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Mr Marc Clercx
Director, TAXUD.D.2 (Direct Tax Policy & Cooperation)

18 September 2023

**Response to European Commission Proposal for a Council Directive on Faster and Safer Relief of Excess Withholding Taxes**

Dear Mr Clercx,

UK Finance is the collective voice for the banking and finance industry operating in and from the UK, representing more than 300 domestic and international firms. Our members include businesses that are large and small, corporate and mutual, retail and wholesale. UK Finance and our members appreciate the chance to engage with the European Commission's (EC) proposed Directive which concerns the FASTER and Safer Relief of Excess Withholding Taxes. It is worth noting that although the UK is no longer a European Union (EU) Member State, our membership contains prominent financial institutions who regularly handle transactions to and from EU Member States. Consequently, our response stems from the perspective of highly invested third parties who are closely observing developments within the EU.

As previously communicated in our letter of 15 November 2022, Members of the UK Finance International Custody Tax Working Group (ICTWG)[1] are receptive to the European Commission's proposal to introduce a harmonised withholding tax regime across European Union Member States and welcome the EC's engagement with our members, the various participants in the custody chain and capital markets who will be impacted by any changes. We would like to express our thanks to the EC for taking into consideration the concerns raised to date by our members. We are submitting this letter to voice our general support of the proposal for a Council Directive on Faster and Safer Relief of Excess Withholding Taxes (the FASTER Directive) and to provide our comments on aspects of the proposal that we think warrant specific consideration to ensure the efficient implementation of the regime that works for all stakeholders.

We have reviewed the FASTER Directive, Explanatory notes and associated Annexes issued on 19 June 2023 and wish to provide our comments on various aspects of the FASTER Directive for your consideration. We welcome any opportunity to continue to engage with the EC on the proposed measures ahead of the implementation of the FASTER Directive.

Yours sincerely,

Seema Pandya (ICTWG Chair)
Ben Musio (UK Finance)

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[1] The ICTWG is the principal forum for custody tax practitioners operating out o the United Kingdom. Members include most of the major global custodians. Group members are primarily concerned with the provision of tax services, and in particular services related to the claiming of tax relief on investment income, for cross-border portfolio investors.

**The concept of “Beneficial Ownership” and “Registered Owner”**

We are aware that the EC does not intend to introduce a common concept of a “Beneficial Owner” in the context of the Directive at this stage, due to the complexities of how this concept is interpreted and applied across the Member States.

However, we implore the EC to consider providing a harmonised concept of a “Beneficial Owner” across the Member States in the future. A harmonised definition would greatly enhance the effectiveness of the Directive by bringing a much greater level of understanding and certainty to all stakeholders.

We appreciate that in lieu of addressing “beneficial ownership”, the EC has included the concept of a “registered owner” in the definitions and this term is used throughout the Directive.

The concept of “registered owner” is not a clear substitute for “beneficial owner” and in some circumstances, for example in the context of nominee held shares, the “registered owner” definition would not apply to the end-investor, but may apply to various entities along the custody chain who are in the plain sense, the registered owner of the securities held in a nominee account.

We recommend that the EC reconsider this definition to make it clear that the “registered owner” of the shares is the person or entity which ultimately holds the unencumbered economic entitlement to the income arising from the security, in accordance with the laws and regulations of the Member State in which the income arises.

Such an amended definition would provide clarity as to who is contemplated by the term, and would not require the EC to harmonise “beneficial ownership” in the Directive at this time, as the concept of beneficial ownership would remain particular to the Member State in which the income arises.

**Certificates of Tax Residence – Electronic and Traditional/Paper-based**

EU e-Certificates of Tax Residence (eCoTRs):

We welcome the proposal to use a standardised electronic process to request the eCoTRs and the timely issuance of eCoTRs for investors resident in the EU.

*Applying for eCoTRs*

Financial institutions often obtain Certificates of Tax Residence (CoTR) for their clients under Power of Attorney (POA) as part of their service offering to their clients, the end investors.

Under the FASTER Directive, we understand that the EC envisage that authorised Certified Financial Institutions (CFIs), or other authorised third parties, will be able to access and utilise the Member State platforms to request eCoTRs on behalf of their clients. We are supportive of this capability being mandated in the FASTER Directive to ensure that Member States implement the feature as they develop their respective platforms for requesting eCoTRs. Under current practice, financial institutions are ordinarily authorised through a POA issued by the end investor. Therefore, Member States should be obliged to issue eCoTRs where a third party holds relevant authorisation.

As third parties may apply for eCoTRs on behalf of the end investor, we would propose that the EC considers implementing a central platform for submitting requests for eCoTRs which are disseminated to the relevant Member State authorities for processing. It is our view that, a single point of access can be established, which will streamline the process for third parties responsible for obtaining eCoTRs for their various clients, eliminating the inefficiencies and administrative burden of accessing multiple Member State platforms. Additionally, a single, central platform would

streamline the process for persons or entities requesting their own eCoTRs, regardless of their residence.

A central platform would also help achieve the EC's stated goal of having a standardised electronic method for requesting the eCoTRs creating efficiencies in the process whereby CFIs or other authorised third parties can obtain eCoTRs on behalf of the end-investors to achieve reduced withholding tax rates under the FASTER Directive.

Where a third party applies for an eCoTR, the document should be delivered directly, or simultaneously copied to the third party to reduce the need and time taken for the end investor to send on to the original third-party applicant.

Consideration should also be given as to how investors are able to authorise third parties to request eCoTRs and whether that authorisation is completed through the central platform. It should be noted that it is common practice for investors to have assets with multiple Global Custodians. As such the system of authorisation should allow for eCoTRs to be requested by and issued to multiple authorised parties for one investor.

Due to the ongoing need for CoTRs for use in third party countries, we contend that the Legal Entity Identifier (LEI) should be used instead of the European Unique Identified Number (EUID) given the universal application of the LEI data.

However, the requirement to use an LEI (or EUID) may result in complication in the case of umbrella/sub-fund structures, where beneficial ownership is recognised at the sub-fund level (for example, in Austria and Germany), whereas the LEI or EUID would be issued at the umbrella level. Accordingly there would be a mismatch between the details on the eCoTR and the LEI. Consideration should be given to such scenarios and how the beneficial owner (i.e. sub-fund) can furnish acceptable documentation for verification.

*eCoTRs for Member State investors investing in third party countries*

For withholding tax relief outside of Member States, third countries may impose their own specific requirements that a CoTR must satisfy to be considered valid, and also may require traditional/physical CoTRs. Member States must still have the capability to receive requests for and issue such CoTRs to avoid limiting the reduced withholding tax rates in third countries that Member State investors can achieve. Accepting that physical CoTRs may not be able to be issued in the same timeframe as the FASTER Directive envisaged for eCoTRs, Member States should still be required to process requests and issue physical CoTRs within a reasonable time frame. In our view being able to utilise the same platform(s) to apply for CoTRs for relief in third countries would be beneficial to reduce the processes investors need to be aware of and comply with, noting that the platform must have the flexibility to cater for the different requirements that third party countries may impose.

Non-EU CoTRs

Understanding that at least in the short term, investors from third countries may not be able to obtain an equivalent eCoTR, in our view the FASTER Directive should be more prescriptive with respect to the form and validity of third country CoTRs (or eCoTRs where they are already issued).

We are aware that third country CoTRs, as they are currently issued, may not include the specific requirements for a CoTR to be considered valid under the Directive (i.e. as set out in Article 4, paragraph 2).

We encourage the EC to work with third country tax authorities to request that they enhance their CoTRs for the purpose of obtaining withholding tax relief under the Directive. If this cannot be

completed before the Directive takes effect, we encourage the EC to provide flexibility with regards to the required requirements for third country investors for a transitionary period. Certain third countries may not issue CoTRs with some of the minimum requirements, for example the requirement to include the address of the tax payer or the EUID (or LEI) on the CoTR.

For third country CoTRs, CFIs require certainty that the CoTRs received from the end-investors can be relied on for the purpose of providing relief under the Directive. The Directive should stipulate the minimum requirements for third-country CoTRs (following any transitionary period discussed above) and where the third country CoTR meets those requirements, the CFI should be able to accept it in the same manner as it can accept an eCoTR issued by a Member State, Codifying the requirements for third country CoTRs/eCoTRs will create additional certainty for both third-country investors and for CFIs seeking to support withholding tax relief under the FASTER Directive for such investors.

Failure to provide certainty for third country investors and CFIs alike may reduce the appeal of investment in Member States if there is uncertainty surrounding the procedures and application of withholding tax relief.

**Comparable legislation of a third country**

The Directive refers to the concept of credit institutions / investment firms established outside of the EU "*under comparable legislation of a third country of residence"* at various points throughout the text. Specifically, reference is made in (i) the Preamble, (ii) Article 3 (definition of a financial intermediary), (iii) Article 7 (Registration procedure) and (iv) Article 8 (Removal from the national register).

In the preamble, the wording is particularly vague regarding registration on a National Register as it states that the financial intermediary established outside the EU can register if *"it is required to be subject to legislation in the third country of its residence that is comparable for the purposes of this Directive and the third country of residence is neither on Annex I of the EU list of non-cooperative jurisdictions nor on the EU list of high-risk third countries (anti-money laundering list)".*

We note that the legislation of a third country is compared to the following Directives throughout:

> **Article 3:** Article 4(1) of Regulation (EU) No 575/20133 5 (credit institution), Article 4(1) in Directive 2014/65/EU (investment firm).
>
> **Article 7:** (12) or (14) of Annex I of Directive 2013/36/EU (credit institution performing custodial duties), Section B(1) of Annex I of Directive 2014/65/EU (investment firm performing custodial duties), Regulation EU 909/2014 (central securities depository).
>
> **Article 8:** this Directive, Council Directive 2014/107/EU, Directive 2018/843/EU.

We would encourage the EC to consider this point further, as it would be helpful to have clarity on what is considered to be comparable legislation. In addition, the absence of a list of countries that may have comparable legislation leaves this definition to be ambiguous (noting that in some cases that jurisdictions included on the list of non-cooperative jurisdictions are specifically excluded from being considered comparable).

**Requirement to operate a National Register**

Noting that the members represented by the ICTWG may not be resident in a Member State, and therefore will not in any way be involved in establishing or maintaining a National Register, in our view the language set out in Article 5, paragraph 1, could be clearer to specifically note that a Member State is required to establish a National Register if there is <u>any</u> opportunity for relief of excess withholding tax under the relevant double tax treaty network or domestic laws of that Member State.

**Member States option for Relief at Source and/or Quick Refund (Articles 12 and 13)**

Please can the EC provide further guidance on how Member States must implement either Relief at Source (RAS) or Quick Refund (QR) across the different withholding tax reliefs that exist in a Member State?

Where a Member State is required to implement, as a minimum, either RAS or QR (or both), is that Member State then obliged to include all potential avenues to reduce excess tax withheld under their double tax treaty network and under their domestic law, or can the Member State elect what mechanisms are supported by the FASTER Directive?

For example, in a Member State where RAS/QR is not currently available, if the Member State introduces QR, can the Member State choose that the QR only applies to withholding tax relief for rates not less than 15% only and require that all other withholding tax relief must be obtained through long form /standard reclaims? Or, would the Member State be required to provide withholding tax relief via QR for all available relief (i.e. for all withholding tax relief under double tax treaties and under the Member States domestic laws) (and essentially leave different existing mechanisms to remain or become subject to long form/standard reclaims)?

**Registering to be a Certified Financial Intermediary**

Head Office and Branch registrations

In our view, the FASTER Directive should prescribe the requirements for registering in the National Register where there are Head Office and Branch entities which are registering as a CFI. Specifically, where a Branch entity registers as a CFI, we would request that this does not require mandatory registration of the Head Office entity as well.

If a Branch entity is not offering RAS or QR as part of its service offering to clients for reasons such as having limited activity in a Member State, it must be able to offer standard refunds as per the current procedure, without having to register as CFI and undertake reporting. If the Directive obliges Branch entities to register as a CFI and to undertake reporting obligations, there could be withdrawal of services by CFIs in Member States where the compliance obligations outweigh any commercial rationale.

Statements that a CFI must certify on registration

We note that a CFI must provide a "declaration of compliance with the provisions of Council Directive 2014/107/EU41 or the provisions of Directive 2018/843/EU of the European Parliament and of the Council as applicable or with a comparable legislation of a third country jurisdiction not included on Annex I of the EU list of non-cooperative jurisdictions.

CFIs should be required to attest to taking all reasonable measures to ensure compliance with the provisions of Council Directive 2014/107/EU or the provisions of Directive 2018/843/EU of the European Parliament and of the Council as applicable or with a comparable legislation of a third country jurisdiction not included on Annex I of the EU list of non-cooperative jurisdictions.

**Requirements for Certified Financial Intermediaries to verify data received from end investors – Article 11**

Declarations under Article 11, Paragraph 1

As per Paragraph 1 of Article 11, we understand that in order to support RAS or relief via a QR under the FASTER Directive, a CFI requesting relief under Articles 12 and/or 13 must obtain from the final investor:

- A representation that the end investor is the beneficial owner of the dividend payment in accordance with the source country law; and
- A statement that the end investor has not entered into a financial arrangement underlying the dividends, specifically that the investor "has not engaged in a financial arrangement linked to the underlying publicly traded share that has not been settled, expired or otherwise terminated at the ex-dividend date."

Noting that the eCoTRs will be issued for a minimum validity period spanning the calendar year of issue, the FASTER Directive does not specify the validity period of the above statements, nor does it specify whether such statements must be obtained on a per-event basis or not. However, we note that the language in the FASTER Directive refers to a specific publicly traded share and ex-date which infers that a per-event approach is envisaged.

In our view, and akin to the Investor Self-Declaration under Finnish TRACE, to enable the smooth facilitation of RAS or QR under the FASTER Directive, the CFI should be obliged to collect the above declarations no more frequently than annually from an end investor (the ISD under Finnish TRACE is valid for 5 years for comparison). Practically, if a CFI is required to collect the above declarations on a per-event basis, it would render RAS impossible in a number of Member State countries where the ordinary time between record date, ex-date and payment date would not be sufficient for the end investors or the CFI to complete and deliver or to validate the necessary declarations respectively.

The FASTER Directive should be prescriptive as to the frequency with which the declarations must be collected by the CFI to ensure consistency across the Member States to enable the end investors and CFIs to operate with certainty.

We acknowledge that if, for any reason, the CFI was to obtain information that called into question the ongoing validity of the representations, or if the end investor instructed the CFI that the representations could no longer be relied on then that CFI could no longer support reduced withholding tax rates.

In addition, will the EC prescribe standardised language for the above representations to be adopted across the Member States to help achieve the EC's goal to avoid having disparate documentation requirements for different Member States? We acknowledge that under Member State domestic law, the concept of "beneficial ownership" is not homogenous across Member States or even within a Member State when considering their domestic laws and double tax treaty interpretation, however in our view, a statement such as the example below, could be used broadly across the Member States:

> *"We, [End Investor], confirm for the purposes of [Source Member State] laws, that we are the beneficial owner of the income derived from [Source Member State] and request that [CFI], in its role as Certified Financial Intermediary, apply reduced withholding tax rates to [Dividend and/or Interest] payments derived by and for our benefit from [Source Member State] in accordance with the implementation of the FASTER Directive by [Source Member State]."*

We want to draw to the EC's attention to the fact that that there does not appear to be a requirement under the FASTER Directive for the end investor to represent the withholding tax rate that they believe they are entitled to.

In our view, as part of the above declarations, the end investor should also be required to confirm the relevant withholding tax rate applicable to the dividend payment, confirm whether the rate arises under a double tax treaty or the domestic law of the Member State and provide a statement that the end investor has determined that it meets the relevant criteria to qualify for the application of the reduced withholding tax rate. It should not be the role of the CFI to determine the appropriate withholding tax rate to apply to a given investor.

Verification under Article 11, Paragraph 2

As per Paragraph 1 of Article 11, in order to support RAS or via a QR under the FASTER Directive, a CFI must ensure that certain validations of information/entitlement of the end investor must be completed in line with the FASTER Directive as implemented by the Member State.

We understand that the CFI must verify the following:

1. That a valid eCoTR (EU investors) is held or an “appropriate proof of tax residence in a third country” is held (non-EU investors).

   Comments on 1:

   *Validity/Quantity of eCoTRs required per investor:*

   Our interpretation based on the (minimum) validity of the eCoTR being for the calendar year is that an eCoTR/CoTR is only required to be obtained once per year from the end investor. Similarly, noting that “the Member State of the investment does not need to be mentioned in the eCoTR”, it follows that only a single eCoTR should need to be obtained per year as it is universally applicable for supporting relief of excess tax in the Member States.

   Practically the process of obtaining and validating the eCoTRs (and third party CoTRs) is operationally burdensome for CFIs and accordingly if CFIs can obtain, validate, and then utilise a single eCoTR/CoTR per end investor per year this will contribute to the efficient operation of the FASTER Directive.

   Please can the EC specify that a single eCoTR can be relied on in support of a claim across all Member States for the validity period of the eCoTR? That is, an eCoTR is not required to be provided for each Member State that an investor is seeking withholding tax relief in.

   *Necessity for eCoTRs in support of all reliefs*

   Based on the language of the FASTER Directive, CFIs are required to obtain an eCoTR to support any reduced withholding tax rates, however, there are a number of Member States which provide for withholding tax relief for certain investment funds established as an undertaking for collective investment (UCITS) pursuant to EU Directive 2009/65/CE or as an Alternative Investment Fund (AIF) whose manager is subject to regulatory supervision in the Country in which it is established pursuant to EU Directive 2011/61/UE. There are variants of investment funds which are unable to obtain a CoTR but nevertheless are regulated under the relevant UCITS or AIF Directive and based on this status are entitled to withholding tax relief, for example, a Luxembourg FCP.

   In our view, the FASTER Directive should make it clear that when relief of excess tax is contingent on being a tax resident of a country, that an eCoTR is required, but where relief is contingent on some other factor(s) not including tax residence, that a CFI is not required to obtain or validate an eCoTR (or other CoTR as the case may be).

2. That the end investors tax residence per the eCoTR/CoTR and information in the above declarations is in accordance with information from the internal control mechanisms used by the CFI in order to comply with the obligations in relation to money laundering and terrorist financing under Directive (EU) 2015/84943 or comparable information required in third countries.

Comments on 2:

As above, an annual (to align to the eCoTR) or longer (to reduce operational requirements for CFIs) validity period for where the CFI checks the information in the end investors eCoTR/CoTR and declarations would contribute to the efficient operation of the FASTER Directive.

3. The end investor's "entitlement to a specific reduced withholding tax rate" under a double tax treaty with or the national legislation of the Member State.

   Comments on 3:

   Noting that Article 3, Paragraph 3 says "Member States shall ensure that certified financial intermediaries have adequate procedures in place to perform verifications in accordance with paragraph 2", this obligation on the CFI is very unclear and will potentially be problematic for CFIs to complete depending on the procedures implemented by the individual Member States.

   CFIs, particularly those which are acting in a Global Custodian role, are not in a position to validate the entitlement of their individual clients to a particular reduced withholding tax rate based on the end investor's specific facts and circumstances. As noted above, it should primarily be the responsibility of the end investor to determine and communicate their entitlement to a particular reduced withholding tax rate to the CFI.

   The CFI's role should be to collect evidence of the end investors tax residence, the declarations on beneficial ownership and relating to financial arrangements and to validate that this information is not inconsistent with the information in possession of the CFI.

   We accept that a CFI should reasonably be expected to have controls in place to ensure that it does not erroneously facilitate withholding tax relief for clients that have provided eCoTRs/CoTRs and declarations. For example, a rate reserved for qualifying pension funds under a double tax treaty should not be supported where the end investor is known to the CFI to be a corporate investment fund.

   To facilitate the efficient operation of the FASTER Directive, the CFI's obligations in relation to this point should be limited to validating that the withholding tax rate requested by the end investor is a valid rate in the source market under the relevant double tax treaty or national legislation. CFIs should validate that the end investor is not obviously precluded from being entitled based on information held from the internal control mechanisms used by the CFI in order to comply with the obligations in relation to money laundering and terrorist financing under Directive (EU) 2015/84943 or comparable information required in third countries.

4. The potential existence of any financial arrangement which has not been settled, expired, or otherwise terminated at the ex-dividend date, unless the dividend paid to the registered owner for each group of identical shares held does not exceed €1,000.

   Comments on 4:

   Noting that Article 3, Paragraph 3 states; "Member States shall ensure that certified financial intermediaries have adequate procedures in place to perform verifications in accordance with paragraph 2", this obligation on the CFI is very unclear and in our view would benefit from common guidance issued by the EC.

   CFIs, particularly those which are acting in a Global Custodian role, will often be operating

as part of a much larger financial institution (or group of related financial institutions) which offer a range of financial products to clients including but not limited to for example, securities lending/borrowing and derivatives (as well as many other services). An obligation on the CFI to positively review and confirm that there are no such financial arrangements in the same legal entity as the CFI or across related entities is prohibitive to the CFI being able to complete the necessary verification envisaged under the FASTER Directive. We note that under Finnish TRACE, which imposes a similar obligation, Authorised Intermediaries operating in the market are not universally comfortable with the obligation and associated risks and therefore significant opportunities to provide RAS or via QR are not realised.

The FASTER Directive assigns the responsibility to define the procedures under points 3 and 4 above to the individual Member States. Noting that Member States may take a different view as to the impact of financial arrangements on an investor's entitlement to reduced withholding tax rates, it is within contemplation that CFIs will be subject to different due diligence requirements to satisfy this requirement in different Member States. To ensure a truly streamlined process CFIs would benefit from a common understanding of the due diligence obligations.

In our view, the requirements under 3 and 4 above may encourage financial institutions which could otherwise be CFIs, to take a risk-mitigating approach to the FASTER Directive to protect themselves rather than take on the risk in order to service their clients.

Under the FASTER Directive, the end investor is already required to make a specific declaration that there are no relevant financial arrangements which would impact the reduced withholding tax rate from applying to a dividend payment. The CFI should be able to place reasonable reliance on this statement for the purpose of supporting reduced withholding tax rates. Drawing a parallel to a long form reclaim procedure, a financial institution could not reasonably be expected to review an end-investor's reclaim against any potential financial arrangements before passing it on to a Member State's tax authority. The financial institution would be relying on the end-investor's assessment and certification through signing the reclaim form that it is entitled to the reduced withholding tax rate.

Regarding the €1,000 threshold, please could the EC provide further guidance regarding the statement "unless the dividend paid to the registered owner for each group of identical shares held does not exceed €1000".

It is our view that a threshold will be problematic for CFIs to apply, particularly taking into account complexities regarding market claims and foreign exchange variations for Member States that do not operate in Euro denominated currency or for non-Euro denominated securities.

We would be grateful if the EC could clarify whether all payments received by the end-investor for a particular share must be considered in aggregate by the CFI to avoid a scenario where there are various parcels of shares which individually do not result in a dividend payment in excess of €1,000, but in aggregate would?

If this is the case, we note that the CFI will only have visibility over the end investor's equity position held in custody by them. If an end investor had multiple parcels of the same equity split across different custodians which individually result in dividend payments under €1,000 but in aggregate exceed €1,000, each CFI would not have visibility over this and under the FASTER Directive the CFI would not be required to consider the elements in Annex II heading E relating to the acquisition dates of the equities or the existence of financial arrangements.

We would propose that the threshold is removed in its entirety due to the operational difficulties in managing this as described above. However, if the threshold is to be retained it must be higher to be operationally feasible (for example, €10,000 and clear guidance must be issued to give certainty to CFIs when applying the rules and furnishing reporting).

General Comments:

Referring to the overall requirements described above for a CFI to collect and verify documentation, to perform due diligence on the investors entitlement to relief and investigate the existence of financial arrangements, in our view the level of verification/due diligence required for verification procedures to be deemed 'adequate' should be prescribed in the FASTER Directive. At Article 11, paragraph 3, the EC notes that Member States shall ensure that CFIs have adequate procedures in place to perform verification in accordance with paragraph 2. Our understanding is that these procedures will be individually determined by the Member States. We are concerned that whilst the EC aim was to develop more efficient, streamlined and secure withholding tax procedures within the EU, by not providing common guidance this could lead to a circumstance where CFIs have differing due diligence procedures for each Member State.

This would take away from the efficiencies envisaged by the EC that are welcomed by the industry. In our view, the minimum requirements for performing verification and due diligence to an 'adequate' level should be set out in the FASTER Directive to provide consistency and greater certainty to investors, CFIs and Member State tax authorities.

Furthermore, we note that in our view any verification or due diligence procedures should be mandated to be performed based on the validity period of the document in question, subject to any change in circumstance identified as a part of day-to-day operations of the CFI.

It is incredibly operationally burdensome if the CFI is required to perform the validation/due diligence on a per-event basis. As currently written in the FASTER Directive and accepting that the detailed rules for validation/due diligence are not published, we are concerned that the expectation placed on CFIs to validate and investigate the circumstances around a payment may mean that many potential CFIs cannot take up the relief mechanisms envisaged under the FASTER Directive.

If the expectations of the FASTER Directive as implemented by Member States cannot be met, it will render the FASTER Directive ineffective and fail to meet the ECs goals of introducing an efficient system for managing withholding tax reclaims across the Member States, which in turn would facilitate smoother functioning of Capital Markets.

When considering whether the CFI has acquired information that calls into question the validity of the eCoTR/CoTR or the declarations, the extent of the CFIs knowledge should only include information acquired by the CFI in undertaking its ordinary activities when acting as a CFI (and should not, for instance, include information that may have been obtained by other lines of business within the same legal entity or by related parties). In addition, we believe that the requirement under Article 10 (1)(b) should remove the reference to "such verification may also include a risk assessment that takes into account the credit risk and fraud risk". It is our view that this requirement is not proportionate, and it is not practical for CFIs to establish.

**Reporting under the FASTER Directive – Article 9**

We welcome the streamlined reporting proposed under the FASTER Directive, specifically that the EC will be using an implementing act to define the standard computerised report and the relatively simple nature of the reportable fields as set out in Annex II.

In our view adopting a simple yet effective reporting regime under the FASTER Directive is imperative to the efficient operation of the FASTER Directive as it removes a large barrier to entry for potential CFIs.

*Need for greater clarity on the reporting obligations of CFIs within a payment chain*

Please can the EC provide greater clarity on the information that is expected to be reported by the intermediate CFIs in the custody chain who do not have a direct relationship with the end investor? Does the EC expect that only the CFI closest to the end investor is required to report the information in Annex II, Part E?

*Timeline for reporting under the FASTER Directive*

Considering the current requirement in Article 9, paragraph 1, for CFIs to effectively report on a rolling basis within a 20-day period after record date, this will place significant operational burdens on CFIs to report almost on a daily basis, particularly where the CFI's client base invests widely across the EU and during the busy dividend seasons for Member States, many of which overlap.

We would propose that the EC considers an approach to reporting whereby CFIs are required to report all relevant information for the previous calendar month by a certain date after the end of the month to allow for time for any outstanding settlement etc.

We acknowledge the need for the Member States to receive data in a timely manner, however if reporting under the FASTER Directive was required to be submitted at a set time on a monthly basis:

- all information from the CFIs along the entire custody chain should be received at the same time and by a known date, meaning that the Member State should receive the necessary information to reconstruct the chain of payments; and,
- CFIs would be less likely to need to make corrections or to omit dividend information in error as there would be a clearly defined window in which the CFI needed to look for and report the relevant information from their internal systems. This should reduce the need for Member States to investigate with CFIs why there is data missing when attempting to reconstruct the payment chain.

*Content of Annex II reporting*

Annex II, Part B requires that a reporting CFI includes information on the identity of the "financial intermediary or final taxpayer" receiving the dividend or interest payment. In our view, this Part B should also include a specific identifier whether the recipient is a financial institution or the final income recipient.

*Reporting when there are no relevant payments to report*

We would be grateful if the EC can provide clarity on events where reporting is not required. Noting that under the FASTER Directive reporting is meant to occur no later than 25 days of record date, should it be interpreted that a CFI which does not receive payments simply does not need to report anything, as opposed to be required to furnish a nil report for a given period?

*2-day holding period reporting*

We note that the requirement to report any shares that were acquired either side of the 2-day period before ex-dividend is likely to be operationally burdensome for CFIs, particularly where client assets are held in omnibus accounts.

It is impractical to manage such a requirement in the case of income distributions where the Pay-Date is the day after Record Date (currently set 1 business day after Ex-Date but due to become equal to Ex-Date if the EU moves to a T+1 settlement cycle), which is the guideline agreed within the European CA standards.

We note that there is not sufficient time to perform the controls envisaged by the Directive. Under the current proposal, how will the withholding agent know about any trading activity that takes place 2 or less days before Ex-Date? Would details of these events need to be informed along the custody chain?

In our view, the requirements as currently proposed may result in CFIs refusing or being operationally unable to provide RAS where it would otherwise be available in the source country, thus penalising investors. This may result in a degradation of services in Member States where the existing RAS procedures are operationally effective today, for example in France, Italy and Spain.

We also envisage that the requirement as currently designed will result in partial withholding tax claims where some of the shares on which a dividend was paid were acquired either side of the 2-day time limit. Does the EC expect that Member State tax authorities will be in a position to accept partial claims with some relief provided at source, and the remainder of the relief obtained via QR or via standard reclaims?

*Article 16 - Civil liability*

Liability should be commensurate to the level of knowledge available to a financial intermediary. A financial intermediary that has reasonably performed the required due diligence tasks (which need to be clear and unambiguous) should not be subject to penalties, fines or other sanctions. A CFI should only be held liable where the CFI has intentionally failed to act in accordance with the Directive or where the CFI has acted negligently by failing to take reasonable measures to comply with the requirements of the Directive.

Where a CFI is found to have intentionally or negligently failed to take the appropriate actions required under the Directive, the CFI should be provided with an opportunity to take remedial actions with the impacted Member State before being subject to any fine, sanction or otherwise.

The Directive should make it clear that where a CFI has performed the required due diligence it will not be held liable. It should be made clear that where, by no fault of the CFI, a final beneficiary has achieved withholding tax relief for which it was not entitled the Member State will seek recourse from that beneficiary.

Alternatively, the Commission should provide further guidance in the Directive as to what would be considered to be negligent. The Member States should then be required to use this standard when assessing the actions of a CFI.

We request that the Commission considers increasing the standard to a level of “gross negligence” rather than “negligence” to reflect that operational oversights can occur without being intended. A standard of "gross negligence” more properly reflects that the CFI has not taken reasonable steps to comply with its obligations.
Any fines, sanctions or otherwise imposed by a Member State must be proportionate to any failure to meet the requirements under the Directive.

*Article 22 – Transposition*

We note that the Directive requires that “Member States should adopt and publish this Directive, by 31 December 2026 at the latest and apply those provisions from 1 January 2027.”

To ensure that CFIs, as well as Member State tax authorities, investors and other stakeholders have adequate time to interpret and implement the necessary changes required under the Directive there should be a period no shorter than 18 months between the deadline for Member States to transpose the Directive into their law and the Directive taking effect.

Where adequate time is not provided between transposition and the Directive ‘going live’ there is a much greater risk that the Directive will not operate smoothly across the Member States leading to confusion and loss of potential withholding tax relief.