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Mr Thomas Gerassimos

Director General Taxation and Customs Union
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Mr John Berrigan

Director General Financial Stability, Financial Services and Capital Markets Union
European Commission

sent via email

The AMI-SeCo's observations and recommendations on the proposal on Faster and Safer Relief of Excess Withholding Taxes

Dear Ms Garde, Mr Gerassimos and Mr Berrigan,

I am writing to you in my capacity as chair of the Eurosystem's Advisory Group on Market Infrastructures for Securities and Collateral (AMI-SeCo). The AMI-SeCo represents a wide community of financial market stakeholders including national and international Central Securities Depositories (CSDs), market participants, Eurosystem central banks and industry associations. In addition to fulfilling its governance responsibilities with respect to the Eurosystem's TARGET2-Securities service (T2S), the AMI-SeCo focuses on fostering harmonisation of securities settlement, collateral management and post-trade services in Europe.

The AMI-SeCo welcomes the European Commission's [proposal on Faster and Safer Relief of Excess Withholding Taxes](#) (WHT) and strongly supports the Commission's Capital Markets Union Action Plan and, as part of that Action plan, the objectives to improve the efficiency of WHT procedures and to prevent tax abuse in the single market.

Throughout its work, the AMI-SeCo has been giving close attention to the need for harmonising WHT procedures across EU Member States. This is an area which has been highlighted as one of the key barriers to European capital markets integration consistently by all relevant industry and Commission-sponsored

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analyses since the [2001 / 2003 Giovannini reports](#).¹ Inefficient and uncertain national WHT procedures are an important barrier in particular in the area of collateral management and collateral mobility. The AMI-SeCo and its predecessor, the T2S Advisory Group, have actively contributed to this discussion by expressing their views consistently with the findings included in earlier analyses when answering to public consultations on the Capital Market Union ([2015](#), [2017](#) and [2020](#)) and in letters sent to the European Commission ([2018](#), [2020](#)). In June 2022 the AMI-SeCo submitted [a response](#) to the European Commission's public consultation on making WHT procedures more efficient.

On behalf of the AMI-SeCo, I am pleased to provide you with a few observations and recommendations on the proposal for your and the EU law-makers' consideration. These recommendations are made in the spirit of further strengthening the positive integration impact of the proposal while also making the prevention of tax abuse potentially more robust in the proposed framework. The observations and recommendations made in the annex and highlighted below remain consistent with the previous AMI-SeCo communications on WHT procedures.

Overall, the proposal represents an important step in further fostering the integration of post-trade securities market procedures and will benefit the entire EU economy. In particular, the elements of the proposal on creating a common and harmonised Digital tax residence certificate (eTRC) and on creating a harmonised reporting framework will be very beneficial for making WHT processes more uniform and efficient across the EU. The AMI-SeCo would recommend the following for your consideration:

- **Scope:** The AMI-SeCo recommends that the scope of the Directive is extended to all securities constituted under the laws of the Member States and issued in EU CSDs, if such securities pay income that is subject to withholding tax in the Member States. In particular, this would imply extending the mandatory scope of the proposal to debt instruments in addition to equities, i.e. to cover WHT on interest income if applicable. This would have the potential to unlock significantly higher integration and efficiency benefits of the proposal than keeping the scope restricted to equities and dividend income only as debt instruments play a very significant role in EU capital markets and the post-trade procedures related to distributing interest income is very similar that of dividends.
- **Definition of financial arrangement and exclusion of securities subject to financial arrangements:** The AMI-SeCo recommends that a more sophisticated definition of financial arrangements is provided in the Directive which could give a more restricted interpretation of those arrangements for which the beneficial owner cannot benefit from the RaS and QR procedures. The more sophisticated definition of financial arrangement should be based on actual and concrete experience related to the use of cum /

¹ For example the [2006 / 2007 FISCO Reports](#), the [EC's own impact analysis related to the 2009 EC Recommendation on WHT](#), the [T-BAG report of 2013](#), the [EPTF Report of 2017](#), or, most recently, in the [2020 report by the High-level Task Force on the CMU](#).

cum tax abuse and should target specifically those types of arrangements which have been and can be used for the purpose of such tax abuse. In particular, the definition of such excluding financial arrangements should not cover tri-party collateral management operations and collateral operations with central banks.

- **Use of the record date principle and treating market claims as indemnities:** The Directive could leverage the record date principle, the concept used in post-trade processing of corporate actions (to which the withholding tax procedures on holdings also belong) rather than relying on the trading concept of the ex-date. It could require Member States that the date on which the holder of a security is recorded for tax purposes (i.e. the 'tax record date') is based on the settlement date of securities in CSDs' and custodians' books. This could have the major benefit of aligning dates of the tax record date with those of other corporate actions relevant for the income on securities. In addition, and consistently with this, Member States could consider treating market claims (i.e. the reallocation of securities proceeds in case the beneficial owner of the security on the record date is different from holder of the security in settlement systems' or custodians' books) as indemnities rather than 'manufactured' income which could eliminate the mechanisms used in the past for 'cum / ex' tax abuse.
- **Treatment of global investments:** With a view to attracting global capital flows to the EU, the AMI-SeCo recommends that the EU-framework created by the Directive allows for third-country investors to benefit from the faster and more efficient RaF and QF procedures (provided that such third countries follow all requirements of the framework and, where applicable, have a relevant agreement with the EU) by i) allowing that third countries issue e-TRCs to their residents; ii) allowing third-country intermediaries to act as CFIs under the framework, and iii) allowing investors using non-CFI intermediaries to have access to the more efficient procedures provided all required information is made available to competent authorities on these investors.
- **Harmonised definition of beneficial ownership:** the AMI-SeCo is of the view that harmonising the definition of beneficial owners of securities at least for tax purposes is a key ingredient to an efficient EU framework on the processing of withholding tax. Therefore, the AMI-SeCo recommends that Member States align these definitions and, where necessary, clarify the application of such definitions in a cross-border context.

A note on a more detailed set of observations on the proposal is annexed to this letter. The AMI-SeCo stands ready to provide its continued support with respect to fostering harmonisation of WHT procedures across Member States and to provide additional technical and operational expertise from the entire community of financial market stakeholders represented in the AMI-SeCo.

Yours sincerely,

[signed]

Ulrich Bindseil
Chair of the AMI-SeCo