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COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

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To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

No. Cion doc.: SWD(2022) 402 final

Subject: COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT Initiative to strengthen existing rules and expand the exchange of information framework in the field of taxation so as to include crypto-assets
Accompanying the document Proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation

Delegations will find attached document SWD(2022) 402 final.

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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

**Initiative to strengthen existing rules and expand the exchange of information
framework in the field of taxation so as to include crypto-assets**

Accompanying the document

Proposal for a Council Directive

amending Directive 2011/16/EU on administrative cooperation in the field of taxation

{COM(2022) 707 final} - {SEC(2022) 438 final} - {SWD(2022) 400 final} -
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Executive Summary Sheet

Impact assessment on an initiative to strengthen existing rules and expand the exchange of information framework in the field of taxation so as to include crypto-assets.

A. Need for action

Why? What is the problem being addressed?

The main problem addressed by the initiative is that tax authorities lack information to monitor the proceeds obtained using crypto-assets. The under-reporting of data related to revenues and income gained by crypto-asset users severely limits the ability of tax administrations to ensure that due taxes are effectively paid. Crypto-assets are currently not within the scope of the Directive on Administrative Cooperation (Council Directive 2011/16/EU (DAC)), which provides for automatic exchange of information between Member States for tax purposes.

Internet-based products, services and applications, in particular those that take advantage of distributed networks, such as crypto-assets, are easily traded cross-border. This creates tax challenges in terms of access to information, which can only be solved through strong administrative cooperation between countries.

What is this initiative expected to achieve?

As a general objective, the proposal aims at ensuring a fair and efficient functioning of the single market by increasing overall tax transparency. This would benefit not only tax authorities but also users and service providers. This initiative also aims at safeguarding Member State tax revenues by extending and clarifying the reporting obligations concerning crypto-assets within the European Union. The current proposal (DAC8) should more specifically improve the ability of Member States to detect and counter tax fraud, tax evasion and tax avoidance. It should also deter non-compliance.

What is the value added of action at the EU level?

Member State actions do not provide an efficient and effective solution to problems that are transnational in essence. An EU approach appears preferable to avoid a patchwork of reporting requirements unilaterally implemented by some or all Member States. Action at EU level ensures coherence, reduces administrative burden for reporting entities and tax authorities, and is more robust in relation to potential loopholes due to the volatile nature of the assets concerned.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

The following options have been considered: a) non-legislative, soft-law option; and b) six potential legislative initiatives. The legislative initiatives would encompass as alternatives: 1) transaction by transaction; 2) transaction by transaction with an SME threshold; 3) fully aggregated reporting; 4) fully aggregated reporting with an SME threshold; 5) hybrid or middle ground option; and 6) hybrid or middle ground option with an SME threshold.

The preferred choice is a legislative initiative with intermediate coverage. Hence, the hybrid or middle ground option (option 5) is the most appropriate option to meet the objectives of the initiative. All crypto-asset service providers, irrespective of their size and country of establishment, would need to report when performing transactions for clients resident in the EU. This will create a new reporting framework and exchange of information between tax administrations. The initiative will encompass marketable crypto-assets where the aim is to exchange transactional information, albeit with some degree of aggregation.

Who supports which option?
The outcomes of the public consultation and the specific consultation of crypto-asset service providers show a trend that favour a legislative initiative. Most Member States have also expressed support for the preferred choice.
C. Impacts of the preferred option
What are the benefits of the preferred option (if any, otherwise main ones)?
The initiative is expected to have significant direct economic benefits. It will have a positive impact on tax collection, with additional tax revenues estimated at EUR 1.7 billion stemming from crypto-asset transactions. Those revenues can be a source to fund Member State economic and social policies. The initiative is expected to contribute to fairness aspects and increased trust in tax systems through fair burden-sharing across taxpayers.
What are the costs of the preferred option (if any, otherwise main ones)?
The IT solution that would best facilitate reporting and exchange of information with the lowest costs and highest benefits for all parties involved – crypto-asset service providers, Member States and the Commission – is the central directory (already used for exchanges under DAC3 and DAC6). By analogy with previous reporting requirements, costs for tax administrations when dealing with crypto-assets are estimated to vary between EUR 1 million and EUR 12.96 million in one-off (development) costs and between EUR 1 million and EUR 5.67 million in recurrent costs. Crypto-asset service providers are estimated to incur around EUR 259 million in one-off costs and between EUR 22.6 million and EUR 24 million in recurrent costs. The European Commission will also incur costs and these are expected to be around EUR 0.48 million in one-off costs and EUR 0.21 million in recurrent costs. These estimates are however based on a number of assumptions and extrapolations and should be used with caution.
How will businesses, SMEs and micro-enterprises be affected?
The initiative is expected to have a limited impact on small and medium-sized businesses. The information to be reported is largely available to crypto-asset service providers for their daily operations. Furthermore, the crypto-asset market matures fast and so do service providers. While the initiative will bring compliance costs, it may be more favourable to SMEs to have a single set of rules across the EU, rather than a potential patchwork of reporting requirements across the EU. The initiative should also ensure a level playing field across all categories of players, which should benefit SMEs.
Will there be significant impacts on national budgets and administrations?
The costs that national administrations would incur depend on the IT solution used for the exchange of information. The benefits for national budgets in terms of additional tax revenues significantly outweigh costs under each and every option, and are estimated in billions of euro (about EUR 1.7 billion under the preferred option).
Will there be other significant impacts?
The initiative will comply with the General Data Protection Regulation and therefore will not negatively impact the fundamental right to protection of personal data.
D. Follow-up
When will the policy be reviewed?
The initiative will be monitored through information collected via annual assessments and discussions with tax administrations. A more comprehensive assessment will take place in compliance with the DAC's general provisions on evaluation, when the Commission is due to present a report to the European Parliament and the Council on the functioning of the Directive administrative cooperation in direct taxation.