The proposal outlines a seven-step process.
1. Entities in scope self-assess against three gateway criteria that examine the type of income, volume of cross-border activity and level of outsourcing.
2. Entities crossing all three gateways are deemed to be at high-risk of lacking substance and would be required to report on substance through their annual tax return.
3. Reporting entities that fail to meet three substance indicators related to own infrastructure (premises and bank account) and nexus (employees and/or directors), are deemed to be ‘shell entities’.
4. The shell presumption can be rebutted by bringing evidence of commercial reasons and nexus.
5. Entities can also request an upfront exemption by substantiating a lack of tax motives test.
6. Tax consequences include denial of certain tax benefits.
7. Data on shell entities would be automatically exchanged between Member States.

The text of the Directive has been subject to lengthy discussions in the Council of the EU working groups. Several compromise texts were proposed, yet Member States have not yet reached agreement.

Based on the December 8, 2023, ECOFIN report, a compromise text was proposed by the Spanish presidency outlining a two-stage approach, i.e., i) first step: automatic exchange of information based on a set of agreed hallmarks and domestic tax consequences where appropriate, and ii) second step: exchange and evaluation of best practices on applying tax consequences.

Following concerns raised by some Member States, an alternative text, incorporating a minimum standard and a toolbox of consequences, was drafted in November but did not receive unanimous agreement.

Discussions are set to continue in 2024, with the file having been included in the work program of the Belgian Presidency (first half of 2024), albeit not prioritized specifically.

The initial aim was adoption in 2023 and application of the rules from January 1, 2024. However, due to the delays in the negotiation process, the final text and date of application remaining uncertain.

It can be inferred from the progress report published by the ECOFIN that the final text will very likely differ from the initial proposal, possibly substantially.