

## 3. Definitions

Unless otherwise specified, all terms used in this document are consistent with the definitions in the Energy Star Specification for Displays.

(A) Host Machine: The machine or device used as the source of video/audio signal for testing Displays. It may be a computer or any other device capable of providing a video signal.

## 4. Test set-up

(A) Test Set-up and Instrumentation: Test set-up and instrumentation for all portions of this method shall be in accordance with the requirements of International Electrotechnical Commission (IEC) 62301:2011, 'Household electrical appliances — Measurement of standby power,' Section 4, 'General Conditions for Measurements,' unless otherwise noted in this document. In the event of conflicting requirements, the Energy Star Test Method shall take precedence.

(B) AC Input Power: Products capable of being powered from AC mains shall be connected to a voltage source appropriate for the intended market, as specified in Table 10. If an external power supply is shipped with the product, it shall be used to connect the product to the specified voltage source.

Table 10

### Input Power Requirements for Products

Market	Voltage	Voltage Tolerance	Maximum Total Harmonic Distortion	Frequency	Frequency Tolerance
North America, Taiwan	115 V AC	+/- 1,0 %	5,0 %	60 Hz	+/- 1,0 %
Europe, Australia, New Zealand	230 V AC	+/- 1,0 %	5,0 %	50 Hz	+/- 1,0 %
Japan	100 V AC	+/- 1,0 %	5,0 %	50 Hz or 60 Hz	+/- 1,0 %

(C) DC Input Power:

(1) Products may be tested with a DC source (e.g. via network or data connection) only if DC is the only available source of power for the product (i.e. no AC plug or External Power Supply (EPS) is shipped with the product).

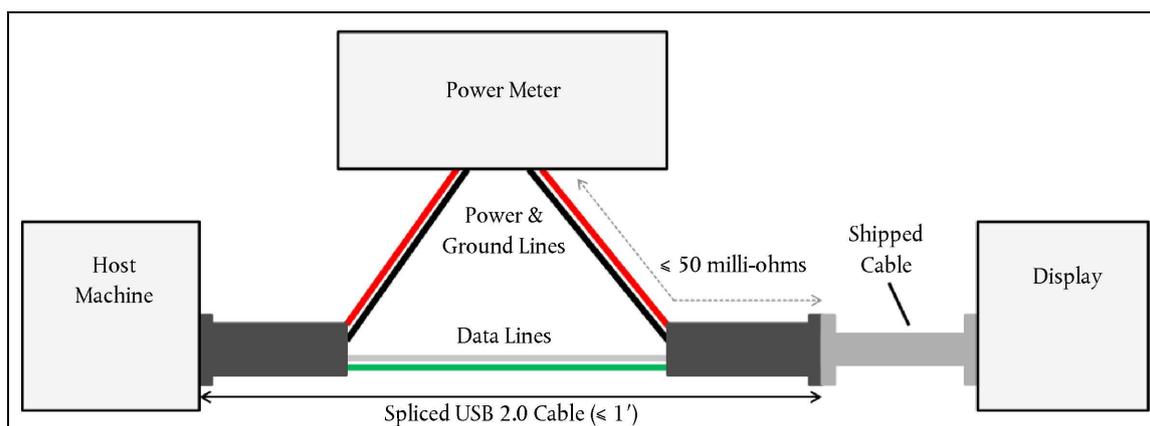
(2) DC-powered products shall be installed and powered as directed by the manufacturer, using a port with the full specifications recommended for the Display (e.g. Universal Serial Bus (USB) 3.1 if applicable, even if backwards-compatible with USB 2.0).

(3) The power measurement shall be made between the DC source (e.g. Host Machine) and the cable shipped with the product, including the losses introduced by the shipped cable. If no cable is shipped with the product, any cable between 2 and 6 feet long may be used in its place. The resistance of the cable used to connect the Display to the point of measurement shall be measured and reported.

*Note:* The measured resistance of DC power cables includes the sum of resistances of both the DC supply voltage wire and the ground wire.

- (4) A spliced cable may be used between the shipped cable and DC source in order to connect the power meter. If this method is used, the following requirements must be met:
- (a) The spliced cable shall be used in addition to the shipped cable described in Section 4(C)(3).
  - (b) The spliced cable shall be connected between the DC source and the shipped cable.
  - (c) The spliced cable shall be no longer than 1 foot.
  - (d) For measuring voltage, the total amount of wiring used between the voltage measurement and the shipped cable shall be less than 50 milliohms of resistance. This only applies to the wiring that is carrying load current.
- Note:* Voltage and current need not necessarily be measured at the same location, so long as the voltage is measured within 50 milliohms of the shipped cable.
- (e) The current measurement can be made either on the ground wire or the DC supply voltage wire.
  - (f) Figure 1 depicts an example spliced cable set-up using a USB 2.0-powered Display connected to the Host Machine.

Figure 1

**Example Spliced USB 2.0 Cable Arrangement**

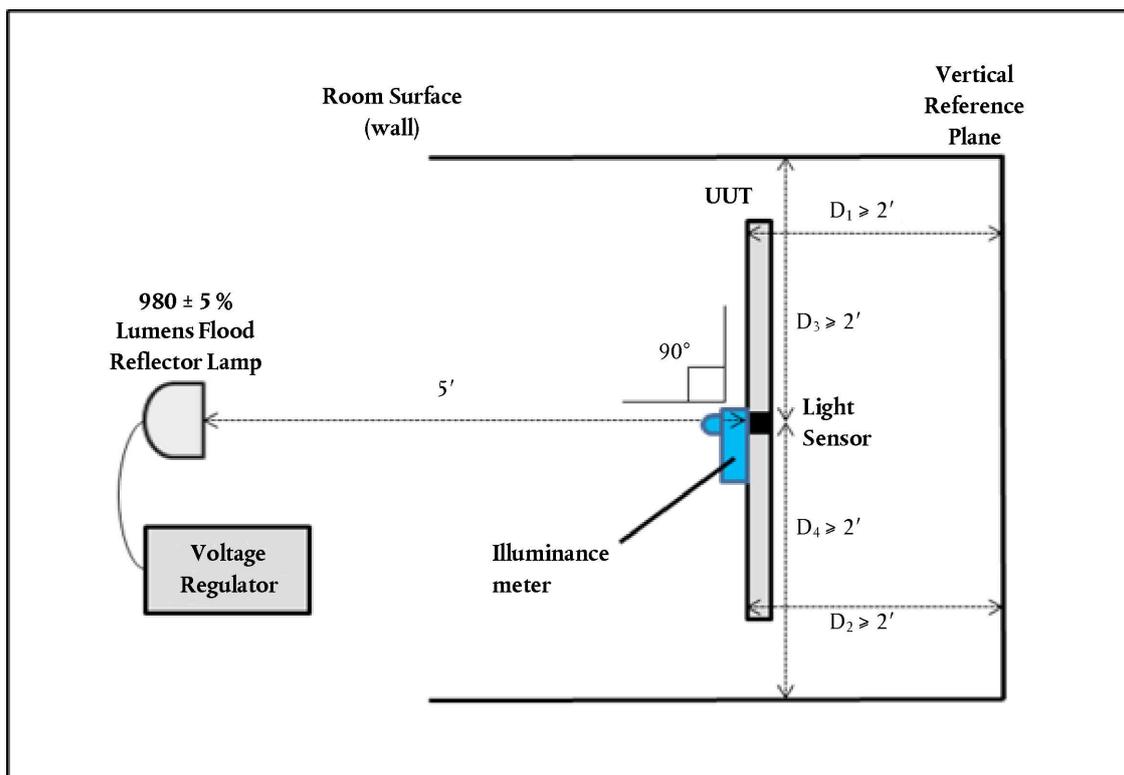
- (D) Ambient Temperature: Ambient temperature shall be  $23\text{ }^{\circ}\text{C} \pm 5\text{ }^{\circ}\text{C}$ .
- (E) Relative Humidity: Relative humidity shall be from 10 % to 80 %.
- (F) UUT Alignment:
- (1) All four corners of the face of the Unit Under Test (UUT) shall be equidistant from a vertical reference plane (e.g. wall).
  - (2) The bottom two corners of the face of the UUT shall be equidistant from a horizontal reference plane (e.g. floor).
- (G) Light Source for On Mode Testing:
- (1) Lamp Type:
    - (a) Standard spectrum halogen flood reflector lamp. The lamp shall not meet the definition of 'Modified spectrum' as defined in 10 CFR 430.2 — Definitions <sup>(1)</sup>.
    - (b) Rated Brightness:  $980 \pm 5\%$  lumens.

<sup>(1)</sup> <http://www.gpo.gov/fdsys/pkg/CFR-2011-title10-vol3/pdf/CFR-2011-title10-vol3-sec430-2.pdf>

- (2) Light Source Alignment for Testing Products With ABC Enabled By Default:
- There shall be no obstructions between the lamp and the UUT's Automatic Brightness Control (ABC) sensor (e.g. diffusing media, frosted lamp covers, etc.).
  - The centre of the lamp shall be placed at a distance of 5 feet from the centre of the ABC sensor.
  - The centre of the lamp shall be aligned at a horizontal angle of  $0^\circ$  with respect to the centre of the UUT's ABC sensor.
  - The centre of the lamp shall be aligned at a height equal to the centre of the UUT's ABC sensor with respect to the floor (i.e. the light source shall be placed at a vertical angle of  $0^\circ$  with respect to the centre of the UUT's ABC sensor).
  - No test room surface (i.e. floor, ceiling, and wall) shall be within 2 feet of the centre of the UUT's ABC Sensor.
  - Illuminance values shall be obtained by varying the input voltage of the lamp.
  - Figure 2 and Figure 3 and provide more information on UUT and light source alignment.

Figure 2

## Test Set-up — Top View

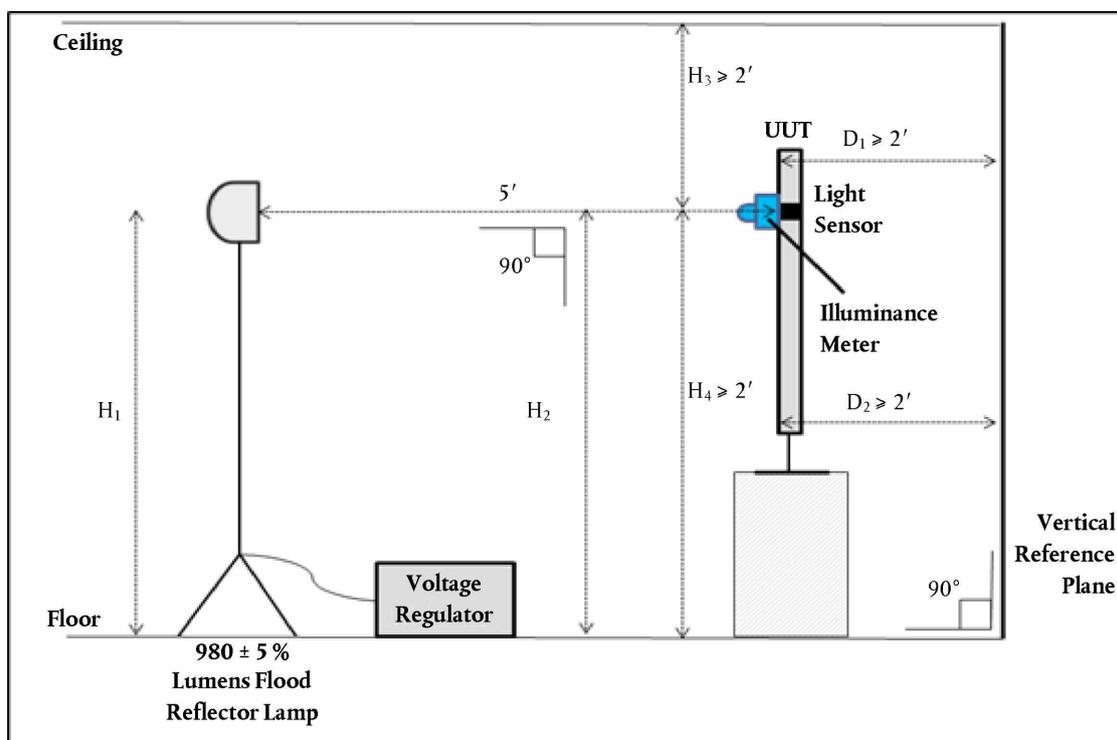


## Notes:

- $D_1 = D_2$  with respect to vertical reference plane,
- $D_1$  and  $D_2$  indicate that the corners of the face of the UUT shall be at least 2 feet from the vertical reference plane,
- $D_3$  and  $D_4$  indicate that the centre of the light sensor shall be at least 2 feet from the room walls.

Figure 3

## Test Set-up — Side View



## Notes:

- $D_1 = D_2$  with respect to vertical reference plane,
- $D_1$  and  $D_2$  indicate that the corners of the face of the UUT shall be at least 2 feet from the vertical reference plane,
- illuminance meter shall be removed for power measurements, after target illuminance achieved,
- $H_1 = H_2$  with respect to horizontal reference plane (e.g. floor),
- $H_3$  and  $H_4$  indicate that the centre of the light sensor must be at least 2 feet from the floor and 2 feet from the ceiling,
- illuminance meter removed for power measurements, after target illuminance achieved.

(H) Power Meter: Power meters shall possess the following attributes

(1) Crest Factor:

- (a) An available current crest factor of 3 or more at its rated range value; and
- (b) Lower bound on the current range of 10 mA or less.

(2) Minimum Frequency Response: 3,0 kHz

(3) Minimum Resolution:

- (a) 0,01 W for measurement values less than or equal to 10 W;
- (b) 0,1 W for measurement values from greater than 10 W to 100 W; and
- (c) 1,0 W for measurement values greater than 100 W.

(I) Luminance and Illuminance Meters:

- (1) Luminance measurement shall be performed using either
  - (a) A contact meter; or
  - (b) A non-contact meter.
- (2) All luminance and illuminance meters shall be accurate to  $\pm 2\%$  ( $\pm 2$  digits) of the digitally displayed value.
- (3) Non-contact luminance meters shall have an acceptance angle of 3 degrees or less.

The overall accuracy of a meter is found by taking ( $\pm$ ) the absolute sum of 2 % of the measurement and a 2-digit tolerance of the displayed value least significant digit. For example, if an illuminance meter displays '200,0' when measuring a screen brightness of 200 nits, 2 % of 200 nits is 4,0 nits. The least significant digit is 0,1 nits. 'Two digits' implies 0,2 nits. Thus, the displayed value would be  $200 \pm 4,2$  nits (4 nits + 0,2 nits). The accuracy is specific to the illuminance meter and shall not be considered as tolerance during actual light measurements.

(J) Measurement Accuracy:

- (1) Power measurements with a value greater than or equal to 0,5 W shall be made with an uncertainty of less than or equal to 2 % at the 95 % confidence level.
- (2) Power measurements with a value less than 0,5 W shall be made with an uncertainty of less than or equal to 0,01 W at the 95 % confidence level.
- (3) All ambient light values (measured lux) shall be measured at the location of the ABC sensor on the UUT with light entering directly into the sensor and with the main menu from the test signal from IEC 62087:2011, 'Methods of measurement for the power consumption of audio, video and related equipment' displayed on the product. For products not compatible with the IEC test signal format, ambient light values shall be measured with the Video Electronics Standard Association (VESA) Flat Panel Display Measurements Standard version 2.0 (FPDM2) FK test signal being displayed on the product.
- (4) Ambient light values shall be measured within the following tolerances:
  - (a) At 12 lux, ambient lighting shall be within  $\pm 1,0$  lux; and
  - (b) At 300 lux, ambient lighting shall be within  $\pm 9,0$  lux.

## 5. Test conduct

### 5.1. Guidance for power measurements

- (A) Testing at Factory Default Settings: Power measurements shall be performed with the product in its as-shipped condition for the duration of Sleep Mode and On Mode testing, with all user-configurable options set to factory defaults, except as otherwise specified by this test method.
  - (1) Picture level adjustments shall be performed as per the instructions in this test method.
  - (2) Products that include a 'forced menu' that requires picture setting selection upon initial start-up shall be tested in the 'standard' or 'home' picture setting. In the case that no standard setting or equivalent exists, the default setting recommended by the manufacturer shall be used for testing and recorded in the test report. Products that do not include a forced menu shall be tested in the default picture setting.
- (B) Point of Deployment (POD) Modules: Optional POD modules shall not be installed.
- (C) Plug-in Modules: Optional Plug-in Modules shall be removed from the Display if the Display can be tested according to the test method without the module installed.
- (D) Sleep Mode with Multiple Functionalities: If the product offers multiple options for device behaviour in Sleep Mode (e.g. quick start) or multiple methods by which Sleep Mode may be entered, the power during all Sleep Modes shall be measured and recorded. All Sleep Mode testing shall be carried out as per Section 6.5.

## 5.2. Conditions for power measurements

### (A) Power measurements:

- (1) Power measurements shall be taken from a point between the power source and the UUT. No Uninterruptible Power Supply (UPS) units may be connected between the power meter and the UUT. The power meter shall remain in place until all On Mode, Sleep Mode and Off Mode power data are fully recorded.
- (2) Power measurements shall be recorded in watts as directly measured (unrounded) values at a rate of greater than or equal to 1 reading per second.
- (3) Power measurements shall be recorded after voltage measurements are stable to within 1 %.

### (B) Dark Room Conditions:

- (1) Unless otherwise specified, the illuminance measured at the UUT screen with the UUT in Off Mode shall be less than or equal to 1,0 lux. If the UUT does not have an Off Mode, the illuminance shall be measured at the UUT screen with the UUT's power cord disconnected.

### (C) UUT Configuration and Control:

#### (1) Peripherals and Network Connections:

- (a) External peripheral devices (e.g. mouse, keyboard, external hard disk drive (HDD), etc.) shall not be connected to USB ports or other data ports on the UUT.
- (b) Bridging: If the UUT supports bridging as per the definition in Section 1 of the Energy Star Specification for Displays Version 7.0, a bridge connection shall be made between the UUT and the Host Machine. The connection shall be made in the following order of preference. Only one connection shall be made and the connection shall be maintained for the duration of the test.
  - (i) Thunderbolt;
  - (ii) USB;
  - (iii) Firewire (IEEE 1394);
  - (iv) Other.

*Note:* Examples of bridging for Displays may include:

- (1) A case where the Display converts data between two different port types (e.g. Thunderbolt and Ethernet). This can allow a device to use Thunderbolt as an Ethernet connection or vice versa.
  - (2) Allowing a USB keyboard/mouse to be connected to another system (e.g. Host Machine) through the Display by a USB hub controller.
- (c) Networking: If the UUT has networking capability (i.e. it has the ability to obtain an IP address when configured and connected to a network) the networking capability shall be activated, and the UUT shall be connected to a live physical network (e.g. WiFi, Ethernet, etc.). The physical network shall support the highest and lowest data speeds of the UUT's network function. An active connection is defined as a live physical connection over the physical layer of the networking protocol. In the case of Ethernet, the connection shall be via a standard Cat 5e or better Ethernet cable to an Ethernet switch or router. In the case of WiFi the device shall be connected and tested in proximity to a wireless access point (AP). The tester shall configure the address layer of the protocol, taking note of the following:
- (i) Internet Protocol (IP) v4 and IPv6 have neighbour discovery and will generally configure a limited, non-routable connection automatically.
  - (ii) IP can be configured manually or by using Dynamic Host Configuration Protocol (DHCP) with an address in the 192.168.1.x Network Address Translation (NAT) address space if the UUT does not behave normally when autoIP is used. The network shall be configured to support the NAT address space and/or autoIP.

- (iii) The UUT shall maintain this live connection to the network for the duration of testing unless otherwise specified in this Test Method, disregarding any brief lapses (e.g. when transitioning between link speeds). If the UUT is equipped with multiple network capabilities, only one connection shall be made in the following order of preference:
- (a) WiFi (Institution of Electrical and Electronics Engineers — IEEE 802.11- 2007 <sup>(1)</sup>);
  - (b) Ethernet (IEEE 802.3). If the UUT supports Energy Efficient Ethernet (IEEE 802.3az-2010 <sup>(2)</sup>), then it shall be connected to a device that also supports IEEE 802.3az;
  - (c) Thunderbolt;
  - (d) USB;
  - (e) Firewire (IEEE 1394);
  - (f) Other.
- (d) Touchscreen Functionality: If the UUT features a touchscreen that requires a separate data connection, this function shall be set up as directed by the manufacturer's instructions, including connections to the Host Machine and installation of software drivers.
- (e) In the case of a UUT that has a single connection capable of performing multiple functions (e.g. bridging, networking, and/or touchscreen functionality), a single connector can be used to meet these functionalities provided it is the highest preferred connection the UUT supports for each functionality.
- (f) In the case of a UUT that has no data/network capabilities, the UUT shall be tested as shipped.
- (g) Built-in speakers and other product features and functions not specifically addressed by the Energy Star Specification or test method must be configured in the as-shipped power configuration.
- (h) Availability of other capabilities such as occupancy sensors, flash memory-card/smart-card readers, camera interfaces, PictBridge shall be recorded.
- (2) Signal Interface:
- (a) If the UUT has multiple signal interfaces, the UUT shall be tested with the first available interface from the list below:
    - (i) Thunderbolt;
    - (ii) DisplayPort;
    - (iii) HDMI;
    - (iv) DVI;
    - (v) VGA;
    - (vi) Other Digital Interface;
    - (vii) Other Analogue Interface.
- (3) Occupancy Sensor: If the UUT has an occupancy sensor, the UUT shall be tested with the occupancy sensor settings in the as-shipped condition. For UUT's with an occupancy sensor enabled as-shipped:
- (a) A person shall be within close proximity of the occupancy sensor for the entire warm up, stabilisation, luminance testing and On Mode to prevent the UUT from entering a lower power state (e.g. Sleep Mode or Off Mode). The UUT shall remain in On Mode for the duration of the warm up period, stabilisation period, luminance test and On Mode test.

<sup>(1)</sup> IEEE 802 — Telecommunications and information exchange between systems—Local and metropolitan area networks — Part 11: Wireless LAN Medium Access Control (MAC) and Physical Layer (PHY) Specifications

<sup>(2)</sup> Part 3: Carrier Sense Multiple Access with Collision Detection (CSMA/CD) Access Method and Physical Layer Specifications — Amendment 5: Media Access Control Parameters, Physical Layers, and Management Parameters for Energy-Efficient Ethernet

- (b) No person shall be within close proximity of the occupancy sensor for the duration of the Sleep Mode and Off Mode tests to prevent the UUT from entering a higher power state (e.g. On Mode). The UUT shall remain in Sleep Mode or Off Mode for the duration of the Sleep Mode or Off Mode tests, respectively.
- (4) Orientation: If the UUT can be rotated into vertical and horizontal orientations, it shall be tested in the horizontal orientation, with the longest dimension being parallel to the table surface.
- (D) Resolution and Refresh Rate:
- (1) Fixed-pixel Displays:
- (a) Pixel format shall be set to the native level as specified in the product manual.
- (b) For non-Cathode Ray Tube (CRT) Displays, refresh rate shall be set to 60 Hz, unless a different default refresh rate is specified in the product manual, in which case the specified default refresh rate shall be used.
- (c) For CRT Displays, pixel format shall be set to the highest resolution that is designed to be driven at a 75 Hz refresh rate, as specified in the product manual. Typical industry standards for pixel format timing shall be used for testing. Refresh rate shall be set to 75 Hz.
- (E) Accuracy of Input Signal Levels: When using analogue interfaces, video inputs shall be within  $\pm 2\%$  of referenced white and black levels. When using digital interfaces, the source video signal shall not be adjusted for colour, or modified by the tester for any purpose other than to compress/inflate and encode/decode for transmission, as required.
- (F) True Power Factor: Programme participants shall report the true power factor (PF) of the UUT during On Mode measurement. The power factor values shall be recorded at the same rate at which the power value ( $P_{ON}$ ) are recorded. The reported power factor shall be averaged over the entire duration of the On Mode testing.
- (G) Test Materials:
- (1) 'IEC 62087:2011 Dynamic Broadcast-Content Signal' shall be used for testing, as specified in IEC 62087:2011, Section 11.6, 'On (average) mode testing using dynamic broadcast-content video signal'.
- (2) 'VESA FPDM2' shall be used only for products that cannot display the IEC 62087:2011 Dynamic Broadcast-Content Signal.
- (H) Video Input Signal:
- (1) The Host Machine shall generate the video input signal in the native resolution of the Display such that the active area of the video fills the entire screen. This may require the playback software to adjust the aspect ratio of the video.
- (2) The frame rate of the video input signal should match the frame rate most commonly used in the region in which the product is sold (e.g. for the US and Japan, a 60 Hz frame rate is used; for Europe and Australia, a 50 Hz frame rate is used).
- (3) The audio settings on the Host Machine shall be disabled so that no sound is produced alongside the video input signal.

## 6. Test procedures for all products

### 6.1. Pre-test UUT initialisation

- (A) Prior to the start of testing, the UUT shall be initialised as follows:
- (1) Set up the UUT as per the instructions in the supplied product manual.
- (2) Connect an acceptable watt meter to the power source and connect the UUT to the power outlet on the watt meter.

- (3) With the UUT off, set the ambient light level such that the measured screen illuminance is less than 1,0 lux (see Section 5.2(B)).
- (4) Power on the UUT and perform initial system configuration, as applicable.
- (5) Ensure UUT settings are in their as-shipped configuration, unless otherwise specified in this test method.
- (6) Warm up the UUT for 20 minutes, or the time it takes the UUT to complete initialisation and become ready for use, whichever is longer. The IEC 62087:2011 test signal format, as specified in Section 5.2(G)(1), shall be displayed for the entire warm-up period. Displays that cannot display the IEC 62087:2011 test signal format shall have the VESA FPDM2 L80 test signal, as specified in Section 5.2(G)(2), displayed on the screen.
- (7) Report the AC input voltage and frequency or DC input voltage.
- (8) Report the test room ambient temperature and relative humidity.

## 6.2. Luminance testing

- (A) Luminance testing shall be performed immediately following the warm up period and in dark room conditions. Product screen illuminance, as measured with the UUT in Off Mode, shall be less than or equal to 1,0 lux.
- (B) Luminance shall be measured perpendicular to the centre of the product screen using a luminance meter in accordance with the meter's user manual.
- (C) The position of the luminance meter relative to the product screen shall remain fixed throughout the duration of testing.
- (D) For products with ABC, luminance measurements shall be performed with ABC disabled. If ABC cannot be disabled, luminance measurements shall be measured perpendicular to the centre of the product screen with light entering directly into the UUT's ambient light sensor at greater than or equal to 300 lux.
- (E) Luminance measurements shall be performed as follows:
  - (1) Verify that the UUT is in the default as-shipped luminance value or 'Home' picture setting.
  - (2) Display the test video signal for the specific product class, as described below:
    - (a) All products, except as specified in (b): Three-bar video signal specified in IEC 62087:2011, Section 11.5.5 (three bars of white (100 %) over a black (0 %) background).
    - (b) Products that cannot display signals from IEC 62087:2011: VESA FPDM2 L80 test signal for the maximum resolution supported by the product.
  - (3) Display the test video signal for no less than 10 minutes to allow the UUT luminance to stabilise. This 10-minute stabilisation period may be reduced if luminance measurements are stable to within 2 % over a period of not less than 60 seconds.
  - (4) Measure and record the luminance in default as-shipped setting  $L_{As-shipped}$ .
  - (5) Set the brightness and contrast levels of the UUT to their maximum values.
  - (6) Measure and record the luminance as  $L_{Max\_Measured}$ .
  - (7) Record the manufacturer-reported maximum luminance  $L_{Max\_Reported}$ .
- (F) The contrast setting shall be left at the maximum level for the subsequent On Mode tests unless otherwise specified.

### 6.3. On Mode testing for products without ABC enabled by default

- (A) After the Luminance Testing and prior to On Mode power measurement, the luminance of the UUT shall be set according to the following:
- (1) For Signage Displays, the product shall be tested with luminance set at a value greater than or equal to 65 % of the manufacturer-reported maximum luminance ( $L_{\text{Max\_Reported}}$ ). Luminance values shall be measured as per Section 6.2. This luminance value  $L_{\text{On}}$  shall be recorded.
  - (2) For all other products, adjust appropriate luminance controls until the luminance of the screen is 200 candelas per square metre ( $\text{cd}/\text{m}^2$ ). If the UUT cannot achieve this luminance, set the product luminance to the nearest achievable value. Luminance values shall be measured as per Section 6.2. This luminance value  $L_{\text{On}}$  shall be reported. Appropriate luminance controls refer to any controls that adjust the brightness of the Display, but do not include contrast settings.
- (B) For a UUT capable of displaying the IEC signals, On Mode power ( $P_{\text{ON}}$ ) shall be measured according to IEC 62087:2011 Section 11.6.1 'Measurements using dynamic broadcast-content video signal.' For a UUT not capable of displaying the IEC signals, On Mode power ( $P_{\text{ON}}$ ) shall be measured as follows:
- (1) Ensure that the UUT has been initialised as per Section 6.1.
  - (2) Display the VESA FPD2, A112-2F, SET01K test pattern (8 shades of grey from full black (0 volts) to full white (0,7 volts)).
  - (3) Verify that input signal levels conform to VESA Video Signal Standard (VSIS), Version 1.0, Rev. 2.0, December 2002.
  - (4) With the brightness and contrast controls at maximum, verify that the white and near-white grey levels can be distinguished. If necessary, adjust contrast controls until the white and near-white grey levels can be distinguished.
  - (5) Display the VESA FPD2, A112-2H, L80 test pattern (full white (0,7 volts) box that occupies 80 % of the image).
  - (6) Ensure that the luminance measurement area falls entirely within the white portion of the test pattern.
  - (7) Adjust appropriate luminance controls until the luminance of the white area of the screen is set as described in Section 6.3(A).
  - (8) Record the screen luminance ( $L_{\text{On}}$ ).
  - (9) Record On Mode power ( $P_{\text{ON}}$ ) and total pixel format (horizontal  $\times$  vertical). The On Mode power shall be measured over a 10-minute period similar to the IEC 62087:2011 dynamic broadcast-content test.

### 6.4. On Mode testing for products with ABC enabled by default

The average On Mode power consumption of the product shall be determined with the dynamic broadcast-content as defined in IEC 62087:2011. If the product cannot display the IEC signal, then the VESA FPD2 L80 test pattern, as described in Section 6.3(B)(5), shall be used for all of the following steps.

- (A) Stabilise the UUT for 30 minutes. This shall be done with three repetitions of the 10-minute IEC dynamic broadcast-content video signal.
- (B) Set the light output of the lamp used for testing to 12 lux as measured at the face of the ambient light sensor.
- (C) Display the 10 minute dynamic broadcast-content video signal. Measure and record the power consumption,  $P_{12}$ , during the 10 minute dynamic broadcast-content video signal.
- (D) Repeat steps 6.4(B) and 6.4(C) for an ambient light level of 300 lux, to measure  $P_{300}$ .

- (E) Disable ABC and measure On Mode power ( $P_{\text{ON}}$ ) as per Section 6.3. If ABC cannot be disabled, power measurements shall be conducted as follows:
- (1) If the brightness can be set to a fixed value as specified in Section 6.3, then On Mode power for these products shall be measured as per Section 6.3 with light entering directly into the UUT's ambient light sensor at greater than or equal to 300 lux.
  - (2) If the brightness cannot be set to a fixed value, then On Mode power for these products shall be measured as per Section 6.3 with light entering directly into the UUT's ambient light sensor at greater than or equal to 300 lux and without modifying the screen brightness.

#### 6.5. Sleep Mode testing

- (A) Sleep Mode power ( $P_{\text{SLEEP}}$ ) shall be measured according to IEC 62301:2011, with the additional guidance in Section 5.
- (B) The Sleep Mode test shall be conducted with the UUT connected to the Host Machine in the same manner as in the On Mode test. If possible, Sleep Mode shall be enacted by putting the Host Machine to sleep. For a computer Host Machine, Sleep Mode is defined in the Version 6.1 Energy Star Computers specification.
- (C) If the product has a variety of Sleep Modes that may be manually selected, or if the product can enter Sleep Mode via different methods (e.g. remote control or putting the Host Machine to sleep), measurements shall be performed and recorded in all Sleep Modes.

If the product automatically transitions through its various Sleep Modes, the measurement time shall be long enough to obtain an average of all Sleep Modes. The measurement shall still meet requirements (e.g. stability, measurement period, etc.) outlined in Section 5.3 of IEC 62301:2011.

#### 6.6. Off Mode testing

- (A) For products having Off Mode capability, at the conclusion of the Sleep Mode test, initiate Off Mode via the most easily accessible power switch.
- (B) Measure Off Mode power ( $P_{\text{OFF}}$ ) according to Section 5.3.1 of the IEC 62301:2011. Document the method of adjustment and sequence of events required to reach Off Mode.
- (C) Any input synchronising signal check cycle may be ignored when measuring Off Mode power.

#### 6.7. Additional testing

- (A) For products with data/networking capabilities or a bridge connection, in addition to tests performed with data/networking capabilities activated and a bridge connection established (see Section 5.2(C)(1)), Sleep Mode Testing shall be performed with data/networking features deactivated and without any bridge connection established, as per Section 5.2(C)(1)(b) and (c).
- (B) The presence of Full Network Connectivity shall be determined by testing the Display for network activity in Sleep Mode according to Section 6.7.5.2 of CEA-2037-A, Determination of Television Set Power Consumption, with the following guidance:
- (1) The Display shall be connected to a network as per Section 5.2(C)(1)(c) prior to the test.
  - (2) The Display shall be placed into Sleep Mode in place of standby-active, low.

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**COMMISSION IMPLEMENTING DECISION (EU) 2016/1757****of 29 September 2016****on setting up the European Multidisciplinary Seafloor and Water Column Observatory —  
European Research Infrastructure Consortium (EMSO ERIC)***(notified under document C(2016) 5542)***(Only the English, French, Greek, Italian, Portuguese, Romanian and Spanish texts are authentic)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC) <sup>(1)</sup>, and in particular point (a) of Article 6(1) thereof,

Whereas:

- (1) Ireland, Greece, Spain, France, Italy, Portugal, Romania and the United Kingdom requested the Commission to set up the European Multidisciplinary Seafloor and Water Column Observatory — European Research Infrastructure Consortium (EMSO ERIC).
- (2) Ireland, Greece, Spain, France, Italy, Portugal, Romania and the United Kingdom have agreed that Italy will be the host Member State of EMSO ERIC.
- (3) The Commission has, in accordance with Article 5(2) of Regulation (EC) No 723/2009, assessed the application and concluded that it meets the requirements set out in that Regulation.
- (4) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 20 of Regulation (EC) No 723/2009,

HAS ADOPTED THIS DECISION:

*Article 1*

1. The European Multidisciplinary Seafloor and Water Column Observatory — European Research Infrastructure Consortium named 'EMSO ERIC' is hereby set up.
2. The essential elements of the Statutes of EMSO ERIC are set out in the Annex.

*Article 2*

This Decision is addressed to Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Portuguese Republic, Romania and the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 29 September 2016.

*For the Commission*  
Carlos MOEDAS  
*Member of the Commission*

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<sup>(1)</sup> OJ L 206, 8.8.2009, p. 1.

## ANNEX

## ESSENTIAL ELEMENTS OF THE STATUTES OF EMSO ERIC

## 1. TASKS AND ACTIVITIES

## 1. The tasks of EMSO ERIC shall be as follows:

- (a) the development and provision of the facilities owned by EMSO ERIC together with all facilities made available to EMSO ERIC by the Members for undertaking activities carried out by the Members to achieve the objectives of EMSO ERIC at European level to allow scientific communities and other interested stakeholders to access the data and facilities of ocean observatories throughout Europe;
- (b) the management of the existing fixed-point deep-sea floor and fixed-point water column observatories around Europe to contribute to EMSO ERIC for agreed periods of time for use by EMSO ERIC, including access by qualified European and international scientific communities;
- (c) the coordination and support of the activities of existing fixed-point deep-sea floor and fixed-point water column observatories around Europe, promoting the continuity and quality of time series and reliable data management;
- (d) the provision and rationalisation of access to EMSO ERIC infrastructure by qualified European and international scientific communities, whose projects shall be evaluated for such purpose;
- (e) the support to the leadership of Europe in marine technologies and the sustainable use of marine resources, through partnership with industries and other relevant stakeholders;
- (f) the integration of research, training, and information dissemination activities. EMSO ERIC shall be the central point of contact for research, training, education and dissemination activities for ocean observatories in Europe in order to enable scientists and other interested stakeholders to make efficient use of ocean observatories around Europe;
- (g) the establishment of connections with international initiatives relevant to open ocean observation, to act as a representative of Europe in these fields in other parts of the world to set up and to promote international cooperation in these fields; and
- (h) the synchronisation of investment and operational funds, in a way to optimise national, European and international resources.

## 2. In carrying out the tasks of EMSO ERIC, it shall:

- (a) ensure the high-quality of its scientific services by:
  - (i) defining an overall scientific strategy through the adoption of a periodically updated long-term strategic plan;
  - (ii) outlining future scientific developments and assessing the achievement of scientific objectives;
  - (iii) evaluating experiments proposed by users;
  - (iv) reviewing site scientific objectives; and
  - (v) managing the communication with scientific and other users;
- (b) enable access to the EMSO infrastructure, which shall include:
  - (i) establishing selection criteria for access that shall be developed in accordance with the advice of the relevant scientific user community;
  - (ii) managing integrated access to ocean observatories around Europe;
  - (iii) managing standardisation issues and defining guidelines for calibration and registration of instruments according to predefined requirements;

- (iv) working to enable long-term data series acquisition on the deep-sea floor and throughout the water column; and
  - (v) coordinating the storage and use of data for scientific research as well as the timely delivery of data for use in geo-hazard early warning and operational oceanography;
- (c) build capacity in order to foster the coordinated training of scientists, engineers and users;
  - (d) act as an advocate of the science community involved in ocean observation;
  - (e) promote innovation and transfer of knowledge and technology, providing services and engage in partnerships with industry;
  - (f) carry out any other activities necessary for accomplishing the tasks of EMSO ERIC.

## 2. STATUTORY SEAT

The statutory seat of EMSO ERIC shall be in Rome on the territory of the Italian Republic, hereinafter referred to as the 'Host Member'.

## 3. NAME

A European Multidisciplinary Seafloor and Water Column Observatory — European Research Infrastructure Consortium (EMSO ERIC) is set up under Regulation (EC) No 723/2009.

## 4. DURATION AND THE PROCEDURE FOR WINDING-UP

1. EMSO ERIC shall be established until 31 December 2024.
2. The Assembly of Members may decide to wind up EMSO ERIC by a 2/3 majority vote of the Members in attendance.
3. Notification on the decision to wind up EMSO ERIC and on closure of the winding-up procedure in accordance with Article 16 of Regulation (EC) No 723/2009 shall be made by the Director-General.
4. Any assets remaining after payment of EMSO ERIC's debts shall be apportioned among the Members in proportion to their accumulated contribution to EMSO ERIC at the time of dissolution.

## 5. BASIC PRINCIPLES

### 5.1. Access policy for users

- (a) Access to data produced by EMSO ERIC shall, wherever possible taking into account third-party licences and any pre-existing arrangements, be free and open to all members of scientific institutions and other stakeholders. In addition access to the EMSO ERIC infrastructure shall be granted to qualified European and international scientific communities, whose projects shall be evaluated for such purpose. EMSO ERIC shall employ selection criteria that shall be developed in accordance with the advice of the relevant scientific user community. Use and collection of data is subject to the relevant statutory provisions of data privacy.
- (b) Members shall make reasonable efforts to host visiting scientists, engineers and technicians for collaborations with those directly involved in EMSO ERIC activities in their laboratories.

### 5.2. Scientific evaluation policy

- (a) The annual scientific evaluation of EMSO ERIC activities shall be carried out by the Scientific, Technical and Ethics Advisory Committee. The evaluation report shall be submitted for approval to the Assembly of Members.

- (b) A review of the activities and operation of EMSO ERIC shall be conducted every 5 years by a team of independent experts to be designated by the Assembly of Members, on proposal from the Scientific, Technical and Ethics Advisory Committee.

### 5.3. Dissemination policy

- (a) EMSO ERIC may disseminate collected data to users other than the members of scientific institutions and other stakeholders and qualified European and international scientific communities subject to evaluation for a fee. Such fee shall be calculated on the basis of the full costs connected to the use of EMSO ERIC infrastructure by that user, in compliance with Directive 2003/4/EC of the European Parliament and of the Council <sup>(1)</sup> and Directive 2007/2/EC of the European Parliament and of the Council <sup>(2)</sup> and other applicable law. The preceding requirement for a financial contribution shall not apply to requests for catalogue access and, in respect of all other requests, shall not exceed a reasonable amount.
- (b) Where data produced by EMSO ERIC is shared with third parties EMSO ERIC shall retain all rights, interest and title in such data.
- (c) EMSO ERIC users shall be encouraged to publish their results in the peer-reviewed scientific literature, to present communications in scientific conferences, as well as in other media targeted at larger audiences including the general public, the press, citizen groups and education institutions.
- (d) EMSO ERIC shall develop added-value data products to serve a broad range of private and public users, with the aim of developing products to meet stakeholders' needs.

### 5.4. Intellectual property rights policy

- (a) Intellectual property shall mean property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation, done at Stockholm on 14 July 1967.
- (b) Any and all intellectual property rights, which are created, obtained or developed by EMSO ERIC shall vest in and be owned absolutely by EMSO ERIC.
- (c) The Assembly of Members shall determine the policies of EMSO ERIC relating to the identification, protection, management and maintenance of Intellectual Property Rights of EMSO ERIC, including access to those rights, as established in the EMSO ERIC Implementing Rules.
- (d) The Director-General shall propose a pricing policy based on full cost-recovery in consultation with the Executive Committee and to be approved by the Assembly of Members.
- (e) With respect to questions of intellectual property rights, the relations between the Members and Observers of EMSO ERIC shall be governed by the respective national legislation of Members and Observers and by international agreements to which the Members and Observers are parties.
- (f) The provisions of these Statutes and the Implementing Rules shall be without prejudice to the background intellectual property rights owned by Members and Observers.

### 5.5. Employment policy, including equal opportunities

- (a) EMSO ERIC shall be an equal opportunity employer. The procedures for selecting applicants for EMSO ERIC staff positions shall be transparent, non-discriminatory and respect equal opportunities.
- (b) Employment contracts shall comply with applicable national laws and regulations of the country in which staff carries out their activities.
- (c) Subject to the requirements of national legislation, each Member shall within its jurisdiction facilitate the movement and residence of nationals of Members involved in the tasks of EMSO ERIC and of the family members of such nationals.

<sup>(1)</sup> Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ L 41, 14.2.2003, p. 26).

<sup>(2)</sup> Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) (OJ L 108, 25.4.2007, p. 1).

**5.6. Procurement policy respecting the principles of transparency, non-discrimination and competition**

- (a) EMSO ERIC procurement policy shall be governed by principles of transparency, equal treatment, non-discrimination and open competition.
  - (b) The procurement policy shall be defined in detail in the Implementing Rules.
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