



*Feasibility Study on an
International instrument
on data exchange for income and asset
declarations*

including a
**Draft Model Memorandum of Understanding
on data exchange**

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ReSPA is a joint Initiative of European Union and the Western Balkan countries working towards fostering and strengthening the regional cooperation in the field of public administration among its Member States. It seeks to offer excellent innovative and creative training events, networking activities, capacity building and consulting services to ensure that the shared values of respect, tolerance, collaboration and integration are reaffirmed and implemented throughout the public administrations in the region.

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1 Executive summary

1.1 This study looks at possible options for facilitating international data exchange for the purpose of verifying asset declarations.

1.2 Out of several options (convention, executive agreement, memorandum of understanding), a memorandum of understanding is the recommended option.

1.3 The memorandum would have to cover inter alia the following issues: Information covered, exchange of information upon request, possibility of declining a request, confidentiality and data protection.

1.4 Prior to concluding such a memorandum, ReSPA members, and any other interested country outside the region, would need to check the following questions:

- Does the national legal framework provide a legislative basis for facilitating data exchange on verification of asset declarations?
- Is the UNCAC self-executable in the ReSPA member country so that a memorandum of understanding could be seen as simply facilitating implementation of this convention?
- Do data protection laws allow for international data exchange, provided the memorandum of understanding ensures a level of protection as required by domestic data protection laws?
- Are there any other concerns related to the conclusion of memoranda of understanding?

1.5 A suggested draft memorandum based on an OECD template for tax matters is contained in Annex 1.

2 Background

2.1 At the fifth meeting of the Ethics & Integrity Network of ReSPA, it was decided to follow-up on the comparative study on asset declarations inter alia with the following practical step: a draft international agreement on data exchange for verification of asset declarations.

2.2 This draft agreement responds to the Recommendation 5 of the comparative study: “International cooperation: In view of the rather time-consuming procedures of formal mutual legal assistance, oversight bodies should conclude bilateral or multilateral agreements on data exchange (Article 48 United Nations Convention Against Corruption – UNCAC), make use of FIUs’ existing data exchange structures (Articles 14 para. 1 b, 52 para. 2 of UNCAC), or of tax authorities’ options under international double taxation agreements.”

2.3 This cited recommendation is based on the following finding of the comparative study (p. 12/13): “Macedonia partly channels its need for information from foreign sources through the tax administration: based on double-tax treaties, the tax authority obtains information from the tax offices of other countries about whether a specific person pays taxes, 13 and if so, what kind. In Kosovo*, the oversight body has a memorandum of cooperation with Albania and is in preparation of a memorandum with Montenegro, allowing the exchange of data for verification (and other anticorruption) purposes. Furthermore, the oversight body in Kosovo* uses the international network of its FIU to obtain data from abroad in a direct and less formal way. It is noteworthy, that in Croatia the Act on Preventing the Conflict of Interest empowers the legal oversight body to request information from international organizations or a foreign entity directly, without going through the channels of mutual legal assistance. However, this provision of the Act on Preventing the Conflict of Interest has never been tested in practice, so it is not yet certain to what extent this legal provision is effective in real life.”

2.4 There is currently no international model agreement yet for data exchange on verification of asset declarations. Albania and Kosovo* base their cooperation in that subject matter on a general agreement. It contains an

Article 3

Other forms of cooperation

In view of the cooperation agreement, the Parties engage in other forms of cooperation through:



*3.1 advice and data exchange, that they possess, technical information and documentation through official channels of communication [...]”.*¹

Albania and Kosovo* use this Article in practice for exchanging data for the purpose of verifying asset declarations.

3 Why is an international agreement needed (legally)?

Territorial integrity

2.5 The verification of income and asset declaration is the exercise of a public function. Such a public function is not possible on the territory of a foreign State. In this respect, the principle of international law applies, under which it is forbidden to exercise state power on foreign territory. This principle is not stipulated in international conventions; however, the principle is recognised as being part of international law.² In some countries, the violation of this principle is subject to criminal sanctions.³ Decisive for the question of a violation is the perspective of the State on which territory the public function is exercised.⁴

2.6 Thus, collecting data from foreign territory entails at least substantial legal risks: It can be already a public act on foreign territory to informally interview a private person, if only done by a lawyer, if the result of the interview is channelled to a public official.⁵ Also telecommunication to a foreign country to collect data can be problematic.⁶ Summoning a citizen to a foreign court procedure without approval by domestic authorities is a violation of territorial integrity in some countries.⁷

¹ Agreement of 18 May 2012 between the High Inspectorate for the Declaration and Audit of Assets (Albania), Protocol No. 2156, and the Anti-Corruption Agency (Kosovo*), Protocol No. 1794.

² *Rudolf Geiger*, Grundgesetz und Völkerrecht, 3rd edition, München 2002, § 60 II 2 c; *Knut Ipsen*, Völkerrecht, 5th edition, Munich 2004, § 23 Rn. 69; German Constitutional Court, Decision of 5 November 2003, 2 BvR 1243/03, NJW 2004, p. 141 (p. 143).

³ See for example Suisse Criminal Code (as of 1 June 2008), Systematische Sammlung des Bundesrechts 311.0: Art. 269 – Verletzung schweizerischer Gebietshoheit, Art. 271 – Verbotene Handlungen für einen fremden Staat („violation of territorial integrity“; „illegal acts for a foreign state“).

⁴ *Knut Ipsen*, *ibid* (note. 2), § 23 No. 70.

⁵ Decision of the Suisse Federal Supreme Court, 30 September 1988, Entscheidungen des Schweizerischen Bundesgerichts, 114. Jahrgang, Band IV, S. 128.

⁶ Suggestion illegality: *Rainer Spatscheck / Jörg Alvermann*, Internet-Ermittlungen im Strafprozess, wistra 1999, p. 333 (p. 334); differing opinion: *Klaus Vogel* in: *Klaus/Vogel / Maris Lehner* (Hrsg.), Doppelbesteuerungsabkommen, 4. edition, Munich 2003, Einl. No. 16.

⁷ *Jörg Paul Müller / Luzius Wildhaber*, Praxis des Völkerrechts, 3rd edition, Bern 2001, VII 2 a, p. 428.

Usability in court

2.7 Some courts also do not allow the use of information in court procedures if it was obtained without consent of the State where it was obtained.⁸

Consent/agreement with foreign state

2.8 As a consequence of above points, consent of the foreign state concerned is necessary, ideally in the form of a permanent agreement.

Data protection

2.9 All major international standards on data protection set limits for cross-border exchanges of data. Similar is true for national legislations, which will usually call – inter alia – for a similar level of data protection to be ensured in the country of destination, and the usage of data limited to the function it was collected for (see for example the Council of Europe’s “Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data” (ETS 108), the European Union’s “Directive on protection of individuals with regard to the processing of personal data and on the free movement of such data” (95/46/EC), and the OECD’s “Recommendations of the Council Concerning Guidelines Governing the Protection of Privacy and Trans-Border Flows of Personal Data”).

3 Options

3.1 Notwithstanding bilateral and individual solutions, for a common approach by ReSPA members (and possibly other parties joining in), basically the following options are possible:

A multilateral convention

3.2 A convention is the strongest measure ReSPA members can take. A convention is not a statutory act but is a binding legal instrument; it owes its legal existence to the consent of those member States that sign and ratify it. However, the negotiation of a convention is a laborious and time-consuming process. Also, even once a convention is adopted, the process of ratification can take up many years.

An executive/administrative agreement

3.3 Depending on what their respective national constitutions foresee, ReSPA members could conclude executive agreements. Such agreements are

⁸ German Supreme Court, Judgment of 8 April 1987, 3 StR 11/87, NJW 1987, p. 2168 (p. 2171).



3.4 less formal than a treaty and are usually not subject to the constitutional requirement for ratification.⁹ Normally, though, such agreements need some authorization by law or by a parliament resolution.

A bi- or multilateral memorandum of understanding

3.5 A memorandum of understanding is a more flexible instrument and less formal instrument than conventions or executive agreements. It does not require ratification, but only a national legislative authorisation to exchange data with specific foreign entities for specific causes.

3.6 The memorandum of understanding is the standard tool for data exchange in the area of fighting money laundering or terrorist financing: This “involves a communication between financial intelligence units (FIUs) or other bodies set up to fight financial crime. The FIUs, with the task of receiving and analysing suspicious transaction reports on an ongoing basis and maintaining close links with police and customs authorities, are presently mostly engaged in tracking terrorist funds and following up reports of potential terrorist accounts. FIUs share information between themselves informally in the context of investigations, usually on the basis of memoranda of understanding (MOU). The Egmont Group of FIUs has established a model for such MOU. Unlike the MLAT [treaty for mutual legal assistance], this gateway is not ordinarily used for obtaining evidence, but it is used for obtaining intelligence that might lead to evidence.”¹⁰ MoUs are also used in the area of international banking and insurance oversight.¹¹

3.7 A variety of MoUs are publicly available on the internet for reference. The agreement between Albania and Kosovo* is the only example in the region of a specific legal instrument for international exchange of asset declaration data.

3.8 Such an agreement would not require ratification, but would still require a national legislative authorisation to exchange data with specific foreign entities for specific causes (which might already exist in some or all countries).

⁹ See for example the United States:

<http://www.britannica.com/EBchecked/topic/197901/executive-agreement>.

¹⁰ www.bis.org/publ/bcbs89.htm.

¹¹

http://www.bafin.de/EN/International/BilateralCooperation/MemorandaOfUnderstanding/memorandaofunderstanding_node.html.

A template for bilateral agreements

3.9 A similar approach to the above multilateral memorandum of understanding would be to draft a template for bilateral agreements. They could be concluded either in a binding way (agreement) or in a non-binding way (memorandum of understanding). Both alternatives would require a national legislative authorisation to exchange data with specific foreign entities for specific causes (which might already exist in some or all countries).

4 Necessary content

4.1. The agreement will need to clarify the following points

- Object and Scope of the Agreement
- Information covered
- Restriction of use of information
- Exchange of Information Upon Request
- Possibility of Declining a Request
- Confidentiality and data protection
- Costs
- Language
- Other international agreements or arrangements
- Termination

5 National requirements

5.1 The above mentioned legal instruments need the following national requirements:

5.2 A convention would need ratification.

5.3 A memorandum of understanding would require a legislative basis to allow for the international exchange of personal data. An example of such legislative basis would be for example (in the context of banking supervision): “The Financial Supervision Authority may, pursuant to section 4b of the Federal Data Protection Act, provide foreign agencies with information from the data file [...] for the purposes described in sentence 1. [...] This is without



prejudice to the provisions on international judicial assistance in criminal cases.”¹²

5.4 There might be no need for a specific legislative basis, where a country has ratified the UNCAC, and this convention is self-executable according to the constitution of that country. Article 48 par. 1 lit. f UNCAC reads as follows: States Parties shall, in particular, take effective measures “to exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.”

5.5 One could very well argue that verifying asset declarations certainly is an “administrative measure [...] for the purpose of early identification” of illegal enrichment and other offences covered by UNCAC.

6 Conclusion and next steps

5.6 A memorandum of understanding (MoU) would be the easiest way of facilitating international data exchange. A draft of such a MoU is contained in Annex 1 below. It is designed in a way that ReSPA members can decide with which other member(s) they would like the agreement to be in force.

5.7 ReSPA members would need to check the following questions:

- 5.7 Does the national legal framework provide a legislative basis for facilitating data exchange on verification of asset declarations?
- 5.8 Is the UNCAC self-executable in the ReSPA member country so that a memorandum of understanding could be seen as simply facilitating implementation of this convention?
- 5.9 Do data protection laws allow for international data exchange, provided the memorandum of understanding ensures a level of protection as required by domestic data protection laws?
- 5.10 Are there any other concerns related to the conclusion of memoranda of understanding?

5.11 The following two points should be kept in mind:

¹² See § 24c Gesetz über das Kreditwesen (KWG) – German Banking Act, English version available at

http://www.bundesbank.de/Redaktion/EN/Downloads/Core_business_areas/Banking_supervision/PDF/banking_act.pdf?_blob=publicationFile.

- 5.12 The provision of data by the requested State would concern only data about a foreign individual (a public official of the applicant State). Thus, limitations and barriers on data exchange might not be as high as they may be towards domestic individuals.
- 5.13 The MoU is in the end a legally non-binding agreement of application; hence its signing requires little formal procedures.



Annex 1 – Draft Model MoU

Bi- and multilateral Memorandum of Understanding on Exchange of information on income and asset declarations

The Parties to this Memorandum of Understanding (MoU), desiring to facilitate the exchange of information with respect to financial monitoring of public officials (income and asset declarations) have reached the following understanding:

Article 1: Object and Scope of the MoU

The competent authorities of the Parties shall provide mutual assistance through direct exchange of information upon request that is relevant to the administrative verification of income and asset declarations of public officials in the State of the applicant Party.

Article 2: Information covered

This MoU shall apply to information as is used by the requested Party for the purpose of verification of declarations. The requested Party may also provide information that is only used by the requested Party for the purpose of verification of declarations, but not by the requesting Party.

Article 3: Restriction on usage

The information or documents obtained from the requested Party shall only be used for the verification of accuracy of the declaration, and shall not be disseminated to any third party, nor be used for any other administrative proceeding, or any disciplinary, administrative, prosecutorial or judicial purpose without prior consent in writing of the disclosing Party.

Article 4: Exchange of Information Upon Request

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1 and 2.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested.
3. The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party. To ensure a prompt response, the competent authority of the requested Party shall confirm receipt of a request to the competent authority of the applicant Party and shall notify the competent authority of the applicant Party of deficiencies in the request.
4. If the competent authority of the requested Party has been unable to obtain and provide the information within 30 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

Article 5: Confidentiality

1. Any information received by a Party to this MoU shall be treated as confidential and may be disclosed only to persons or authorities in the jurisdiction of the Party tasked with the administrative verification of income and asset declarations. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.
2. The information is subject to official secrecy and is protected at least by the same confidentiality and protection as provided by the national legislation of the receiving Party for similar information from national sources. Notwithstanding the termination of the MoU, this provision shall remain in application.
3. The existence of data may be disclosed to law enforcement authorities and courts only for the purpose of allowing these entities to initiate formal mutual legal assistance procedures or any other internationally agreed data exchange procedure.



Article 6: Costs

In principle, assistance granted under this MoU is free of cost. Incidence of costs incurred in providing assistance in exceptional cases shall be agreed by the Contracting Parties.

Article 7: Language

Requests for assistance and answers thereto shall be drawn up in English, or any other language agreed or used bilaterally between the competent authorities of the Contracting Parties, or else by the language of the requested Party.

Article 8: Other international agreements or arrangements

The possibilities of assistance provided by this MoU do not limit those contained in existing international agreements or other arrangements between the Parties which relate to the exchange of data.

Article 9: Coming into force

1. Each Party shall specify through written correspondence with other Parties, vis-à-vis which other party it wishes to operate based on this MoU. The MoU shall apply only between Parties that specify each other in this way. A copy shall be provided to the Regional School of Public Administration (ReSPA), which will publish and update a chart on the regional applicability of the MoU.
2. Any additional agreement between the competent authorities of two or more Parties shall be effective only between those Parties.
3. Any non-member of ReSPA may join the MoU by corresponding with other Parties of the MoU and a mutual specification as defined in para. 1.
4. At the request of one or more of the competent authorities of the Parties, the Regional School of Public Administration (ReSPA) may convene a meeting of the competent authorities or their

representatives, to discuss significant matters related to interpretation or implementation of the MoU.

Article 10: Termination

Any Party may terminate this MoU vis-à-vis any other Party by serving a written notice to the competent authority of the other Party. A copy shall be provided to the Regional School of Public Administration (ReSPA).

Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the other Party.



Annex 2 – OECD Model agreement on tax matters

For further details and comments see: <http://www.oecd.org/ctp/exchange-of-tax-information/taxinformationexchangeagreementstieas.htm>.

**AGREEMENT ON
EXCHANGE OF INFORMATION ON TAX MATTERS**

MULTILATERAL VERSION

The Parties to this Agreement, desiring to facilitate the exchange of information with respect to taxes have agreed as follows:

BILATERAL VERSION

The government of _____ and the government of _____, desiring to facilitate the exchange of information with respect to taxes have agreed as follows:

Article 1

Object and Scope of the Agreement

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

Article 2

Jurisdiction

A Requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

Article 3

Taxes Covered

MULTILATERAL VERSION

1. This Agreement shall apply:
 - a) to the following taxes imposed by or on behalf of a Contracting Party:
 - i) taxes on income or profits;
 - ii) taxes on capital;

BILATERAL VERSION

1. The taxes which are the subject of this Agreement are:
 - a) in country A, _____;

iii) taxes on net wealth;

b) in country B, _____.

iv) estate, inheritance or gift taxes;

b) to the taxes in categories referred to in subparagraph a) above, which are imposed by or on behalf of political sub-divisions or local authorities of the Contracting Parties if listed in the instrument of ratification, acceptance or approval.

2. This Agreement shall also apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the competent authorities of the Contracting Parties so agree. Furthermore, the taxes covered may be expanded or modified by mutual agreement of the Contracting Parties in the form of an exchange of letters. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

5.1 The Contracting Parties, in their instruments of ratification, acceptance or approval, may agree that the Agreement shall also apply to indirect taxes.

5.2 This Agreement shall also apply to any identical taxes imposed after the date of entry into force of the Agreement in addition to or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of entry into force of the Agreement in addition to or in place of the existing taxes if the competent authorities of the Contracting Parties so agree. Furthermore, the taxes covered may be expanded or modified by mutual agreement of the Contracting Parties in the form of an exchange of letters. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

Article 4

Definitions

MULTILATERAL VERSION

BILATERAL VERSION

1. For the purposes of this Agreement, unless otherwise defined:

a) the term “Contracting Party” means any party that has deposited an instrument of ratification, acceptance or approval with the depositary;

b) the term “competent authority” means the authorities designated by a Contracting Party in its instrument of acceptance, ratification or approval;

a) the term “Contracting Party” means country A or country B as the context requires;

b) the term “competent authority” means

i) in the case of Country A,
_____;



ii) in the case of Country B,
_____;

- c) the term “person” includes an individual, a company and any other body of persons;
- d) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- e) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- f) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- g) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
- h) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- i) the term “tax” means any tax to which the Agreement applies;
- j) the term “applicant Party” means the Contracting Party requesting information;
- k) the term “requested Party” means the Contracting Party requested to provide information;
- l) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
- m) the term “information” means any fact, statement or record in any form whatever;
- n) the term “depository” means the Secretary-General of the Organisation for Economic Co-operation and Development; *This paragraph would not be necessary*
- o) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party;
- p) the term “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under

the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 5

Exchange of Information Upon Request

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of an applicant Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide upon request:

a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;

b) information regarding the ownership of companies, partnerships, trusts, foundations, “Anstalten” and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

(a) the identity of the person under examination or investigation;

(b) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;

(c) the tax purpose for which the information is sought;

(d) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;

(e) to the extent known, the name and address of any person believed to be in possession of the requested information;



(f) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement;

(g) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party. To ensure a prompt response, the competent authority of the requested Party shall:

a) Confirm receipt of a request in writing to the competent authority of the applicant Party and shall notify the competent authority of the applicant Party of deficiencies in the request, if any, within 60 days of the receipt of the request.

b) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

Article 6

Tax Examinations Abroad

MULTILATERAL VERSION

1. A Contracting Party may allow representatives of the competent authority of another Contracting Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.

2. At the request of the competent authority of a Contracting Party, the competent authority of another Contracting Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.

3. If the request referred to in paragraph

BILATERAL VERSION

1. A Contracting Party may allow representatives of the competent authority of the other Contracting Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.

2. At the request of the competent authority of one Contracting Party, the competent authority of the other Contracting Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.

3. If the request referred to in paragraph

2 is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

2 is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

Article 7

Possibility of Declining a Request

1. The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.

2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

3. The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:

- (a) produced for the purposes of seeking or providing legal advice or
- (b) produced for the purposes of use in existing or contemplated legal proceedings.

4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (ordre public).

5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

6. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances.

Article 8

Confidentiality



Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.

Article 9

Costs

Incidence of costs incurred in providing assistance shall be agreed by the Contracting Parties.

Article 10

Implementation Legislation

The Contracting Parties shall enact any legislation necessary to comply with, and give effect to, the terms of the Agreement.

Article 11

Language

This article may not be required.

Requests for assistance and answers thereto shall be drawn up in English, French or any other language agreed bilaterally between the competent authorities of the Contracting Parties under Article 13.

Article 12

Other international agreements or arrangements

This article may not be required

The possibilities of assistance provided by this Agreement do not limit, nor are they limited by, those contained in existing international agreements or other arrangements between the Contracting Parties which relate to co-operation in tax matters.

Article 13

Mutual Agreement Procedure

1. Where difficulties or doubts arise between two or more Contracting Parties regarding the implementation or interpretation of the Agreement, the competent authorities of those Contracting Parties shall endeavour to resolve the matter by mutual agreement.

2. In addition to the agreements referred to in paragraph 1, the competent authorities of two or more Contracting Parties may mutually agree:

a) on the procedures to be used under Articles 5 and 6;

b) on the language to be used in making and responding to requests in accordance with Article 11.

3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.

4. Any agreement between the competent authorities of two or more Contracting Parties shall be effective only between those Contracting Parties.

5. The Contracting Parties may also agree on other forms of dispute resolution.

Article 14
Depositary's functions

1. The depositary shall notify all Contracting Parties of:

a. the deposit of any instrument of ratification, acceptance or approval of this Agreement;

b. any date of entry into force of this Agreement in accordance with the provisions of Article 15;

c. any notification of termination of this Agreement;

d. any other act or notification relating

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of the Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.

2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5 and 6.

4. The paragraph would not be necessary.

The article would be unnecessary



to this Agreement.

2. At the request of one or more of the competent authorities of the Contracting Parties, the depositary may convene a meeting of the competent authorities or their representatives, to discuss significant matters related to interpretation or implementation of the Agreement.

Article 15

Entry into Force

1. This Agreement is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be submitted to the depositary of this Agreement.

2. Each Contracting Party shall specify in its instrument of ratification, acceptance or approval vis-à-vis which other party it wishes to be bound by this Agreement. The Agreement shall enter into force only between Contracting Parties that specify each other in their respective instruments of ratification, acceptance or approval.

3. This Agreement shall enter into force on 1 January 2004 with respect to exchange of information for criminal tax matters. The Agreement shall enter into force on 1 January 2006 with respect to all other matters covered in Article 1.

For each party depositing an instrument after such entry into force, the Agreement shall enter into force on the 30th day following the deposit of both instruments.

4. Unless an earlier date is agreed by the Contracting Parties, the provisions of this Agreement shall have effect

1. This Agreement is subject to ratification, acceptance or approval by the Contracting Parties, in accordance with their respective laws. Instruments of ratification, acceptance or approval shall be exchanged as soon as possible.

2. This Agreement shall enter into force on 1 January 2004 with respect to exchange of information for criminal tax matters. The Agreement shall enter into force on 1 January 2006 with respect to all other matters covered in Article 1.

3. The provisions of this Agreement shall have effect:

- with respect to criminal tax matters for taxable

- with respect to criminal tax matters for taxable periods beginning on or after 1 January 2004 or, where there is no taxable period, for all charges to tax arising on or after 1 January 2004;
- with respect to all other matters described in Article 1 for all taxable periods beginning on or after January 1 2006 or, where there is no taxable period, for all charges to tax arising on or after 1 January 2006.

- periods beginning on or after 1 January 2004 or, where there is no taxable period, for all charges to tax arising on or after 1 January 2004;
- with respect to all other matters described in Article 1 for all taxable periods beginning on or after January 1 2006 or, where there is no taxable period, for all charges to tax arising on or after 1 January 2006.

In cases addressed in the third sentence of paragraph 3, the Agreement shall take effect for all taxable periods beginning on or after the sixtieth day following entry into force, or where there is no taxable period for all charges to tax arising on or after the sixtieth day following entry into force.

Article 16

Termination

4.2. Any Contracting Party may terminate this Agreement vis-à-vis any other Contracting Party by serving a notice of termination either through diplomatic channels or by letter to the competent authority of the other Contracting Party. A copy shall be provided to the depositary of the Agreement.

4.3. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the depositary.

4.4. Any Contracting Party that terminates the Agreement shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

Termination

1. Either Contracting Party may terminate the Agreement by serving a notice of termination either through diplomatic channels or by letter to the competent authority of the other Contracting Party.

2. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of notice of termination by the other Contracting Party.

3. A Contracting Party that terminates the Agreement shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

In witness whereof, the undersigned, being duly authorised thereto, have signed the Agreement

Annex 3 – Example: MoU between Germany and Turkey on money laundering data

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE MINISTRY OF FINANCE, FINANCIAL CRIMES INVESTIGATION BOARD
(MASAK) OF THE REPUBLIC OF TURKEY
AND
ZENTRALSTELLE FÜR VERDACHTSMELDUNGEN at the

BUNDESKRIMINALAMT (BKA) OF THE FEDERAL REPUBLIC OF GERMANY CONCERNING THE
EXCHANGE OF FINANCIAL INTELLIGENCE RELATED TO MONEY LAUNDERING AND TERRORIST
FINANCING

The Ministry of Finance, Financial Crimes Investigation Board (MASAK) of the Republic of Turkey and the Zentralstelle für Verdachtsmeldungen at the Bundeskriminalamt (BKA) of the Federal Republic of Germany (each hereinafter referred to as an “Authority” or collectively as “the Authorities”) desire, in a spirit of cooperation and mutual interest, to facilitate the exchange of information in assisting investigations concerning money laundering, associated predicate offences for money laundering and terrorist financing within the framework of the national legislation of the country of each Authority.

To that end, the Authorities, without the intention to create a legally binding document, express the desire to further develop their co-operation in the following way:

Objective

1. To set out a framework whereby the Authorities, to the full extent allowed by the laws of their respective countries, including the legal assistance rules, will provide to each other the information they have reasonable grounds to suspect of being relevant to money laundering, associated predicate offences for money laundering and terrorist financing.

Information Exchange

2. To the extent authorized by the laws of its country, and consistent with its own policies and procedures, each Authority will provide, spontaneously or upon request from the other, any available information concerning financial transactions that they have reasonable grounds to suspect of being relevant to money laundering, associated predicate offences for money laundering and terrorist financing. The providing Authority may, in compliance with its national law, impose conditions on the use made of such information by the receiving Authority. If the receiving Authority accepts such information, it shall be bound by any such conditions.

Making a request

3. Any request for information will be justified by writing at least;
- (a) a brief statement of the underlying facts justifying any request for information
 - (b) the purpose of the request

(c) the name of party(ies), if any, in the country of the requesting Authority which will be given access to the information and the reasons for providing the information to the said party(ies).

Use and Disclosure of Information

4. The receiving Authority will use the information only for the purposes of assisting investigations concerning money laundering, associated predicate offences for money laundering and terrorist financing and in a manner consistent with the legislation of the country of the receiving Authority and the conditions, if any, imposed by the providing Authority.

5. With regard to provision of information upon request, the requesting Authority will disclose the information provided in response only to the party(ies) identified in the request. With regard to spontaneous provision of information, the receiving Authority will disclose the information only to the party(ies) designated by the providing Authority.

6. This Memorandum will not provide a legal basis for a request for information for the purposes of using the information as evidence in criminal proceedings. The information received from the respective Authorities will not be disseminated to any third party and the use of the provided information or document in criminal proceedings and for purposes other than stated in this Memorandum will be prohibited without the prior written consent of the providing Authority; the written consent shall be governed by the national law of the providing Authority, including the legal assistance rules.

7. Unless otherwise stated by the providing Authority, the use of exchanged information for police investigations concerning money laundering, associated predicate offences for money laundering and terrorist financing will be allowed.

Use and Disclosure of Information Contained in a Request

8. The requested Authority will not disclose the information contained in the request for information to parties or for purposes not identified in the request without the prior written consent of the requesting Authority. If not otherwise stated in a request, the requested Authority will be allowed to transmit to other appropriate agencies of the government of the requested Authority (i) the content of the request to obtain information responsive to the request, or (ii) the identity of both the requesting Authority and the individual or entity that is the subject of the request, to facilitate coordination between the requested Authority and other appropriate agencies of the government of the requested Authority.

Procedure for Refusal of a Request for Information

9. The Authorities will be under no obligation to give assistance, especially if;

(a) in the Republic of Turkey or in the Federal Republic of Germany, judicial proceedings concerning the same facts as those related to the request have already been initiated.

(b) the assistance would be contrary to the domestic legal system or to national security of the country of requested Authority or international agreements.

The requesting Authority will be informed of the reason for refusal.

Communication Procedures

10. The Authorities will jointly arrange, consistent with the legislation of their respective countries, for appropriate and secure procedures of communication and will consult each other with the purpose of implementing this Memorandum.

11. Communication between the Authorities will take place in English.

Confidentiality

12. All information exchanged by the Authorities will be confidential and subjected to strict controls and safeguards to ensure that the information is used only in an authorized manner and treated in a confidential manner. Exchanged information will be protected by the same confidentiality as provided by the legislation of the country of the receiving Authority for similar information received from domestic sources.

Others

13. Cooperation in accordance with this Memorandum to begin as of the date of signature.

14. This Memorandum may be amended at any time by mutual written consent of both Authorities.

15. Cooperation in accordance with this Memorandum will end upon the receipt of the written notice by the other Authority. The terms and conditions governing the confidentiality and use and disclosure of information provided before the cooperation in accordance with this Memorandum ends will continue to apply.

Signed on 13 March 2013 in Ankara and duplicate in the English language.

For the Ministry of Finance, Financial
Crimes Investigation Board (MASAK) of
the Republic of Turkey

For the Bundeskriminalamt (BKA) of the
Federal Republic of Germany