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Proposal for a

COUNCIL DIRECTIVE

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

{SEC(2022) 438 final} - {SWD(2022) 400 final} - {SWD(2022) 401 final} -
{SWD(2022) 402 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Fair taxation is one of the main foundations of the European social market economy. It is also and among the key pillars of the Commission's commitment for '*an economy that works for people*'[1]. A fair tax system should be based on tax rules that ensure everybody pays their fair share, while making it easy for taxpayers, whether businesses or individuals, to comply with the rules.

The COVID-19 pandemic and the consequences derived from Russia's war of aggression against Ukraine add urgency to the need to protect public finances. Member States will require sufficient tax revenues to finance their considerable efforts to contain the negative economic impact of the crises, while ensuring that the most vulnerable groups are protected. In this context, ensuring tax fairness by preventing tax fraud, tax evasion and tax avoidance has become more important than ever. And, in order to better prevent tax fraud, tax evasion and tax avoidance in the EU, it is crucial to strengthen administrative cooperation and exchange of information on tax matters.

More specifically, the emergence of alternative means of payment and investment, such as crypto-assets and e-money, threaten to undermine the progress made on tax transparency in recent years and pose substantial risks for tax evasion. Hence, the Commission committed in the Communication for an Action Plan for fair and simple taxation supporting the recovery strategy[2] to update the directive on administrative cooperation to expand its scope to an evolving economy and strengthen the administrative cooperation framework.

In support of the work of the Commission, the Council (Ecofin) adopted Council conclusions on fair and effective taxation in times of recovery, on tax challenges linked to digitalisation and on tax good governance in the EU and beyond[3] on 27 November 2020.

The Ecofin report to the European Council on tax issues[4], which was approved by the European Council on 1 December 2021, states that it "*is expected that the Commission will, in 2022, table a legislative proposal on further revision of the Directive 2011/16/EU on administrative cooperation in the field of taxation, concerning exchange of information on crypto-assets and tax rulings for wealthy individuals.*"

The European Parliament adopted its resolution of 10 March 2022 with recommendations to the Commission on fair and simple taxation supporting the recovery strategy[5] where it welcomes the Action Plan and supports its thorough implementation and specifically calls on the Commission to include further categories of income and assets such as crypto-assets in the scope of automatic exchange of information.

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1 European Commission, Political Guidelines for the next European Commission 2019-2024, A Union that strives for more, https://op.europa.eu/en/publication-detail/-/publication/62e534f4-62c1-11ea-b735-01aa75ed71a1

2 COM(2020) 312 final.

3 Document 13350/20, FISC 226.

4 Document 14651/21, FISC 227.

5 OJ C, C/347, 09.09.2022, p. 211.

This proposal should also be seen in the context of the parallel work in the OECD to agree on a standard for the exchange on information for tax purposes in relation to crypto-assets (the CARF) and the extension of the scope of the Common Reporting Standard (CRS) to cover e-money, which resulted in an agreement in August 2022[6] and was welcomed by the G20 in the Bali Leaders' Declaration[7] in November 2022.

In recent years, the EU has focused its efforts on tackling tax fraud, tax evasion and tax avoidance, and on boosting transparency. Major improvements have been made in particular in the field of exchange of information trough a number of amendments to the Directive on Administrative Cooperation (DAC)[8]. Nevertheless, the European Court of Auditors report[9] and the European Parliament resolution[10] pointed at some inefficiencies and the need for improvement in several areas of the Directive, relating to all forms of exchanges of information and administrative cooperation. In particular, the lack of specific provisions covering e-money and central banck digital currencies, cross-border tax rulings for high net worth individuals and the lack of clarity of the compliance measures emerged among the most problematic elements of the framework[11].

The European Court of Auditors report notes that *'Cryptocurrencies are excluded from the scope of information exchange. If a taxpayer holds money in electronic cryptocurrencies, the platform or other electronic provider supplying portfolio services for such customers are not obliged to declare any such amounts or gains acquired to the tax authorities. Therefore, money held in such electronic instruments remains largely untaxed.'*

Therefore, there is a clear need to improve the existing framework for exchange of information and administrative cooperation in the EU.

In addition to making existing rules more stringent, the expansion of administrative cooperation to new areas is required in the EU. This is to address the challenges posed by the ever increasing use of crypto-assets for investment purposes. This will help tax administrations in the EU to better and more efficiently collect taxes and keep pace with new developments, especially given the differences in the taxation systems for crypto-assets from Member State to Member State. The characteristics of crypto-assets make the traceability and detection of taxable events by tax administrations very difficult. The problem is intensified in particular when trading is carried out using crypto-asset service providers or crypto-asset operators located in another country, or when it is done directly between individuals or entities established in another jurisdiction. The lack of reporting of income from crypto-asset

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6 https://www.oecd.org/tax/exchange-of-tax-information/oecd-presents-new-transparency-framework-for-crypto-assets-to-g20.htm

7 http://www.g20.utoronto.ca/2022/G20%20Bali%20Leaders-%20Declaration,%2015-16%20November%202022.pdf

8 Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC.

9 Special Report No 03/2021: Exchanging tax information in the EU: solid foundation, cracks in the implementation.

10 European Parliament. (2021). European Parliament resolution of 16 September 2021 on the implementation of the EU requirements for exchange of tax information: progress, lessons learnt and obstacles to overcome, retrieved from: https://www.europarl.europa.eu/doceo/document/TA-9-2021-0392_EN.pdf

11 European Court of Auditors. (2021). Exchanging tax information in the EU: solid foundation, cracks in the implementation. Exchanges of information have increased, but some information is still not reported. Pages 33-34, retrieved from: https://www.eca.europa.eu/Lists/ECADocuments/SR21_03/SR_Exchange_tax_inform_EN.pdf

investments leads to a shortfall of Member States' tax revenues. It also provides crypto-asset users with an advantage over those who do not invest in crypto-assets. If this regulatory gap is not addressed, the objective of fair taxation cannot be ensured. In order to address these concerns, the Commission brought forward this proposal that is based on the OECD crypto-asset reporting framework. The latter specifies due diligence procedures, reporting requirements and other rules for reporting crypto-asset service providers. The main difference between the proposal and the OECD crypto-asset reporting framework is that operators of crypto-asset services active on the EU market are regulated by Regulation XXX.

Well functioning and coordinated reporting and exchange of information are further needed to improve the conditions for taking necessary action to enforce sanctions against Russia. This increases the urgency and highlights the importance of introducing provisions to ensure that information related to both holding, and transactions of crypto-assets are reported and exchanged among Member States.

This proposal foresees also to strengthen existing provisions of the Directive to reflect the developments observed in the internal market and at international level. It should lead to an effective reporting and exchange of information including by reflecting the latest additions to the Common Reporting Standard including the integration of e-money and central bank digital currency provisions, by providing a clear and harmonised framework for compliance measures, or by extending the scope of cross-border rulings to high net worth individuals.

- **Consistency with existing policy provisions in the policy area**

The proposed legislation addresses the broad political priority for transparency in taxation, which is a pre-requisite for effectively fighting against tax fraud, tax evasion and tax avoidance.

The Directive on administrative cooperation that provides the framework for administrative cooperation between Member States' competent authorities in the field of taxation was amended several times with the following initiatives:

– Council Directive 2014/107/EU of 9 December 2014[12] (DAC2) as regards the automatic exchange of financial account information between Member States based on the OECD Common Reporting Standard (CRS) which prescribes the automatic exchange of information on financial accounts held by non-residents;

– Council Directive (EU) 2015/2376 of 8 December 2015[13] (DAC3) as regards the mandatory automatic exchange of information on advance cross-border tax rulings;

– Council Directive (EU) 2016/881 of 25 May 2016[14] (DAC4) as regards the mandatory automatic exchange of information on country-by-country reporting (CbCR) among tax authorities;

– Council Directive (EU) 2016/2258 of 6 December 2016[15] (DAC5) as regards access to anti-money-laundering information by tax authorities;

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12 Council Directive (EU) 2014/107 of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (OJ L 359, 16.12.2014, p. 1).

13 Council Directive (EU) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (OJ L 332, 18.12.2015, p. 1).

14 Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (OJ L 146, 3.6.2016, p. 8).

– Council Directive (EU) 2018/822 of 25 May 2018[16] (DAC6) as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements; and

– Council Directive (EU) 2021/514[17] of 22 March 2021 (DAC7) amending Directive 2011/16/EU on administrative cooperation in the field of taxation as regards sellers on digital platforms.

• **Consistency with other EU policies**

The existing provisions of the Directive on Administrative Cooperation interact with the General Data Protection Regulation[18] (GDPR) in several instances where personal data becomes relevant. At the same time, the Directive includes specific provisions and safeguards on data protection. The proposed amendments will continue to follow and respect these safeguards. The relevant IT and procedural measures ensure that personal data are protected in line with the GDPR. The exchange of data will pass through a secured electronic system that encrypts and decrypts the data and, in every tax administration, only authorised national officials should have access to this information. As joint data controllers, Member States will have to ensure the data storage according to the security measures and time limts required by the GDPR.

The Commission is active in several policy areas relevant to the crypto-asset market, including crypto-asset service providers and crypto-asset operators covered by the proposed initiative. The proposed initiative does not impinge on other simultaneously ongoing Commission projects, as it is specifically aimed at addressing certain tax-related issues. The proposal builds on the provisions of the Regulation on Market in Crypto-Assets (Regulation XXX) and the Transfer of Funds Regulation especially in terms of using the definitions set out in those EU acts and relying on the authorisation requirements of the former. The Transfer of Funds Regulation ensures a certain level of due diligence carried out by obliged entities for anti-money laundering and financing of terrorism purposes but does not provide for the reporting and automatic exchange of information in the detail which is required for direct tax purposes.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• **Legal basis**

Article 115 of the Treaty on the Functioning of the European Union (TFEU) is the legal base for legislative initiatives in the field of direct taxation. Although no explicit reference to direct taxation is made, Article 115 refers to directives for the approximation of national laws that directly affect the establishment or functioning of the internal market. For this condition to be met, it is necessary that proposed EU legislation in the field of direct taxation aims to rectify

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15 Council Directive (EU) 2016/2258 of 6 December 2016 amending Directive 2011/16/EU as regards access to anti-money-laundering information by tax authorities (OJ L 342, 16.12.2016, p. 1–3).

16 Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (OJ L 139, 5.6.2018, p. 1–13).

17 Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation (OJ L 104 25.3.2021, p. 1–26).

18 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39–98).

existing inconsistencies in the functioning of the internal market. Furthermore, given that the information exchanged under the Directive on Administrative Cooeration can be also used in the field of VAT and other indirect taxes, Article 113 TFEU is also quoted as a legal base.

As the proposed initiative amends the Directive, it is inherent that the legal base remains the same. Indeed, the proposed rules that aim at improving the existing framework with respect to the exchange of information and administrative cooperation do not deviate from the subject matter of the Directive. Most notably, the envisaged amendments will provide a clear and harmonised framework for compliance measures, integrate e-money provisions into the existing framework and extend the scope of cross-border rulings to high net worth individuals. The consistent application of these provisions can only be achieved through the approximation of national laws.

In addition to the existing framework, the proposal presents rules on reporting by reporting crypto-asset service providers as a response to problems in the area of taxation arising out of the use of crypto-assets for investment or as a means of exchange. Reporting crypto-asset service providers allow crypto-asset users to make use of their services, while potentially not reporting income earned in the Member State of their residence. As a consequence, Member States suffer from unreported income and loss of tax revenue. Such a situation also gives rise to conditions of unfair tax competition against individuals or businesses that do invest in crypto-assets, which distorts the operation of the internal market. It follows that such a situation can only be tackled through a uniform approach, as prescribed in Article 115 TFEU.

- **Subsidiarity (for non-exclusive competence)**

The proposal fully observes the principle of subsidiarity as set out in Article 5 TFEU. It addresses administrative cooperation in the field of taxation. This includes certain changes in the rules to improve the functioning of existing provisions that deal with cross-border cooperation between tax administrations across Member States. The proposal also involves extending the scope of automatic exchange of information to crypto-asset service providers and crypto-asset operators by placing an obligation on them to report on the income earned by crypto-asset users.

Tax authorities lack information to monitor the proceeds obtained using crypto-assets and the potential tax consequences. In other words, there is a lack of information available to tax administrations regarding crypto-assets, even though the crypto-assets market has gained in importance over the last few years.

Most Member States already have legislation or at least administrative guidance in place to tax income obtained through crypto-asset investments. However, they often lack the necessary information that would enable them to do so.

Legal certainty and clarity can only be ensured by addressing national inefficiencies through a single set of rules applicable to all Member States. The internal market needs a robust mechanism to address these loopholes in a uniform fashion and to rectify existing distortions by ensuring that tax authorities receive appropriate information on a timely basis. A harmonised reporting framework across the EU seems indispensable in light of the prevalent cross-border dimension of services provided by reporting crypto-asset service providers. Considering that the reporting obligation with respect to income earned through crypto-asset investments aims primarily to inform tax authorities about cross-border crypto-asset transactions, it is necessary to pursue such an initiative through action at the EU level, in order to ensure a uniform approach to the identified problem.

Therefore, the EU is better placed than individual Member States to address the problems identified and ensure the effectiveness and completeness of the system for the exchange of information and administrative cooperation. First, the proposed Directive will ensure a consistent application of rules across the EU. Second, all reporting crypto-asset service providers in scope will be subject to the same reporting requirements. Third, reporting will be accompanied by an exchange of information and, as such, enable tax administrations to obtain a comprehensive set of information on the income earned through crypto-asset investments.

- **Proportionality**

The proposal consists of improving existing provisions of the Directive on Administrative Cooperation and extends the scope of automatic exchanges to certain specific information reported by reporting crypto-asset service providers. The improvements do not go beyond what is necessary to achieve the objective of exchanges of information and, more broadly, administrative cooperation. Considering that the identified distortions in the functioning of the internal market usually extend beyond the borders of a single Member State, EU common rules represent the minimum necessary for tackling the problems in an effective manner.

Thus, the proposed rules contribute to a clearer, and more consistent and effective application of the Directive leading to better ways of achieving its objectives. The envisaged obligation of reporting crypto-asset service providers to report income earned by their users, also offers a workable solution against tax evasion through the use of mechanisms for the exchange of information that have previously already been tried for DAC3 and DAC6. In this vein, one can claim that the proposed initiative represents a proportionate answer to identified loopholes in the Directive and also aims to tackle the problem of tax evasion.

- **Choice of the instrument**

The legal base for this proposal is dual: Articles 113 and 115 TFEU, which lay down explicitly that legislation in this field may only be enacted in the legal form of a directive. It is therefore not permissible to use any other type of EU legal act when it comes to passing binding rules in taxation. In addition, the proposed directive constitutes the seventh amendment to the Directive; it thus follows Council Directives 2014/107/EU, (EU) 2015/2376, (EU) 2016/881, (EU) 2016/2258, (EU) 2018/822 and (EU) 2021/514.

3. RESULTS OF *EX POST* EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- ***Ex post* evaluations/fitness checks of existing legislation**

In 2021, the European Court of Auditors examined how the European Commission is monitoring the implementation and performance of the system for exchange of tax information laid down in Directive 2011/16/EU, and how Member States are using the exchanged information.

In addition, the European Parliament[19] assessed the implementation of the obligations of information exchange under Directive 2011/16/EU and its subsequent amendments, which aim to combat tax fraud, tax evasion and tax avoidance by facilitating the exchange of information related to taxation.

[19] https://www.europarl.europa.eu/doceo/document/A-9-2021-0193_EN.pdf

The European Cout of Auditors report concluded that overall the system has been well established, but more needs to be done in terms of monitoring, ensuring data quality and using the information received. In its resolution, the European Parliament claims that the information exchanged is of limited quality and that little monitoring of the system's effectiveness takes place. It was also noted that currently there is no common EU framework for monitoring the system's performance and achievements, and only a few Member States systematically carry out quality checks on the data exchanged. Finally, the European Parliament advocated for new legislation to strengthen and further improve the Directive[20], while at the same time, ensuring the thorough implementation of existing rules and standards, also in the field of anti-money laundering. Building upon these two reports, this legislative proposal presents a set of specific initiatives to improve the functioning of administrative cooperation.

- **Stakeholder consultations**

On 10 March 2021, the Commission launched a public consultation to gather feedback on the way forward for EU action on strengthening the exchange of information framework in the field of taxation. A number of questions were presented and stakeholders gave supportive feedback in a total of 33 responses.

In addition, on 23 March 2021, the Commission carried out a targeted consultation of the business sector by holding a meeting with various representatives of crypto-asset and e-money service providers and digital asset associations. There was a consensus among representatives on the benefits of having a standardised EU legal framework for gathering information from reporting crypto-asset service providers, as compared with several disparate national reporting rules. In addition, representatives advocated for a solution similar to DAC2, which would enable reporting of the information only to the tax administration in a Member State where the reporting crypto-asset service provider is authorised/resident/registered.

As regards Member States, they were consulted via a questionnaire and dedicated meetings. On 13 November 2020 and 24 March 2021, the Commission services organised a meeting of Working Party IV, where Member States had the opportunity to debate a possible proposal for an amendment to the Directive. The meeting focused on the reporting and exchange of information on income earned through crypto-asset investments.

Overall, broad support was recorded for a possible EU initiative for the exchange of information on income earned by crypto-asset users via reporting crypto-asset service providers. Most Member States supported aligning the scope with the work done at OECD level.

Overall, both public and targeted consultations seem to converge on the challenges that the new rules addressed to reporting crypto-asset service providers should aim to tackle: the lack of reporting on holdings and transactions involving crypto-assets; and the need to clarify the inclusion of e-money products in the scope of reporting obligations and information exchange among Member States.

[20] For example, the inclusion of new categories of income and capital, rulings for high net worth individuals, e-money and crypto-assets, provisions on the use of exchanged information, etc.

- **Impact assessment**

The Commission conducted an impact assessment of the relevant policy options. This received a positive opinion from the Regulatory Scrutiny Board on 12 November 2021 (SEC(2022) 438). The Regulatory Scrutiny Board issued a positive opinion with reserrvations making a number of recommendations for improvements that have been taken into account in the final impact assessment report (SWD(2022) 401). The Regulatory Scrutiny Board commented on the potential improvements on the description of the scope of the initiative and all the available and feasible policy options taking into account the impact on small and medium enterprises. The impact assesment was re-drafted to better define the scope of the initiative and further analyse the different policy options taking into account the potential carve out of crypto-asset service providers based on their size.

Various policy options have been assessed against the criteria of effectiveness, efficiency and coherence in comparison with the baseline scenario. At the highest level of analysis, a choice is to be made between the *status quo* or baseline scenario and a scenario where the Commission would act by way of either a non-regulatory or a regulatory action. Non-regulatory action would consist in issuing a recommendation. The regulatory options involve a legislative initiative to amend specific elements of the existing administrative cooperation framework.

The different policy options revolved around the interaction of different forms of reporting (i.e. transaction-by-transaction, aggregated or hybrid) and the possibility to set a threshold based on size (turnover) of businesses. The preferred option is the one where there is a hybrid reporting, where reporting crypto-asset service providers report aggregate information per type of crypto-asset and per type of transaction; thereby ensuring that tax authorities can manage the amount of received information to perform the needed risk analyses. The preferred option does not include any threshold based on reporting crypto-asset service providers' size as it may create loopholes.

Regarding reporting crypto-asset service providers, the impact assessment indicates that the regulatory option at EU level is the most appropriate for meeting the identified policy. The *status quo* or baseline scenario was shown to be the least effective, efficient or coherent option. As opposed to the baseline scenario, an EU mandatory common standard would ensure that all EU tax administrations have access to the same type of data. In other words, EU regulatory action would put all tax authorities on an equal footing when it comes to access to information collected for an identified tax purpose. This also provides for the automatic exchange of information at EU level based on common standards and specifications. Once implemented, it is the only scenario in which tax authorities in the Member State of a crypto-asset user can verify that the user has accurately reported its capital gains earned through crypto-asset investments, without the need for ad hoc, time-consuming requests and inquiries. In addition, an EU mandatory common reporting standard would ensure that crypto-asset service-providers do not face fragmented national solutions when it comes to tax related reporting obligations.

Economic impacts

Benefits

The obligation to report income earned through crypto-asset investments and the exchange of such information will help Member States receive a full set of information in order to collect tax revenues due. Based on estimations, additional tax revenues could reach EUR 2.4 billion.

Common reporting rules will also help create a level playing field between crypto-asset providers. Transparency on income earned by crypto-asset investors would improve the level playing field with more traditional assets.

Having a single EU mandatory instrument could also have positive social impacts and contribute to a positive perception of tax fairness and to a fair burden sharing across taxpayers. It is assumed that the broader the scope of the rules, the greater the perception of tax fairness, given that there are issues of underreporting across all types of activities. The same reasoning applies to benefits in terms of fair-burden sharing: the wider the scope of the initiative, the better Member States can ensure that taxes due are effectively collected. The fiscal benefits of EU action are much greater where the reporting obligation has a broad scope.

Costs

The one-off costs incurred for implementing and automatic EU-wide reporting are estimated approximately at EUR 300 millions for the totality of reporting crypto-asset service providers and tax administrations, with recurrent costs around EUR 25 millions annually . One-off and recurrent costs are mainly due to IT systems' development and operations. Tax administrations will also incur enforcement costs. In the interest of cost efficiency, Member States are encouraged to enable digital reporting and ensure, to the extent possible, interoperability of systems, including at data level, between reporting crypto-asset service providers and tax administrations.

- **Regulatory fitness and simplification**

The proposal is designed to minimise regulatory burdens for reporting crypto-asset service providers, taxpayers and tax administrations. In line with the one in one out rule, reporting crypto-assets service providers will benefit from homogeneous reporting requirements throughout the EU, rather than having multiple standards across each Member State. The preferred policy response represents a proportionate answer to the identified problem since it does not exceed what is necessary for achieving the objective of the Treaties for a better functioning of the internal market without distortions. Indeed, the common rules will be limited to creating the minimum necessary common framework for reporting income earned through crypto-asset investments. For example: (i) the rules ensure that there is no double reporting (i.e. single point oreporting); (ii) the automatic exchange is limited to the relevant Member States; and (iii) the imposition of penalties for non-compliance will remain under the sovereign control of Member States. In addition, harmonisation does not go further than ensuring that the competent authorities are informed about the income earned. Thereafter, it is for Member States to decide on the tax due in accordance with national legislation.

- **Fundamental rights**

This proposed directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, the set of data elements to be transmitted to tax administrations are defined in a way to capture only the minimum data necessary to detect non-compliant underreporting or non-reporting, in line with the GDPR obligations in particular the data minimisation principle.

4. BUDGETARY IMPLICATIONS

See legislative financial statement.

5. DETAILED EXPLANATION OF THE SPECIFIC PROVISIONS OF THE PROPOSAL

The proposal puts forward changes to existing provisions on exchanges of information and administrative cooperation. It also extends the Directive's scope to the automatic exchange of information with respect to information reported by reporting crypto-asset service providers. The rules on due diligence procedures, reporting requirements and other rules applicable to reporting crypto-asset service providers are based on the OECD crypto-asset reporting framework.

(i) Automatic exchange of information

- **Categories of income and capital**

Article 8(1) lays down the categories of income subject to mandatory automatic exchange of information between the Member States. Non-custodial dividend income is added to the categories of income and capital that are already subject to the exchange of information. An amendment will also oblige Member States to exchange with other Member States all information that is available on all categories of income and capital[21] with respect to taxable periods starting on or after January 2026 in accordance with Article 8(3).

- **Advance cross-border rulings for high-net-worth individuals**

Article 8a lays down rules for the automatic exchange of advance cross-border rulings and advanced pricing agreements for persons other than natural persons. This provision is extended to high-net-worth individuals who hold a minimum of EUR 1 000 000 in financial or investable wealth or assets under management, excluding that individual's main private residence. The amendment will oblige Member States to exchange with other Member States information on advance cross-border rulings for high-net-worth individuals issued, amended or renewed between 1 January 2020 and 31 December 2025, such communication shall take place under the condition that they were still valid on 1 January 2026.

- **Information reported by reporting crypto-asset service providers**

Article 8ad lays down the scope and conditions for the mandatory automatic exchange of information that will be reported by reporting crypto-asset service providers to the competent authorities. Detailed rules concerning the obligations to be fulfilled by reporting crypto-assets service provides are laid down in Annex VI which is introduced by Annex III. As a first step, the rules provide for an obligation on the reporting crypto-asset service provider to collect and verify the information in line with due diligence procedures laid down by the proposal. As a second step, the reporting crypto-asset service providers have to report to the relevant competent authority information on the crypto-asset users, i.e. those who use the service provider to trade and exchange their crypto-assets. The third step concerns the communication of the reported information by the competent authority of the Member State that have received the information from the reporting crypto-asset service provider to the competent authority of the relevant Member State where the reportable crypto-asset user is resident.

Scope

Annex V, Section IV provides definitions that determine the scope of the rules for reporting.

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[21] Income from employment, director's fees, life insurance products not covered by other Union legal instruments on exchange of information and other similar measures, pensions, ownership of and income from immovable property and royalties

– Who bears the burden of reporting?

The rules include definitions of what is a crypto-asset service provider, crypto-asset operator and reporting crypto-asset service provider.

A crypto-asset service provider means any legal person or undertaking whose occupation or business is the provision of one or more crypto-asset services to third parties on a professional basis, and who is authorised in a Member State to provide crypto-asset services in accordance with Regulation XXX. This term is linked with Regulation XXX to keep a consistent definition. Furthermore, crypto-asset service providers are allowed to exercise activity in the EU through passporting and are listed in a register maintained by ESMA.

A crypto-asset operator means any natural person, legal person or undertaking whose occupation or business is the provision of one or more crypto-asset services to third parties on a professional basis but who is not covered by the scope of Regulation XXX.

A reporting crypto-asset service provider is any crypto-asset service provider and any crypto-asset operator that conducts one or more crypto-asset services permitting reportable users to complete an exchange transaction.

The definition of reporting crypto-asset service provider encompasses crypto-asset service providers as defined in Regulation XXX and crypto-asset operators that do not fall under the scope of Regulation XXX (e.g. crypto-asset operator with 'non-solicited' EU resident crypto-asset users, crypto-asset operators that trade non-fungible tokens, etc.) and hence do not meet the conditions to be authorised under that Regulation.

Crypto-asset service providers receive authorisation under Regulation XXX in the Member State of the legal entity and thus will report in such Member State. Whereas, to cover crypto-asset operators, the proposal lays down in Article 8ad(7) obligations for a single registration with a Member State of their choice. The reporting will take place in such Member State. Annex VI, Section V, paragraph F lays down the details of the registration process. To ensure uniform conditions for the implementation of the proposed rules and, more precisely, the registration and identification of reporting crypto-asset service provider, subparagraph 3 of Article 8ad(11) confers implementing powers on the Commission to adopt a standard form. These powers are to be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

Only crypto-asset operators that do not fall under the scope of Regulation XXX, would be required to register in a Member State in accordance with Article 8ad(12). A crypto-asset service provider already authorised within the EU, pursuant to Regulation XXX, would be exempted from the single registration requirement.

As the crypto-asset operators may be resident outside the EU, the proposal foresees the relieving of the single registration and reporting obligation as provided for in this Directive which is dependent upon the determination of correspondent reporting and exchange mechanisms in relation to non-Union jurisdictions and Member States. This mechanism is similar to that included in Directive 2021/514 (DAC7) and has the same purpose of ensuring a level playing field and avoiding that service providers engage in forum shopping.

The Directive requires reporting by European Union and non-European Union crypto-asset operators, to the extent that such non-European Union operators have reportable users resident

in the Union. This is essential to ensure a level playing field among all reporting crypto-asset service providers and prevent unfair comptetition.

The obligation of single registration and reporting for non-European Union operators, may be relieved, in cases where adequate arrangements exist, to ensure that corresponding information is exchanged between a non-Union jurisdiction and Member States.

These adequate arrangements will be determined by the Commission in accordance with the criteria and processes specified in Article 8ad. Where determined as correspondent, the registration and reporting obligation will be relieved and in the absence of such a determination, the registration and reporting obligations, as provided for in the Directive, shall still apply.

– Which transactions are reportable?

Reportable transactions are exchange transactions and transfers of reportable crypto-assets. Both, domestic and cross-border transactions are in the scope of the proposal and are aggregated by type of reportable crypto-assets.

– Whose transactions are reportable?

A crypto-asset user is an individual or entity that is a customer of a reporting crypto-asset service provider for the purposes of carrying out reportable transactions. An individual or entity, other than a financial institution or a reporting crypto-asset service provider, acting as a crypto-asset user for the benefit or account of another individual or entity as agent, custodian, nominee, signatory, investment adviser, or intermediary, is not treated as a crypto-asset user, and such other individual or entity is treated as the crypto-asset user.

Where a reporting crypto-asset service provider facilitates payments in crypto-assets for or on behalf of a merchant, the customer that is the counterparty to the merchant must be treated as a crypto-asset user. In such cases the reporting crypto-asset service provider is required to verify the identity of the customer in line with domestic anti-money laundering rules.

A reportable user is a crypto-ssset user resident in a Member State that is a reportable person. Excluded persons are: (a) an entity the stock of which is regularly traded on one or more established securities markets; (b) any entity that is a related entity of an entity described in clause (a); (c) a governmental entity; (d) an international organisation; (e) a central bank; or (f) a financial institution other than an investment entity described in Section IV E(5)(b).

Only the transactions of a reportable user are reportable.

Due diligence procedures

A reporting crypto-asset service provider shall carry out due diligence procedures laid down in Annex VI, Section III in order to identify reportable users. The due diligence procedures apply to individual crypto-asset users as well as entity crypto-asset users to be identified as reportble users. The identification of such reportable users is done through self-certification that allows the reporting crypto-asset service provider to determine, for instance, the residence(s) of crypto-asset users. Through this process additional documentation pursuant to customer due diligence procedures may be collected.

Section III, paragraph A lays down the specific information on an individual crypto-asset user that a reporting crypto-asset service provider must collect.

Section III, Paragraph B lays down the specific information on an entity crypto-asset user that a reporting crypto-asset service provider needs to collect on an entity crypto-asset user. Those procedures apply for purposes of determining whether the entity crypto-asset user is a reportable user or an entity, other than an excluded person, with one or more controlling persons who are reportable person.

Section III, Paragraph C lays down the rules for the requirements of self-certification for individual crypto-asset users and entity crypto-asset users.

Section III, Paragraph D lays down the general due dilligence requirements.

Reporting to the competent authority by the reporting crypto-asset service provider

The information, as collected and verified, is to be reported no later than 31 January of the year following the relevant calendar year or other appropriate reporting period of the reportable transaction. Reporting is to take place only in one Member State (i.e. single registration in Member State of choice or Member State of authorisation). A reporting crypto-asset service provider is to report in the Member State in which it is authorised under Regulation XXX. A reporting crypto-asset service provider that is not authorised under Regulation XXX is to report in the Member State in which it has registered in accordance with Article 8ad(11).

In accordance with amended Article 25(3), the reporting crypto-asset service provider has to inform each individual concerned that information relating to this individual will be collected and reported to the competent authorities as required under this proposed directive. The reporting crypto-asset serice provider must also provide all information the data controllers are required to provide under the GDPR. The reporting crypto-asset service provider has to supply each individual with all information and at the latest, before the information is reported. This is without prejudice to the data subject's rights provided under the GDPR.

Automatic exchange of information between competent authorities

Information reported by a reporting crypto-asset service provider has to be communicated to the competent tax authorities of the Member States where the reporting crypto-asset service provider is resident for tax purposes or has received its authorisation, or where it is registered, within 2 months following the end of the calendar year to which the reporting requirements applicable to reporting crypto-asset service providers relate. Paragraph 3 of Article 8ad lays down which information is to be reported to those competent tax authorities of the Member States.

A Reporting Crypto-Asset Service Provider is taken to report to the competent authority of the Member State of its authorisation, tax residence, or registration the information no later than 31 January of the year following the relevant calendar year or other appropriate reporting period of the reportable transaction..

Such timely exchanges will provide tax authorities with a complete set of information, enabling the preparation of pre-populated yearly tax assessments.

The automatic exchange of information will take place electronically via the EU common communication network (CCN) by using an XML schema developed by the Commission. This is the common communication network used for the authomatic exchange of information under this Directive.

For the automatic exchange of information under this proposal, the information will be communicated to the central directory developed by the Commission and already used for the automatic exchange of information on advance cross-border tax rulings and cross-border arrangements.

Effective implementation and prevention of performing exchange transactions

If a crypto-asset user does not provide the information required under Section III after two reminders following the initial request by the reporting crypto-asset service provider, but not before the expiration of 60 days, the reporting crypto-asset service providers are to prevent the crypto-asset user from performing exchange transactions. (see Section V, paragraph A).

(ii) Administrative cooperation

- **Penalties and other compliance measures**

Article 25(a) Penalties and other compliance measures

Effective penalties for non-compliance at national level

Article 25a on penalties is amended by specifically indicating that Member States must lay down rules on penalties applicable to infringements of national provisions adopted in accordance with the Directive and concerning Articles 8(3a), 8aa, 8ab, 8ac and 8ad. The penalties and other compliance measures provided for in the Directive are to be effective, proportionate and dissuasive. A minimum financial penalty is to apply in cases of non-reporting after two valid administrative reminders or when the provided information contains incomplete, incorrect or false data, amounting to more than 25 % of the information that should be reported.

(iii) Other provisions

- **Use of information**

Article 16 is amended with a new paragraph 7 that requires Member States to put in place an effective mechanism to ensure the use of information acquired through the reporting and the automatic exchange of information under Articles 8 to 8ad.Article 16 (2) is amended to ensure that information reported and exchanged under the Directive on administrative Cooperation can be used for purposes other than direct taxation, in situations where there is an agreement at EU level to use such information to implement sanctions in an international context. Such situations would in particular be those where decisions have been taken pursuant to Article 215 of the Treaty on the Functioning of the European Union regarding restrictive measures. Indeed, information exchanged under Directive 2011/16/EU may be very relevant for the detection of violation or circumvention of restrictive measures. In return, any potential breaches of the sanctions will be relevant for tax purposes since avoidance of restrictive measures will in most cases also amount to tax avoidance in relation to these assets. Given the likely synergies and close link between the two areas, authorizing a further use of the data is therefore appropriate.

- **Reporting**

Article 27 (2) is replaced by a provision obliging Member States to monitor and assess, for their own jurisdiction, the effectiveness of administrative cooperation in combating tax fraud, tax evasion and tax avoidance, in accordance with the Directive. For the purpose of the evaluation of the Directive, Member States must communicate annually the results of their assessment to the Commission. This amendment results in removing the biennial evaluation of the hallmarks for cross-border arrangements in Annex IV.

- **Reporting of information on tax identification numbers**

Article 27c is added in order to include a provision requesting Member States to ensure that the tax identification number of reported individuals or entities issued by the Member State of residence are included in the communication of the information referred to in Article 8(1), Article 8(3a), Article 8a(6), Article 8aa(3), Article 8ab(14), 8ac(2) and Article 8ad(3). The tax identification number is to be provided even though not specifically required by these Articles.

- **Review of the provisions of Directive 2014/107/EU**

As Council Directive 2014/107/EU (DAC2) implements within the EU the OECD Common Reporting Standard, this proposal takes account of amendments to the Common Reporting Standard which have been agreed on 26 August 2022 during the Common Reporting review process. These amendments extend the scope of the Common Reporting Standard to cover electronic money products and central bank digital currencies. Additional amendments have been agreed to further improve the due diligence procedures and reporting outcomes, with a view to increasing the usability of Common Reporting Standard information for tax administrations and limiting burdens on financial institutions, where possible.

- **Identification services**

Identification services are introduced as a simplified and standardised means of identification of service providers and taxpayers. This allows those Member States that so wish to use this format for identification without in any way affecting the flow and quality of information exchanged with other Member States that do not use identification services.

- **Use of information exchanges for other purposes**

In general, the Directive provides the possibility to use the information exchanged for other purposes than for direct and indirect tax purposes to the extent that the sending Member State has stated the purpose allowed for the use of such information in a list. The proposal removes the need to consult the sending Member State in cases where a use of information is covered in a list drafted by the sending Member State.

Furthermore, the proposal appropriately clarifies that information communicated between Member States may also be used for the assessment, administration and enforcement of customs duties, and anti-money laundering and countering the financing of terrorism.

- **Date of application of the Directive**

The Directive on administrative cooperation is to apply from 1 January 2026. Two exceptions are provided in the Directive. The provisions on the identification service apply from January 2025. Provisions on the verification on the tax identification number will only apply from January 2027.

2022/0413 (CNS)

Proposal for a

COUNCIL DIRECTIVE

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 and 115 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament[22],

Having regard to the opinion of the European Economic and Social Committee[23],

Acting in accordance with a special legislative procedure,

Whereas:

(1) Tax fraud, tax evasion and tax avoidance represent a major challenge for the Union and at global level. Exchange of information is pivotal in the fight against such practices.

(2) The European Parliament has stressed the political importance of fair taxation and of fighting tax fraud, tax evasion and tax avoidance, including through greater administrative cooperation and exchange of information between Member States.

(3) On 1 December 2021 the European Council approved a report from the Council (Ecofin) requesting the European Commission to table in 2022 a legislative proposal containing further revisions to Council Directive 2011/16/EU[24], concerning exchange of information on crypto-assets and tax rulings for wealthy individuals.[25]

(4) The European Court of Auditors published a report examining the legal framework and implementation of the Directive. That report concludes that the overall framework of Directive 2011/16/EU is solid, but that some provisions need to be strengthened in order to ensure that the full potential of the exchange of information is exploited and the effectiveness of the automatic exchange of information is measured. The report furthermore concludes that the scope of the Directive should be enlarged in order to cover additional categories of assets and income, such as crypto-assets.

(5) The crypto-asset market has gained in importance and increased its capitalisation substantially and rapidly over the last 10 years. Crypto-assets are a digital

22 Not yet published in the Official Journal.

23 Not yet published in the Official Journal.

24 Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.3.2011, p. 1).

25 Document 14651/21, FISC 227, Ecofin report to the European Council on tax issues.

representation of a value or of a right, which is able to be transferred and stored electronically, using distributed ledger technology or similar technology.

(6) Member States have rules and guidance in place, albeit different across Member States, to tax income derived from crypto-asset transactions. However, the decentralised nature of crypto-assets makes it difficult for Member States' tax administrations to ensure tax compliance.

(7) Regulation XXX on Markets in Crypto-assets of the European Parliament and the Council[26] (the Regulation XXX) has expanded the Union regulatory perimeter to issues of crypto-assets that had so far not been regulated by Union financial services acts as well as providers of services in relation to such crypto-assets ('crypto-asset service providers'). The Regulation XXX sets out definitions that are used for the purposes of this Directive. This Directive also takes into account the authorisation requirement for crypto-asset service providers under Regulation XXX in order to minimise administrative burden for the crypto-asset service providers. The inherent cross-border nature of crypto-assets requires strong international administrative cooperation to ensure effective regulation.

(8) The Union's Anti-Money Laundering/Countering the Financing of Terrorism framework (AML/CFT) extends the scope of obliged entities subject to AML/CFT rules, to crypto-asset service providers regulated by Regulation XXX. In addition, the Regulation XXX[27] extends the obligation of payment service providers to accompany transfers of funds with information on the payer and payee to crypto-assets services providers to ensure the traceability of transfers of crypto-assets for purpose of fighting against money laundering and terrorism financing.

(9) At international level, the Organisation for Economic Co-operation and Development (OECD) Crypto-Asset Reporting Framework[28] aims at introducing greater tax transparency on crypto-assets and its reporting. Union rules should take into account the framework developed by the OECD in order to increase effectiveness of information exchange and to reduce the administrative burden.

(10) Council Directive 2011/16/EU[29] lays down obligations for financial intermediaries to report financial account information to tax administrations that are then required to exchange this information with other relevant Member States. However, most crypto-assets are not obliged to be reported under that Directive because they do not constitute money held in a depository accounts nor in financial assets. In addition, crypto-asset service providers as well as crypto-asset operators are in most cases not covered by the existing definition of financial institutions under Directive 2011/16/EU.

(11) In order to address new challenges arising from the growing use of alternative means of payment and investment, which pose new risks of tax evasion and are not yet covered by Directive 2011/16/EU, the rules on reporting and exchange of information should cover crypto-assets and their users.

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28 https://www.oecd.org/tax/exchange-of-tax-information/crypto-asset-reporting-framework-and-amendments-to-the-common-reporting-standard.pdf

29 Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 064 11.3.2011, p. 1).

(12) In order to ensure the proper functioning of the internal market, the reporting should be both effective, simple and clearly defined. Detecting taxable events that occur while investing in crypto-assets is difficult. Reporting crypto-asset service providers are best placed to collect and verify the necessary information on their users. The administrative burden should be minimised for the industry so that it is able to develop its full potential within the Union.

(13) The automatic exchange of information between tax authorities is crucial to provide them with the necessary information to enable them to correctly assess the amounts of income taxes due. The reporting obligation should cover both cross-border and domestic transactions, in order to ensure the effectiveness of the reporting rules, the proper functioning of the Internal Market, a level playing field and respect of the principle of non-discrimination.

(14) The Directive applies to crypto-assets service providers regulated by and authorised under Regulation XXX and to crypto-asset operators that are not. Both are referred to as reporting crypto-asset service providers as they are required to report under this Directive. The general understanding of what constitutes crypto-assets is very broad and includes those crypto-assets that have been issued in a decentralised manner, as well as stablecoins, and certain non-fungible tokens (NFTs). Crypto-assets that are used for payment or investment purposes are reportable under this Directive. Therefore, reporting crypto-asset service providers should consider on a case-by-case basis whether crypto-assets can be used for payment and investment purposes, taking into account the exemptions provided in Regulation XXX, in particular in relation to a limited network and certain utility tokens..

(15) In order to enable tax administrations to analyse the information they receive and to use it in accordance with national provisions, for example, for matching of information and valuation of assets and capital gains, it is appropriate to provide for the reporting and exchange of information that is sub-divided in relation to each crypto-asset with respect to which the crypto-asset user made transactions.

(16) In order to ensure uniform conditions for the implementation of provisions on automatic exchange of information between competent authorities, implementing powers should be conferred on the Commission to adopt practical arrangements necessary for the implementation of the mandatory automatic exchange of information reported by reporting crypto-asset service providers, including a standard form for the exchange of information. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[30].

(17) Crypto-asset service providers covered by Regulation XXX may exercise their activity in the Union through passporting once they have received their authorisation in a Member State. For these purposes, ESMA holds a register with authorised crypto-asset service providers. Additionally, ESMA also maintains a blacklist of operators exercising crypto-asset services that require an authorisation under Regulation XXX.

(18) Crypto-asset operators that do not fall under the scope of that Regulation but are obliged to report information on the crypto-asset users resident in the EU pursuant to

[30] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

this Directive should be required to register and report in one single Member State for the purpose of complying with their reporting obligations.

(19) In order to foster administrative cooperation in this field with non-Union jurisdictions, crypto-asset operators that are situated in non-Union jurisdictions and provide services to EU crypto-asset users, such as NFT service-providers or operators providing services on a reverse-solicitation basis, should be allowed to solely report information on crypto-asset users resident in the Union to the tax authorities of a non-Union jurisdiction insofar as the reported information is correspondent to the information set out in this Directive and insofar as there is an effective exchange of information between the non-Union jurisdiction and a Member State. Crypto-asset service providers authorised under Regulation XXX could be exempt from reporting such information in the Member States where it is holding the authorisation if the correspondent reporting takes place in a non-Union Jurisdiction and insofar as there is an effective qualifying competent authority agreement in place. The qualified non-Union jurisdiction would in turn communicate such information to the tax administrations of those Member States where crypto-asset users are resident. Where appropriate, that mechanism should be enabled to prevent correspondent information from being reported and transmitted more than once.

(20) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission to determine whether information required to be exchanged pursuant to an agreement between the competent authorities of a Member State and a non-Union jurisdiction is correspondent to that specified in this Directive. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council. More specifically, the Commission should, by means of implementing acts determine whether information required to be exchanged pursuant to an agreement between the competent authorities of a Member State and a non-Union jurisdiction is correspondent to that specified in that Directive. Given that the conclusion of agreements with non-Union jurisdictions on administrative cooperation in the area of direct taxation remains within the competence of Member States, the Commission's action could also be triggered by a request from a Member State. For that purpose, it is necessary that, following the request of a Member State, the determination of correspondence could also be made in advance of an envisaged conclusion of such an agreement. Where the exchange of such information is based on a multilateral competent authority agreement, the decision on correspondence should be taken in relation to the whole of the relevant framework covered by such a competent authority agreement. Nevertheless, it should still remain possible to take the decision on correspondence, where appropriate, concerning a bilateral competent authority agreement.

(21) Insofar as the international standard on the reporting and automatic exchange of information on crypto-assets, OECD's Crypto-Asset Reporting Framework, is a minimum standard or equivalent, which establishes a minimum scope and content of jurisdictions' implementation thereof, the determination of correspondence of this Directive and the OECD's Crypto-Asset Reporting Framework by the Commission, by means of an implementing act, should not be required provided that there is an Effective Qualifying Competent Authority Agreement in place between the non-Union jurisdictions and all Member States.

(22) Although the G20 endorsed the OECD Crypto-Asset Reporting Framework and recommended its implementation, no decision has been taken yet on whether it would

be considered as a minimum standard or equivalent. Pending this decision, the proposal includes two different approaches for determining correspondence.

(23) This Directive does not substitute any wider obligations arising from Regulation XXX.

(24) In order to foster convergence and promote consistent supervision with regard to Regulation XXX, national competent authorities should cooperate with other national competent authorities or institutions and share relevant information.

(25) The relieving of the registration and reporting obligation as provided for in this Directive which is dependent upon the determination of correspondent reporting and exchange mechanisms in relation to non-Union jurisdictions and Member States should only be understood to apply in the area of taxation especially for the purpose of this Directive and should not be conceived as a basis for recognising correspondence in other areas of EU law.

(26) It is crucial to reinforce the provisions of Directive 2011/16/EU concerning the information to be reported or exchanged to adapt to new developments of different markets and consequently effectively tackle identified conducts for tax fraud, tax avoidance and tax evasion. Those provisions should reflect the developments observed in the internal market and at international level leading to an effective reporting and exchange of information. Consequently, the Directive includes among others the latest additions to the Common Reporting Standard of the OECD, the integration of e-money and central bank digital currency provisions, a clear and harmonised framework for compliance measures, and the extention of the scope of cross-border rulings to high net worth individuals.

(27) E-money products, as defined by Directive 2009/110/EU of the European Parliament and of the Council[31] are frequently used in the Union and the volume of transactions, and their combined value increases steadily. E-money products are however not explicitly covered by Directive 2011/16/EU. Member States adopt diverse approaches to e-money. As a result, related products are not always covered by the existing categories of income and capital of Directive 2011/16/EU. Rules should therefore be introduced ensuring that reporting obligations apply to e-money and e-money tokens under Regulation XXX.

(28) In order to close loopholes that allow tax evasion, tax avoidance and tax fraud, Member States should be required to exchange information related to income derived from non-custodial dividends. Income from non-custodial dividends should therefore be included in the categories of income subject to mandatory automatic exchange of information.

(29) The Tax Identification Number ('TIN') is essential for Member States to match information received with data present in national databases. It increases Member States' capability of identifying the relevant taxpayers and correctly assessing the related taxes. Therefore, it is important that Member States require that TIN is indicated in the context of exchanges related to financial accounts, advance cross-border rulings and advance pricing agreements, country-by-country reports, reportable cross-border arrangements, and information on sellers on digital platforms.

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[31] Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).

(30) The absence of exchange of rulings concerning high net worth individuals means that tax administrations may not be aware of those rulings., That situation risks creating opportunities for tax fraud, tax evasion and tax avoidance. Therefore, automatic exchange of advance cross-border rulings and advance pricing agreements should extend to situations where an advance cross-border ruling concerns tax affairs of high net worth individuals.

(31) In order to reap the benefits of the mandatory automatic exchange of advance cross-border rulings for high net worth individuals, it should extend to such advance cross-border rulings that were issued, amended or renewed between 1 January 2020 and 31 December 2025 and which are still valid on 1 January 2026.

(32) A number of Member States are expected to introduce identification services as a simplified and standardised means of identification of service providers and taxpayers. The Member States who wish to make use that format for identification should be allowed to do so provided that it does not affect the flow and quality of information of other Member States that do not use such identification services.

(33) It is important that, as a matter of principle, the information communicated under Directive 2011/16/EU is used for the assessment, administration and enforcement of taxes which are covered by the material scope of that Directive. While this was not precluded so far, uncertainties regarding the use of information have arisen due to unclear framework. Given the interlinks between tax fraud, evasion and avoidance and anti-money laundering and the synergies in terms of enforcement, it is appropriate to clarify that information communicated between Member States may also be used for the assessment, administration and enforcement customs duties and anti-money laundering and combating the financing of terrorism.

(34) Directive 2011/16/EU provides for the possibility to use the information exchanged for other purposes than for direct and indirect tax purposes to the extent that the sending Member State has stated the purpose allowed for the use of such information in a list. However, the procedure for such use is cumbersome as the sending Member State need to be consulted before the receiving Member State can use the information for other purposes. Removing the requirement for such consultation should alleviate the administrative burden and allow swift action from tax authorities when needed. It should therefore not be required to consult the sending Member State where the intended use of information is covered in a list drafted beforehand by the sending Member State.

(35) Considering the amount and the nature of the information collected and exchanged on the basis of Directive 2011/16/EU as amended, it can be useful in other areas than taxation. While the use of this information in other areas should as a general rule be restricted to areas approved by the sending Member State in accordance with the provisions of this Directive there is a need to allow for a broader use of the information in situations presenting particular and serious characteristics and where it has been agreed within at Union level to take action. Such situations would in particular be those where decisions have been taken pursuant to Article 215 of the Treaty on the Functioning of the European Union regarding restrictive measures. Indeed, information exchanged under Directive 2011/16/EU may be very relevant for the detection of violation or circumvention of restrictive measures. In return, any potential breaches of the sanctions will be relevant for tax purposes since avoidance of restrictive measures will in most cases also amount to tax avoidance in relation to

these assets. Given the likely synergies and close link between the two areas, authorizing a further use of the data is therefore appropriate.

(36) In order to enhance the efficient use of resources, facilitate the exchange of information and avoid the need for each Member States to make similar changes to their systems for storing information, a central directory should be established, accessible to all Member States and only for statistical purposes to the Commission, to which Member States would upload and store reported information, instead of exchanging that information by secured email. The practical arrangements necessary for the establishment of such central directory should be adopted by the Commission.

(37) In order to ensure that a correct tax identification number (TIN) can be used by Member States, the Commission shall develop and provide Member States with a tool allowing an electronic and automated verification of the correctness of the TIN that has been provided to them by the taxpayer or the reporting person. That IT tool should help increase the matching rates for tax administrations and improve the quality of the exchanged information in general.

(38) The minimum retention period of records of information obtained through exchange of information between Member States pursuant to Directive 2011/16/EU should be no longer than necessary but, in any event, not shorter than 5 years. Member States should not retain information longer than necessary to achieve the purposes of this Directive.

(39) In order to ensure compliance with the Directive 2011/16/EU, Member States should lay down the rules on penalties and other compliance measures that should be effective, proportionate and dissuasive. Each Member State should apply those rules in accordance with their national laws and the provisions set forth in this Directive.

(40) To guarantee an adequate level of effectiveness in all Member States, minimum levels of penalties should be established in relation to two conducts that are considered grievous: namely failure to report after two administrative reminders and when the provided information contains incomplete, incorrect or false data, which substantially affects the integrity and reliability of the reported information. Incomplete, incorrect or false data substantially affect the integrity and reliability of the reported information when they amount to more than 25 % of the total data that the taxpayer or reporting entity should have correctly reported in accordance with the required information set forth in Annex VI, Section II, subparagraph (B). These minimum amounts of penalties should not prevent Member States from applying more stringent sanctions for these two types of infringements. Member States still have to apply effective, dissuasive and proportional penalties for other types of infringements.

(41) In order to take into account possible changes in the prices for goods and services, the Commission should evaluate the penalties provided for in this Directive every 5 years.

(42) For the sake of harmonising the timing between the evaluation of the application of Directive 2011/16/EU and the biennial evaluation of the relevance of hallmarks in Annex IV, the processes are aligned and will take place every 5 years after 1 January 2023.

(43) The European Data Protection Supervisor was consulted in accordance with Article 42 of Regulation (EU) 2018/1725 of the European Parliament and of the Council.[32]

(44) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. This Directive seeks to ensure full respect for the right to the protection of personal data and the freedom to conduct business.

(45) Since the objective of Directive 2011/16/EU, namely the efficient administrative cooperation between Member States under conditions compatible with the proper functioning of the internal market, cannot be sufficiently achieved by the Member States but can rather, by reason of the uniformity and effectiveness required, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(46) Directive 2011/16/EU should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2011/16/EU is amended as follows:

(1) Article 3 is amended as follows:

(a) point (9) is amended as follows:

(i) point (a) of the first subparagraph is replaced by the following:

‘(a) for the purposes of Article 8(1) and Articles 8a to 8ad, the systematic communication of predefined information to another Member State, without prior request, at pre-established regular intervals. For the purposes of Article 8(1), reference to available information relates to information in the tax files of the Member State communicating the information, which is retrievable in accordance with the procedures for gathering and processing information in that Member State;’;

(ii) point (c) of the first paragraph is replaced by the following:

‘(c) for the purposes of provisions of this Directive other than Article 8(1) and (3a) and Articles 8a to 8ad, the systematic communication of predefined information provided the first subparagraph, points (a) and (b), of this point.’;

(iii) the second subparagraph is replaced by the following:

‘In the context of Articles 8(3a), 8(7a), 21(2) and Annex IV, any capitalised term shall have the meaning that it has under the corresponding definitions set out in Annex I. In the context of Article 25(3) and (4), any capitalised term shall have the meaning that it has under the corresponding definitions set out in Annex I or VI. In the context of Article 8aa and Annex III, any capitalised term

[32] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

shall have the meaning that it has under the corresponding definitions set out in Annex III. In the context of Article 8ac and Annex V, any capitalised term shall have the meaning that it has under the corresponding definitions set out in Annex V. In the context of Articles 8ad and Annex VI, any capitalised term shall have the meaning that it has under the corresponding definitions set out in Annex VI.';

(b) the following points are added:

28. 'high net worth individual' means an individual that holds in total a minimum of EUR 1 000 000 in financial or investable wealth or assets under management, excluding that individual's main private residence. For the purposes of this Directive, an individual shall be considered as a high net worth individual when that minimum threshold is met at any time during the calendar year for which the exchange takes place.

29. 'compliance measures' means any non-monetary measure that a Member State may use for addressing non-compliance with the reporting requirements.

30. 'use of information' means the assessment of data acquired through the reporting or the exchange of information under Articles 8 to 8ad within the scope of this Directive.

31. 'non-custodial dividend income' means income from dividends that are not paid or cashed in a custodial account.

32. 'life insurance products not covered by other Union legal instruments on exchange of information and other similar measures' means Insurance Contracts, other than Cash Value Insurance Contracts subject to reporting under Directive 2014/107/EU, where benefits under the contracts are payable on death of a policy holder.

33. 'home Member State' means home Member State as defined in Regulation XXX.

34. 'distributed ledger address' means distributed ledger address as defined in Regulation XXX.

(2) Article 8 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the first subparagraph is replaced by the following:

'The competent authority of each Member State shall, by automatic exchange, communicate to the competent authority of any other Member State all information concerning residents of that other Member State, on the following specific categories of income and capital as they are to be understood under the national legislation of the Member State which communicates the information:

(a) income from employment;

(b) director's fees;

(c) life insurance products not covered by other Union legal instruments on exchange of information and other similar measures;

(d) pensions;

(e) ownership of and income from immovable property;

(f) royalties;

(g) non-custodial dividend income.

(ii) the following subparagraph is added:

‘For taxable periods starting on or after 1 January 2026, Member States shall include the TIN of residents issued by the Member State of residence in the communication of the information referred to in the first subparagraph.’

(b) in paragraph 2, the following subparagraph is added:

‘Member States shall, by automatic exchange, communicate to the competent authority of any other Member State information on all categories of income and capital referred to in paragraph 1, first subparagraph, concerning residents of that other Member State. Such information shall concern taxable periods starting on or after 1 January 2026.’;

(c) paragraph 7a is replaced by the following:

‘Member States shall ensure that entities and accounts that are to be treated, respectively, as Non-Reporting Financial Institutions and Excluded Accounts satisfy all the requirements listed in Section VIII, subparagraphs B.1(c) and C.17(g), of Annex I, and in particular that the status of a Financial Institution as a Non-Reporting Financial Institution or the status of an account as an Excluded Account does not frustrate the purposes of this Directive.’;

(3) Article 8a is amended as follows:

(a) in paragraph 1 the following subparagraph is added:

‘The competent authority of a Member State where an advance cross-border ruling for a high net worth individual was issued, amended or renewed after 31 December 2023 shall, by automatic exchange, communicate information thereon to the competent authorities of all other Member States, with the limitation of cases set out in paragraph 8 of this Article, in accordance with applicable practical arrangements adopted pursuant to Article 21.’;

(b) paragraph 2 is amended as follows:

(i) the first subparagraph is replaced by the following:

‘The competent authority of a Member State shall, in accordance with applicable practical arrangements adopted pursuant to Article 21, also communicate information to the competent authorities of all other Member States as well as to the Commission, with the limitation of cases set out in paragraph 8 of this Article, on advance cross-border rulings and advance pricing arrangements issued, amended or renewed within a period beginning 5 years before 1 January 2017 and on advance cross-border rulings for high net worth individuals issued, amended or renewed within a period beginning 5 years before 1 January 2026.’;

(ii) The following subparagraph is added:

‘Where advance cross-border rulings for high net worth individuals are issued, amended or renewed between 1 January 2020 and 31 December 2025, such communication shall take place under the condition that they were still valid on 1 January 2026.’;

(c) paragraph 4 is replaced by the following:

‘4. Paragraphs 1 and 2 shall not apply in a case where an advance cross-border ruling exclusively concerns and involves the tax affairs of one or more natural persons, except where at least one of those natural persons is a high net worth individual.’;

(d) paragraph 6 is amended as follows:

(i) point is replaced by the following:

‘(a) the identification of the person, other than a natural person who is not a high net worth individual, and where appropriate the group of persons to which it belongs;’;

(ii) point (k) is replaced by the following:

‘(k) the identification of any person, other than a natural person who is not a high net worth individual, in the other Member States, if any, likely to be affected by the advance cross-border ruling, or advance pricing arrangement (indicating to which Member States the affected persons are linked);’;

(4) in Article 8ab (14), point (c) is replaced by the following:

‘(c) a summary of the content of the reportable cross-border arrangement, including a reference to the name by which it is commonly known, if any, and a description of the relevant arrangements and any other information that could assist the competent authority in assessing a potential tax risk, without leading to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy;’;

(5) in Article 8ac(2), the following point (m) is added:

‘(m) where the Reporting Platform Operator relies on direct confirmation of the identity and residence of the ‘Seller’ through an ‘Identification Service’ made available by a Member State or the Union to ascertain the identity and tax residence of the Seller, the name, the Identification Service identifier and the Member State of issuance; in such cases it is not necessary to communicate the information referred to in points (c) to (g).’;

(6) the following Article is inserted:

‘Article 8ad

Scope and conditions of mandatory automatic exchange of information reported by Reporting Crypto-Asset Service Providers

1. Each Member State shall take the necessary measures to require Reporting Crypto-Asset Service Providers to carry out the due diligence procedures and fulfil reporting requirements laid down in Sections II and III of Annex VI. Each Member State shall also ensure the effective implementation of, and compliance with, such measures in accordance with Section V of Annex VI.

2. The competent authority of a Member State where the reporting referred to in paragraph 1 of this Article takes place shall, by means of automatic exchange, and within the time limit laid down in paragraph 5 of this Article, communicate the information specified in paragraph 3 of this Article to competent authorities of all other Member States in accordance with the practical arrangements adopted pursuant to Article 21.

3. The competent authority of a Member State shall communicate the following information regarding each Reportable Crypto-Asset User:

(a) the name, address, Member State(s) of residence, TIN(s) and, in the case of an individual, date and place of birth of each Reportable User and, in the case of any Entity that, after application of the due diligence procedures laid down in Section III of Annex VI, is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, Member State(s) of residence and TIN(s) of the Entity and the name, address, Member State(s) of residence, TIN(s) and date and place of birth of each Reportable Person, as well as the role(s) by virtue of which each Reportable Person is a Controlling Person of the Entity;

(b) the name, address, TIN and, if available, the individual identification number referred to in paragraph 7 and the Global Legal Entity Identifier, of the Reporting Crypto-Asset Service Provider;

(c) for each Reportable Crypto-Asset with respect to which the Reportable Crypto-Asset User has effectuated Reportable Transactions during the relevant calendar year or other appropriate reporting period, where relevant:

  (a) the full name of the Reportable Crypto-Asset;

  (b) the aggregate gross amount paid, the aggregate number of units and the number of Reportable Transactions in respect of acquisitions against Fiat Currency;

  (c) the aggregate gross amount received, the aggregate number of units and the number of Reportable Transactions in respect of disposals against Fiat Currency;

  (d) the aggregate fair market value, the aggregate number of units and the number of Reportable Transactions in respect of acquisitions against other Reportable Crypto-Assets;

  (e) the aggregate fair market value, the aggregate number of units and the number of Reportable Transactions in respect of disposals against other Reportable Crypto-Assets;

  (f) the aggregate fair market value, the aggregate number of units and the number of Reportable Retail Payment Transactions;

  (g) the aggregate fair market value, the aggregate number of units and the number of Reportable Transactions, and subdivided by transfer type where known by the Reporting Crypto-Asset Service Provider, in respect of Transfers to the Reportable User not covered by points (b) and (d);

  (h) the aggregate fair market value, the aggregate number of units and the number of Reportable Transactions, and subdivided by transfer type where known by the Reporting Crypto-Asset Service Provider, in respect of Transfers by the Reportable User not covered by points (c), (e) and (f); and

  (i) the aggregate fair market value, as well as the number of units value of Transfers effectuated by the Reporting Crypto-Asset Service Provider to distributed ledger addresses as defined in Regulation XXX not known to be associated with a virtual asset service provider or financial institution.

For the purposes of points (b) and (c) of this point, the amount paid or received shall be reported in the Fiat Currency in which it was paid or received. In case the amounts were paid or received in multiple Fiat Currencies, the amounts shall be reported in a single currency, converted at the time of each Reportable Transaction in a manner that is consistently applied by the Reporting Crypto-Asset Service Provider. The Reporting Crypto-Asset Service Provider may apply any conversion method as at the time of the transaction(s) to translate such amounts into a single Fiat Currency determined by the Reporting Crypto-Asset Service Provider.

For the purposes of points (d) to (h) of this point, the fair market value shall be determined and reported in a single Fiat Currency, valued at the time of each Reportable Transaction in a manner that is consistently applied by the Reporting Crypto-Asset Service Provider.

The information reported shall specify the Fiat Currency in which each amount is reported.

4. To facilitate the exchange of information referred to in paragraph 3 of this Article, the Commission shall, by means of implementing acts, adopt the necessary practical arrangements, including measures to standardise the communication of the information set out in paragraph 3 of this Article, as part of the procedure for establishing the standard form provided for in Article 20(5).

5. The communication pursuant to paragraph 3 of this Article shall take place using the standard computerised format referred to in Article 20(5) within 2 months following the end of the calendar year to which the reporting requirements applicable to Reporting Crypto-Asset Service Providers relate. The first information shall be communicated for the relevant calendar year or other appropriate reporting period as from 1 January 2027.

6. Notwithstanding paragraph 3, it is not necessary to report the information in relation to a Crypto-Asset User where the Reporting Crypto-Asset Service Provider has obtained adequate assurances that another Reporting Crypto-Asset Service Provider fulfils all reporting requirements of this Article in respect of that Crypto-Asset User.

7. For the purpose of complying with the reporting requirements referred to in paragraph 1 of this Article, each Member State shall lay down the necessary rules to require a Crypto-Asset Operator to register within the Union. The competent authority of the Member State of registration shall allocate an individual identification number to such Crypto-Asset Operator.

Member States shall lay down rules pursuant to which a Crypto-Asset Operator may choose to register with the competent authority of a single Member State in accordance with the rules laid down in of Section V, paragraph F, of Annex VI.

Member States shall take the necessary measures to require that a Crypto-Asset Operator, whose registration has been revoked in accordance with Section V, subparagraph F(7), of Annex VI, can only be permitted to register again if it provides to the authorities of a Member State concerned proof of compliance with the penalties imposed as provided for in Article 25a and appropriate assurance as regards its commitment to comply with the reporting requirements within the Union, including any outstanding unfulfilled reporting requirements.

8. Paragraph 7 shall not apply to Crypto-Asset Service Providers within the meaning of Section IV, subparagraph B(1), of Annex VI.

9. The Commission shall, by means of implementing acts, lay down the practical and technical arrangements necessary for the registration and identification of Crypto-Asset Operator. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 26(2).

10. The Commission shall, by 31 December 2026, establish a central register where information to be notified and communicated in accordance with Section V, subparagraph F(2), of Annex VI shall be recorded. That central register shall be available to the competent authorities of all Member States. The Commission, when processing personal data for the purpose of this Directive shall be considered to process the personal data on behalf of the controllers and shall comply with the requirements for processors in Regulation (EU) 2018/1725. The processing shall be governed by a contract within the meaning of Article 28(3) of Regulation (EU) 2016/679 and Article 29(3) of Regulation (EU) 2018/1725.

11. The Commission shall, by means of implementing acts, following a reasoned request by any Member State or on its own initiative, determine whether the information that is required to be automatically exchanged pursuant to an agreement between competent authorities of the Member State concerned and a non-Union jurisdiction is correspondent to that specified in Section II, paragraph B, of Annex VI, within the meaning of Section IV, subparagraph F(5), of Annex VI. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 26(2).

A Member State requesting the measure referred to in the first subparagraph shall send a reasoned request to the Commission.

If the Commission considers that it does not have all the information necessary for the appraisal of the request, it shall contact the Member State concerned within 2 months of receipt of the request and specify what additional information is required. Once the Commission has all the information it considers necessary, it shall, within one month, notify the requesting Member State and it shall submit the relevant information to the Committee referred to in Article 26(2).

When acting on its own initiative, the Commission shall adopt an implementing act as referred to in the first subparagraph only in respect of competent authority agreement with a non-Union jurisdiction that requires the automatic exchange of information on an individual or Entity that is a customer of a Reporting Crypto-Asset Service Provider for purposes of carrying out Reportable Transactions, concluded by a Member State.

When determining whether information is correspondent within the meaning of the first subparagraph in relation to reportable transactions, the Commission shall take into due account the extent to which the regime on which such information is based corresponds to that set out in Annex VI, in particular with regard to:

(i) the definitions of Reporting Crypto-Asset Service Provider, Reportable User, Reportable Transaction;

(ii) the procedures applicable for the purpose of identifying Reportable Users;

(iii) the reporting requirements;

(iv) the rules and administrative procedures that non-Union jurisdictions are to have in place to ensure effective implementation of, and compliance with, the due diligence procedures and reporting requirements set out in that regime.

The procedure set out in this paragraph shall also apply for determining that the information is no longer correspondent within the meaning of Section IV, subparagraph F(5), of Annex VI.

12. Notwithstanding paragraph 11 of this Article, where an international standard on the reporting and automatic exchange of information on crypto-assets is determined to be a minimum standard or equivalent, any determination by the Commission, by means of implementing acts, on whether the information that is required to be automatically exchanged pursuant to the implementation of this standard and the competent authority agreement between the Member State(s) concerned and a non-Union jurisdiction shall no longer be required. This information shall be deemed correspondent to the information that is required under this directive, provided that there is an Effective Qualifying Competent Authority Agreement in place between the competent authorities of all Member States concerned and the non-Union jurisdiction. The corresponding provisions in this Article and in Annex VI of this Directive shall no longer apply for such purposes.';

(7) Article 16 is amended as follows:

(a) In paragraph 1, the first subparagraph is replaced by the following:

'Information communicated between Member States in any form pursuant to this Directive shall be covered by the obligation of official secrecy and enjoy the protection extended to similar information under the national law of the Member State which received it. Such information may be used for the assessment, administration, and enforcement of the national law of Member States concerning the taxes referred to in Article 2 as well as VAT, other indirect taxes, customs duties and anti-money laundering and countering the financing of terrorism.';

(b) paragraphs 2 and 3 are replaced by the following:

'2. With the permission of the competent authority of the Member State communicating information pursuant to this Directive, and only in so far as this is allowed under the legislation of the Member State of the competent authority receiving the information, information and documents received pursuant to this Directive may be used for other purposes than those referred to in paragraph 1.

The competent authority of each Member State shall communicate to the competent authorities of all other Member States a list in accordance with its national law, of information and documents which may be used for purposes other than those referred to in paragraph 1. The competent authority that receives information may use the received information and documents without the permission referred to in the first subparagraph for any of the purposes listed by the communicating Member State.

The list of information and documents which may be used for purposes other than those referred to in paragraph 1 and which is referred to in paragraph 2, shall be made publicly available by the competent authority of each Member State.

The competent authority that receives the information may also use that information without the permission referred to in the first subparagraph for any purpose that is covered by an act based on Article 215 of the Treaty on the Functioning of the European Union and share it for such purpose with the

competent authority in charge of restrictive measures in the Member State concerned.

3. Where a competent authority of a Member State considers that information which it has received from the competent authority of another Member State is likely to be useful for the purposes referred to in paragraph 1 to the competent authority of a third Member State, it may transmit that information to the latter competent authority, provided that transmission is in accordance with the rules and procedures laid down in this Directive. It shall inform the competent authority of the Member State from which the information originates about its intention to share that information with a third Member State. The Member State of origin of the information may oppose such a sharing of information within 15 calendar days of receipt of the communication from the Member State wishing to share the information.';

(c) the following paragraph 7 is added:

'7. The competent authority of each Member State shall put in place an effective mechanism to ensure the assessment of data acquired through the reporting or the exchange of information under Articles 8 to 8ad within the scope of this Directive.';

(8) in Article 20, paragraph 5 is replaced by the following:

'5. The Commission, acting on behalf of competent authorities in Member States, shall adopt implementing acts laying down standard computerised forms, including the linguistic arrangements, in accordance with the procedure referred to in Article 26(2), in the following cases:

(a) for the automatic exchange of information on advance cross-border rulings and advance pricing arrangements pursuant to Article 8a before 1 January 2017;

(b) for the automatic exchange of information on reportable cross-border arrangements pursuant to Article 8ab before 30 June 2019.

(c) for the automatic exchange of information on Reportable Crypto-Assets pursuant to Article 8ad before 1 January 2026.

Those standard forms shall not exceed the components for the exchange of information listed in Article 8a(6), Article 8ab(14) and Article 8ad(3), and such other related fields which are linked to these components which are necessary to achieve the objectives of Articles 8a, 8ab and 8ad, respectively.

The linguistic arrangements referred to in the first subparagraph shall not preclude Member States from communicating the information referred to in Articles 8a, 8ab and 8ad in any of the official languages of the Union. However, those linguistic arrangements may provide that the key elements of such information shall also be sent in another official language of the Union.';

(9) Article 21 is amended as follows:

(a) the following paragraph 5a is inserted:

'5a. The Commission, acting on behalf of Member States, shall by 31 December 2025, develop and provide with technical and logistical support a secure Member State central directory on administrative cooperation in the field of taxation where information to be communicated in the framework of

Article 8ad(2) and (3) shall be recorded in order to satisfy the automatic exchange provided for in those paragraphs.

The competent authorities of all Member States shall have access to the information recorded in that directory. The Commission shall also have access to the information recorded in that directory for the purposes of complying with its obligations under this Directive, however with the limitations set out in Article 8a(8), Article 8ab(17) and Article 8ad(8). The necessary practical arrangements shall be adopted by the Commission in accordance with the procedure referred to in Article 26(2).

Until that secure central directory is operational, the automatic exchange provided for in Article 8a(1) and (2), Article 8ab(13), (14) and (16) and Article 8ad (2), (3) and (8) shall be carried out in accordance with paragraph 1 of this Article and the applicable practical arrangements.';

(b) the following paragraph 8 is added:

'8. The Commission, acting on behalf of Member States, shall develop and provide Member States with a tool allowing an electronic and automated verification of the correctness of the TIN provided by a reporting entity or a taxpayer for the purpose of automatic exchange of information.'

(10) in Article 22, the following paragraphs 3 and 4 are added:

'3. Member States shall retain the records of the information received through automatic exchange of information pursuant to Articles 8 to 8ad for no longer than necessary but in any event not shorter than 5 years from its date of receipt to achieve the purposes of this Directive.

4. Member States shall ensure that a reporting entity is allowed to obtain confirmation by electronic means of the validity of the TIN information of any taxpayer subject to the exchange of information under Articles 8 to 8ad. The confirmation of TIN information can only be requested for the purpose of validation of the correctness of data referred to in Article 8(1), Article 8(3a), Article 8a (6), Article 8aa(3), Article 8ab(14), Article 8ac(2) and Article 8ad(3), point (c).'

(11) in Article 23, paragraph 3 is replaced by the following:

'3. Member States shall communicate to the Commission a yearly assessment of the effectiveness of the automatic exchange of information referred to in Articles 8 to 8ad as well as the practical results achieved. The Commission shall, by means of implementing acts, adopt the form and the conditions of communication for that yearly assessment. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 26(2).'

(12) Article 25 is amended as follows:

(a) paragraph 3 is replaced by the following:

'3. Reporting Financial Institutions, intermediaries, Reporting Platform Operators, Reporting Crypto-Asset Service Providers and the competent authorities of Member States shall be considered to be controllers, acting alone or jointly. When processing personal data for the purpose of this Directive the Commission shall be considered to process the personal data on behalf of the controllers and shall comply with the requirements for processors in Regulation (EU) 2018/1725. The processing shall be governed by a contract

within the meaning of Article 28(3) of Regulation (EU) 2016/679 and Article 29(3) of Regulation (EU) 2018/1725.';

(b) in paragraph 4, the first subparagraph is replaced by the following:

'Notwithstanding paragraph 1, each Member State shall ensure each Reporting Financial Institution or intermediary or Reporting Platform Operator or Reporting Crypto-Asset Service Provider, as the case may be, which is under its jurisdiction:

(a) informs each individual concerned that information relating to that individual will be collected and transferred in accordance with this Directive; and

(b) provides to each individual concerned all information that the individual is entitled to from the data controller in sufficient time for that individual to exercise his/her data protection rights and, in any case, before the information is reported.';

(13) Article 25a is replaced by the following:

'*Article 25a*
Penalties and other compliance measures

1. Member States shall lay down rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and concerning Article 8(3a), Articles 8aa to 8ad and shall take all necessary measures to ensure that they are implemented and enforced. Penalties and compliance measures provided for shall be effective, proportionate and dissuasive.

2. Member States shall ensure that where penalties and compliance measures can be applied to legal persons in the event of a non-compliance with national provisions transposing this Directive, and to the members of the management body and to other natural persons who under national law are responsible for the non-compliance in accordance with national law.

Member States shall ensure that legal persons can be held liable for the non-compliance with national provisions transposing this Directive by any person acting individually or as part of an organ of that legal person and having a leading position within the legal person. Any of the following circumstances shall indicate the leading position within the legal person:

(a) power to represent the legal person

(b) authority to take decisions on behalf of the legal person;

(c) authority to exercise control within the legal person.

3. In cases of failure to report after 2 administrative reminders or when the provided information contains incomplete, incorrect or false data, amounting to more than 25 % of the information that should have been reported in accordance with the information set forth in Annex VI, Section II, subparagraph (B), Member States shall ensure that the penalties that can be applied include at least the following minimum pecuniary penalties.

(a) in case of non-compliance with national provisions adopted in order to comply with Article 8(3a) the minimum pecuniary penalty shall be not less than EUR 50 000 when the annual turnover of the Reporting Financial Institution is

below EUR 6 million and EUR 150 000 when the turnover is EUR 6 million or above;

(b) in case of non-compliance with national provisions adopted in order to comply with Article 8aa, the minimum pecuniary penalty shall be not less than EUR 500 000;

(c) in case of non-compliance with national provisions adopted in order to comply with Article 8ab, the minimum pecuniary penalty shall be not less than EUR 50 000 when the annual turnover of the intermediary or relevant taxpayer is below EUR 6 million and EUR 150 000 when the turnover is EUR 6 million or above; the minimum pecuniary penalty shall be not less than EUR 20 000 when the intermediary or the relevant taxpayer is a natural person;

(d) in case of non-compliance with national provisions adopted in order to comply with Article 8ac, the minimum pecuniary penalty shall be not less than EUR 50 000 when the annual turnover of the Reporting Platform Operator is below EUR 6 million and EUR 150 000 when the turnover is EUR 6 million or above, the minimum pecuniary penalty shall be not less than EUR 20 000 when the Reporting Platform Operator is a natural person;

(e) in case of non-compliance with national provisions adopted in order to comply with Article 8ad, the minimum pecuniary penalty shall be not less than EUR 50 000 when the annual turnover of the Reporting Crypto-Asset Service Provider is below EUR 6 million and EUR 150 000 when the turnover is EUR 6 million or above, the minimum pecuniary penalty shall be not less than EUR 20 000 when the Reporting Crypto-Asset Service Provider is a natural person.

The Commission shall evaluate the appropriateness of the amounts provided in this paragraph (d) in the report referred to in Article 27 (1).

Member States whose currency is not the Euro shall apply the corresponding value in the national currency on the date of entry of force of this Directive.

The minimum pecuniary penalties identified under subparagraph (3) shall be imposed without prejudice to the Member States' right to set different penalties or other compliance measures for any other infringements of national provisions than those defined in this Directive.

4. Member States shall indicate whether penalties stipulated in national legislation are applied by reference to individual cases of infringement or on a cumulative basis. The minimum penalties stipulated in subparagraph (3) shall be applied on a cumulative basis.

5. Member States shall set penalties for a false self-certification as referred to in Annex I, Section I and Annex VI, Section III of this Directive.

6. When imposing penalties and other compliance measures, competent authorities shall, where relevant, cooperate closely with one another and with other relevant competent authorities and shall coordinate their actions where appropriate, when dealing with cross-border cases.';

(14) in Article 27 paragraph 2 is replaced by the following:

'2. Member States shall monitor and assess in relation to their jurisdiction, the effectiveness of administrative cooperation in accordance with this Directive in

combatting tax evasion and tax avoidance and shall communicate the results of their assessment to the Commission once a year.'

(15) the following Article 27c is inserted:

'*Article 27c*
Reporting of TIN

For taxable periods starting on or after 1 January 2026, Member States shall ensure that the TIN of reported individuals or entities issued by the Member State of residence is included in the communication of the information referred to in Article 8(1) and (3a), Article 8a(6), Article 8aa(3), Article 8ab(14), Article 8ac(2) and Article 8ad(3). The TIN shall be provided even when it is not specifically required by those Articles.

Member States shall also ensure that the TIN of reported individuals or entities is reported on a mandatory basis by the reporting entity even though it is not required by Annex I, Annex III, Annex V or Annex VI.'

(16) Annex I is amended as set out in Annex I to this Directive;

(17) Annex V is amended as set out in Annex II to this Directive;

(18) Annex VI, the text of which is set out in Annex III to this Directive, is added.

Article 2

1. Member States shall adopt and publish, by 31 December 2025 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately inform the Commission thereof. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 1 January 2026.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. By way of derogation from paragraph 1 of this Article, Member States shall adopt and publish, by 1 January 2024, the laws, regulations and administrative provisions necessary to comply with Article 1, point 5, of this Directive. They shall immediately inform the Commission thereof. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 1 January 2025.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

3. By way of derogation from paragraph 1 of this Article, Member States shall adopt and publish, by 31 December 2027, the laws, regulations and administrative provisions necessary to comply with Article 1, point 10, of this Directive. They shall immediately inform the Commission thereof. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 1 January 2028.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

4. Member States shall communicate to the Commission the text of the main provisions of national law, which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Council Directive (EU) 2022/XXX of XX March 2023 amending Council Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation

1.2. Policy area(s) concerned

Tax policy.

1.3. The proposal/initiative relates to:

X a new action

☐ a new action following a pilot project/preparatory action[33]

☐ the extension of an existing action

☐ a merger or redirection of one or more actions towards another/a new action

1.4. Objective(s)

1.4.1. General objective(s)

The proposal aims at ensuring a fair and efficient functioning of the Internal Market by increasing overall tax transparency in the field of crypto-assets, benefiting tax authorities as well as users and service providers. This initiative also aims at safeguarding Member States' tax revenues by extending and clarifying the provisions on administrative cooperation. The proposed rules should more specifically improve the ability of Member States to detect and counter tax fraud, tax evasion and tax avoidance. They should also contribute to deter non-compliance.

1.4.2. Specific objective(s)

Specific objective

The proposal aims at enhancing the relevant information available to tax administrations to perform their duties more effectively and to reinforce the general compliance with the provisions of Directive 2011/16/EU (hereinafter DAC);

The initiative will ensure a level playing field across the Union since the DAC will require crypto-assets service providers (hereinafter CASPs) to report relevant information to Member States on crypto-transactions;

The proposal will improve the deterrent effect through the reporting obligations which would lead to reduce the risk of tax evasion. There is evidence that taxpayers are aware of a higher probability of being caught for avoiding and evading taxes with automatic exchange of information measures in place.

1.4.3. Expected result(s) and impact

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

[33] As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

Improving the existing provision should have positive impact on the efficient application of Directive 2011/16/EU on administrative cooperation. Addressing the current inefficiencies in a uniform fashion will ensure legal certainty and clarity.

The reporting obligation with respect to the income earned by crypto-asset users aims to primarily inform tax authorities and enable them to assess tax due based on correct and complete information. This proposal will encompass reporting obligations and due diligence procedures for CASPs that would imply a compliance cost; however, these costs will be compensated by a higher-level playing field in the market, and the benefits derived from an increased legal certainty for all participants in the market. Not only will CASPs offer their services in a more stable market, but users will also perceive this market as a fairer and more secure market

1.4.4. Indicators of performance

Specify the indicators for monitoring progress and achievements.

Specific objectives	Indicators	Measurement tools
Improve the ability of Member States to detect and contrast cross-border tax evasion	Number of controls carried out based on data tax administrations gather via the initiative (either only or including these data)	Yearly assessment of automatic exchange of information (source: Member States' tax administrations)
Improve Member States' tax revenue collection	Additional tax revenues secured thanks to the initiative, measured either as increase in tax base and/or increase in tax assessed	Yearly assessment of automatic exchange of information (source: Member States' tax administrations)
Improve the deterrent effect through the reporting obligations and subsequent risk of detection.	Qualitative assessment of the rate of crypto-asset users' compliance.	Yearly assessment of automatic exchange of information (source: Member States' tax administrations)

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

CASPs will have to report information for tax purposes when they have users resident in the EU for tax purposes. In order to do so, CASPs will need to be registered in a central registry. An exemption to the registration is given to CASPs authorised under the Regulation on Markets in Crypto-Assets (hereinafter, MICA). After a CASP provides the information requested for the registration in a Member State, tax authorities report the information about such CASP to a central registry accessible to all Member States.

For the purpose of the automatic exchange of information, the Member States will have to exchange the information required by this proposal with other Member States by means of a Central Directory accessible to all Member States. The Commission will have the task to provide Member States with the Central Directory and remains

data processor with limited access. In general, the proposal will use the practical arrangements currently used under DAC.

In terms of timing for setting up the Central Directory, like DAC3 and DAC6, Member States and the Commission would require some time after the adoption of the proposal to be able to put the systems in place to allow the exchange of information to occur between Member States.

1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.

Member States' actions do not provide an efficient and effective solution to problems that are transnational in their essence. An EU approach appears preferable to avoid a patchwork of reporting requirements unilaterally implemented by some or all Member States. An 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.

1.5.3. Lessons learned from similar experiences in the past

This initiative will implement a new exchange of information framework for crypto-assets. The initiative also seeks to improving and strengthening the DAC in general. From similar experiences in the past, this initiative will bring more transparency to the EU crypto-assets market from a tax perspective in terms of getting a fairer and more equitable fiscal system. MS tax authorities will have at their disposal a new tool to fight tax fraud and tax evasion and, ultimately, increasing the efficiency of their fiscal frameworks.

1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments

As stated in the Action Plan for Fair and Simple Taxation Supporting the Recovery Strategy (released on 15 July 2020), the Commission committed to table a legislative proposal setting out union rules to increase fiscal transparency on the crypto-assets market. The proposal will use the procedures, arrangements and IT tools already established or under development under the DAC.

1.5.5. Assessment of the different available financing options, including scope for redeployment

Implementation costs for the initiative will be financed by the EU budget concerning only the central components for the system of automatic exchange of information. Otherwise, it will be for Member States to implement the measures envisaged.

1.6. Duration and financial impact of the proposal/initiative

☐ **limited duration**

– ☐ in effect from [DD/MM]YYYY to [DD/MM]YYYY

– ☐ Financial impact from YYYY to YYYY for commitment appropriations and from YYYY to YYYY for payment appropriations.

X **unlimited duration**

– Implementation with a start-up period from YYYY to YYYY,

– followed by full-scale operation.

1.7. Management mode(s) planned[34]

X **Direct management** by the Commission

– ☐ by its departments, including by its staff in the Union delegations;

– ☐ by the executive agencies

☐ **Shared management** with the Member States

☐ **Indirect management** by entrusting budget implementation tasks to:

– ☐ third countries or the bodies they have designated;

– ☐ international organisations and their agencies (to be specified);

– ☐ the EIB and the European Investment Fund;

– ☐ bodies referred to in Articles 70 and 71 of the Financial Regulation;

– ☐ public law bodies;

– ☐ bodies governed by private law with a public service mission to the extent that they are provided with adequate financial guarantees;

– ☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees;

– ☐ persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

– *If more than one management mode is indicated, please provide details in the 'Comments' section.*

Comments

This proposal builds on the existing framework and systems for the automatic exchange of information using a Central Directory for advance cross-border rulings ('DAC3') and reportable cross-border tax arrangements ('DAC6') which were developed pursuant to Article 21 of Directive 2011/16/EU in the context of these previous amendments to the DAC. The Commission, in conjunction with Member States, shall develop standardised computerised forms and formats for information exchange through implementing measures. As regards the CCN network which will permit the exchange of information between Member States, the Commission is responsible for the development and operation of such a network and Member

[34] Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx

States will undertake to create the appropriate domestic infrastructure that will enable the exchange of information via the CCN network.

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

The Commission will evaluate the functioning of the intervention against the main policy objectives. Monitoring and evaluation will be carried out in alignment with the other elements of administrative cooperation.

Member States will submit data on an annual basis to the Commission for the information outlined in the above Table on indicators of performance which will be used to monitor compliance with the proposal.

Member States undertake to:

- Communicate to the Commission a yearly assessment of the effectiveness of the

automatic exchange of information in Directive referred to in Articles 8, 8a, 8aa, 8ab, 8ac and the proposed 8ad as well;

- Provide a list of statistical data which is determined by the Commission in accordance with the procedure of Article 26(2) (implementing measures) for the evaluation of this Directive.

- Communicate to the Commission annually the results of their assessment the effectiveness of administrative cooperation.In Article 27, the Commission has undertaken to submit a report on the application of the Directive every five years, which started counting following 1 January 2013. The

results of this proposal (which amends the DAC) will be included in the report to the

European Parliament and to the Council that will be issued by 1 January 2028.

2.2. Management and control system(s)

2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed

The implementation of the initiative will rely on the competent authorities (tax administrations) of the Member States. They will be responsible for financing their own national systems and adapations necessary for the exchanges to take place with the Central Directory to be set up for the purposes of the proposal.

The Commission will set up the infrastructure, including the Central Directory, that will allow exchanges to be made between Member States' tax authorities. IT systems have been set up for the DAC which will be used for this initiative. The Commission will finance the systems needed to allow exchanges to take place, including the Central Directory, which will undergo the main elements of control being that for procurement contracts, technical verification of the procurement, ex-ante verification of commitments, and ex-ante verification of payments.

2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them

The proposed intervention will be based on a declarative system, which entails the risk of non-declaration or misdeclaration by CASPs in scope. Member States will be required to report relevant statistics to the Commission on an annual basis.

In order to address the risk of non-compliance of CASPs, the proposal includes a new compliance framework. National tax authorities will be in charge of enforcing penalties and more generally of ensuring compliance with DAC8. Penalties are set up at a sufficiently high level to serve as deterrent. Furthermore, national tax administrations will be able to perform audits to detect and deter non-compliance.

To monitor the proper application of the proposal, the Commission will have limited access to the Central Directory where Member States will exchange information on users' transactions with crypto-assets reported under the proposal, as well as statistics.

Fiscalis will support the internal control system, in accordance with Regulation (EU) 2021/847 of the European Parliament and of the Council of 20 May 2021, by providing funds for the following:

- Joint Actions (e.g. in the form of project groups);

- The development of the technical specifications, including the XML Schema.

The main elements of the control strategy are:

Procurement contracts

The control procedures for procurement defined in the Financial Regulation: any procurement contract is established following the established procedure of verification by the services of the Commission for payment, taking into account contractual obligations and sound financial and general management. Anti-fraud measures (controls, reports, etc.) are foreseen in all contracts concluded between the Commission and the beneficiaries. Detailed terms of reference are drafted and form the basis of each specific contract. The acceptance process follows strictly the TAXUD TEMPO methodology: deliverables are reviewed, amended if necessary and finally explicitly accepted (or rejected). No invoice can be paid without an "acceptance letter".

Technical verification of procurement

DG TAXUD performs controls of deliverables and supervises operations and services carried out by contractors. It also conducts quality and security audits of their contractors on a regular basis. Quality audits verify the compliance of the contractors' actual processes against the rules and procedures defined in their quality plans. Security audits focus on the specific processes, procedures and set-up.

In addition to the above controls, DG TAXUD performs the traditional financial controls:

Ex-ante verification of commitments

All commitments in DG TAXUD are verified by the Head of the Finances and the HR business correspondent Unit. Consequently, 100% of the committed amounts are covered by the ex-ante verification. This procedure gives a high level of assurance as to the legality and regularity of transactions.

Ex-ante verification of payments

100% of payments are verified ex-ante. Moreover, at least one payment (from all categories of expenditures) per week is randomly selected for additional ex-ante verification performed by the head of the Finances and HR business correspondent Unit. There is no target concerning the coverage, as the purpose of this verification is

to check payments "randomly" in order to verify that all payments were prepared in line with the requirements. The remaining payments are processed according to the rules in force on a daily basis.

Declarations of the Authorising Officers by Sub-Delegations (AOSD)

All the AOSD sign declarations supporting the Annual Activity Report for the year concerned. These declarations cover the operations under the programme. The AOSD declare that the operations connected with the implementation of the budget have been executed in accordance with the principles of the sound financial management, that the management and control systems in place provided satisfactory assurance concerning the legality and regularity of the transactions and that the risks associated to these operations have been properly identified, reported and that mitigating actions have been implemented.

2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)

The controls established enable DG TAXUD to have sufficient assurance of the quality and regularity of the expenditure and to reduce the risk of non-compliance. The above control strategy measures reduce the potential risks below the target of 2% and reach all beneficiaries. Any additional measures for further risk reduction would result in disproportionately high costs and are therefore not envisaged. The overall costs linked to implementing the above control strategy – for all expenditures under Fiscalis 2027 programme – are limited to 1.6% of the total payments made. It is expected to remain at the same ratio for this initiative. The programme control strategy limits the risk of non-compliance to virtually zero and remains proportionate to the risks entailed.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.

The European Anti-fraud Office (OLAF) may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EC) No 1073/1999 of the European Parliament and of the Council[35] and Council Regulation (Euratom, EC) No 2185/96[36] with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant agreement or grant decision or a contract funded under this Regulation

[35] Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF), OJ L 136 p. 1, 31.5.1999.

[36] Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities, OJ L 292 p. 2, 15.11.96.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number: 03 04 0100	Diff./Non-diff.[37]	from EFTA countries [38]	from candidate countries[39]	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
1 - Single Market, Innovation and Digital	Improving the proper functioning of the taxation systems	Diff.	NO	NO	NO	NO

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	[XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO

37 Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.
38 EFTA: European Free Trade Association.
39 Candidate countries and, where applicable, potential candidates from the Western Balkans.

3.2. Estimated financial impact of the proposal on appropriations

3.2.1. Summary of estimated impact on operational appropriations

– ☐ The proposal/initiative does not require the use of operational appropriations

– ☒ The proposal/initiative requires the use of operational appropriations, as explained below:

EUR million (to three decimal places)

Heading of multiannual financial framework	Number 1	Single Market, Innovation and Digital

DG: TAXUD			2023	2024	2025	2026	2027	2028	**TOTAL**
• Operational appropriations									
Budget line[40] 14.030100	Commitments	(1a)	0.400	0.870	0.450	0.270	0.170	0.170	**2.330**
	Payments	(2a)		0.400	0.870	0.450	0.270	0.170	**2.160**
Budget line	Commitments	(1b)							
	Payments	(2b)							
Appropriations of an administrative nature financed from the envelope of specific programmes[41]									
Budget line		(3)							
TOTAL appropriations for DG TAXUD	Commitments	=1a+1b +3	0.400	0.870	0.450	0.270	0.170	0.170	**2.330**
	Payments	=2a+2b +3		0.400	0.870	0.450	0.270	0.170	**2.160**

[40] According to the official budget nomenclature.

[41] Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

Heading of multiannual financial framework	7	'Administrative expenditure'

This section should be filled in using the 'budget data of an administrative nature' to be firstly introduced in the Annex to the Legislative Financial Statement (Annex V to the internal rules), which is uploaded to DECIDE for interservice consultation purposes.

EUR million (to three decimal places)

		2023	2024	2025	2026	2027	**TOTAL 2021 -2027 MFF**
DG: TAXUD							
• Human resources		0.118	0.157	0.157	0.063	0.016	**0,511**
• Other administrative expenditure		0.004	0.004	0.002	0.002	0.001	**0,013**
TOTAL DG TAXUD		0.122	0.161	0.159	0.065	0.017	**0,524**

TOTAL appropriations under HEADING 7 of the multiannual financial framework	(Total commitments = Total payments)	0.122	0.161	0.159	0.065	0.017	**0,524**

EUR million (to three decimal places)

		2023	2024	2025	2026	2027	**TOTAL 2021 – 2027 MFF**
TOTAL appropriations under HEADINGS 1 to 7 of the multiannual financial framework	Commitments	0.522	1.031	0.609	0.335	0.187	**2,684**
	Payments	0.122	0.561	1.029	0.515	0.287	**2,514**

TOTAL appropriations under HEADINGS 1 to 7 of the multiannual financial framework										

3.2.2. Estimated impact on operational appropriations

– ☐ The proposal/initiative does not require the use of operational appropriations

– ☒ The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs ⇩			2023		2024		2025		2026		2027		2028		**TOTAL**	
	OUTPUTS															
	Type[42]	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1[43]…																
Specifications				0.400		0.400										**0.800**
Development						0.450		0.350		0.100						**0.900**
Maintenance										0.050		0.050		0.050		**0.150**
Support								0.020		0.060		0.060		0.060		**0.200**
Training								0.020								**0.020**

[42] Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

[43] As described in point 1.4.2. 'Specific objective(s)…'

ITSM (Infrastructure, hosting, licences, etc.),					0.020		0.060		0.060		0.060		0.060		**0.260**
Subtotal for specific objective No 1			**0.400**		**0.870**		**0.450**		**0.270**		**0.170**		**0.170**		**2.330**
SPECIFIC OBJECTIVE No 2 ...															
- Output															
Subtotal for specific objective No 2															
TOTALS			**0.400**		**0.870**		**0.450**		**0.270**		**0.170**		**0.170**		**2.330**

3.2.3. Summary of estimated impact on administrative appropriations

– ☐ The proposal/initiative does not require the use of appropriations of an administrative nature

– ☒ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year **2023**	Year **2024**	Year **2025**	Year **2026**	Year **2027**	**TOTAL**
HEADING 7 of the multiannual financial framework	**0.118**	**0.157**	**0.157**	**0.063**	**0.016**	**0,511**
Human resources	**0.004**	**0.004**	**0.002**	**0.002**	**0.001**	**0,013**
Other administrative expenditure	**0.122**	**0.161**	**0.159**	**0.065**	**0.017**	**0,524**
Subtotal HEADING 7 of the multiannual financial framework						
TOTAL	**0.122**	**0.161**	**0.159**	**0.065**	**0.017**	**0,524**

Outside HEADING 7[44] of the multiannual financial framework						
Human resources						
Other expenditure of an administrative nature						
Subtotal outside HEADING 7 of the multiannual financial framework						

TOTAL	0.122	0.161	0.159	0.065	0.017	**0,524**

The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the

[44] Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

3.2.3.1. Estimated requirements of human resources

– ☐ The proposal/initiative does not require the use of human resources.

– ☒ The proposal/initiative requires the use of human resources, as explained below:

		2023	2024	2025	2026	2027	**Total**
• Establishment plan posts (officials and temporary staff)							
20 01 02 01 (Headquarters and Commission's Representation Offices)		0.75	1	1	0.4	0.1	**3.25**
20 01 02 03 (Delegations)							
01 01 01 01 (Indirect research)							
01 01 01 11 (Direct research)							
Other budget lines (specify)							
• External staff (in Full Time Equivalent unit: FTE)[45]							
20 02 01 (AC, END, INT from the 'global envelope')							
20 02 03 (AC, AL, END, INT and JPD in the delegations)							
XX 01 xx **yy zz** [46]	- at Headquarters						
	- in Delegations						
01 01 01 02 (AC, END, INT - Indirect research)							
01 01 01 12 (AC, END, INT - Direct research)							
Other budget lines (specify)							
TOTAL		**0.75**	**1**	**1**	**0.4**	**0.1**	**3.25**

Estimate to be expressed in full time equivalent units

XX is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	Preparation of meetings and correspondence with Member States; work on forms, IT formats and the Central Directory; Commission of external contractors to do work on the IT system.
External staff	N/A

[45] AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JPD= Junior Professionals in Delegations.

[46] Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

3.2.4. Compatibility with the current multiannual financial framework

The proposal/initiative:

– ☒ can be fully financed through redeployment within the relevant heading of the Multiannual Financial Framework (MFF).

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts. Please provide an excel table in the case of major reprogramming.

– ☐ requires use of the unallocated margin under the relevant heading of the MFF and/or use of the special instruments as defined in the MFF Regulation.

Explain what is required, specifying the headings and budget lines concerned, the corresponding amounts, and the instruments proposed to be used.

– ☐ requires a revision of the MFF.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. Third-party contributions

The proposal/initiative:

– ☒ does not provide for co-financing by third parties

– ☐ provides for the co-financing by third parties estimated below:

Appropriations in EUR million (to three decimal places)

	Year **N**[47]	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

[47] Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

3.3. Estimated impact on revenue

– ☒ The proposal/initiative has no financial impact on revenue.

– ☐ The proposal/initiative has the following financial impact:

☐ on own resources

☐ on other revenue

please indicate, if the revenue is assigned to expenditure lines ☐

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative[48]						
		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article …….								

For assigned revenue, specify the budget expenditure line(s) affected.

Other remarks (e.g. method/formula used for calculating the impact on revenue or any other information).

[48] As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.

EUROPEAN
COMMISSION

Brussels, 8.12.2022
COM(2022) 707 final

ANNEXES 1 to 3

ANNEXES

to the

Proposal for a Council Directive

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

{SEC(2022) 438 final} - {SWD(2022) 400 final} - {SWD(2022) 401 final} -
{SWD(2022) 402 final}

ANNEX I

Annex I is amended as follows:

(1) Section I is amended as follows:

(a) paragraph A is amended as follows:

'(i) the introductory paragraph and subpoints 1 and 2 are replaced by the following:

A. Subject to paragraphs C to G, each Reporting Financial Institution shall report to the competent authority of its Member State.

(1) the following information with respect to each Reportable Account of such Reporting Financial Institution is reported:

(a) the name, address, Member State(s) of residence, TIN(s) and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder of the account and whether the Account Holder has provided a valid self-certification;

(b) in the case of any Entity that is an Account Holder and that, after application of the due diligence procedures consistent with Sections V, VI and VII, is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, Member State(s) of residence and TIN(s) of the Entity and the name, address, Member State(s) of residence, TIN(s) and date, and place of birth of each Reportable Person, as well as the role(s) by virtue of which each Reportable Person is a Controlling Person of the Entity and whether a valid self-certification has been provided for each Reportable Person;

(c) whether the account is a joint account, including the number of joint Account Holders.

(2) the account number (or functional equivalent in the absence of an account number), the type of account and whether the account is a Pre-existing Account or a New Account;';

(ii) the following subparagraph 6a is inserted:

'6a. in the case of any Equity Interest held in an Investment Entity that is a legal arrangement, the role(s) by virtue of which the Reportable Person is an Equity Interest holder; and.'

(b) paragraph C is amended as follows:

'C. Notwithstanding subparagraph A(1), with respect to each Reportable Account that is a Pre-existing Account, the TIN(s) or date of birth is not required to be reported if such TIN(s) or date of birth is not in the records of the Reporting Financial Institution and is not otherwise required to be collected by such Reporting Financial Institution under domestic law or any Union legal instrument. However, a Reporting Financial Institution is required to use reasonable efforts to obtain the TIN(s) and date of birth with respect to Pre-existing Accounts by the end of the second calendar year following the year in which Pre-existing Accounts were identified as Reportable Accounts and

whenever it is required to update the information relating to the Pre-existing Account pursuant to domestic AML/KYC Procedures.';

(c) the following paragraph F is added:

F. Nothwithstanding paragraph A(5), point (b) and unless the Reporting Financial Institution elects otherwise with respect to any clearly identified group of accounts, the gross proceeds from the sale or redemption of a Financial Asset is not required to be reported to the extent such gross proceeds from the sale or redemption of such Financial Asset is reported by the Reporting Financial Institution according to Article 8ad.

(2) in Section VI, paragraph 2, point (b) is replaced by the following:

'(b) Determining the Controlling Persons of an Account Holder. For the purposes of determining the Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures, provided that such procedures are consistent with the Directive (EU) 2015/849. If the Reporting Financial Institution is not legally required to apply AML/KYC Procedures that are consistent with the Directive (EU) 2015/849, it shall apply substantially similar procedures for the purpose of determining the Controlling Persons.'

(3) in Section VII, the following paragraph is inserted:

'AA. Temporary lack of Self-Certification. In exceptional circumstances where a self-certification cannot be obtained by a Reporting Financial Institution in respect of a New Account in time to meet its due diligence and reporting obligations with respect to the reporting period during which the account was opened, the Reporting Financial Institution shall apply the due diligence procedures for Pre-existing Accounts, until such self-certification is obtained and validated.'

(4) Section VIII is amended as follows:

(a) subparagraphs A(5), A(6) and A(7) are replaced by the following:

'5. The term 'Depository Institution' means any Entity that:

(a) accepts deposits in the ordinary course of a banking or similar business; or

(b) holds E-money, E-money Tokens or Central Bank Digital Currencies for the benefit of customers.

6. The term 'Investment Entity' means any Entity:

(a) which primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:

(i) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;

(ii) individual and collective portfolio management; or

(iii) otherwise investing, administering, or managing Financial Assets, money, or Reportable Crypto-Assets on behalf of other persons; or

(b) the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets or Reportable Crypto-Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, Specified Insurance Company or an Investment Entity described in subparagraph A(6), point (a).

An Entity is treated as primarily conducting as a business one or more of the activities described in subparagraph A(6), point (a), or an Entity's gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets or Reportable Crypto-Assets for the purposes of subparagraph A(6), point (b), if the Entity's gross income attributable to the relevant activities equals or exceeds 50 % of the Entity's gross income during the shorter of: (i) the three-year period ending on 31 December of the year preceding the year in which the determination is made; or (ii) the period during which the Entity has been in existence. For the purposes of subparagraph A(6), point (a)(iii), the term "otherwise investing, administering, or managing Financial Assets, money, or Reportable Crypto-Assets on behalf of other persons" does not include the provision of services effectuating Exchange Transactions for or on behalf of customers. The term 'Investment Entity' does not include an Entity that is an Active NFE because that Entity meets any of the criteria in subparagraphs D(8), point (d) to (g).

This paragraph shall be interpreted in a manner consistent with similar language set forth in the definition of 'financial institution' in Directive (EU) 2015/849.

7. The term 'Financial Asset' includes a security (for example, a share of stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness), partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements), Insurance Contract or Annuity Contract, or any interest (including a futures or forward contract or option) in a security, Reportable Crypto-Asset, partnership interest, commodity, swap, Insurance Contract, or Annuity Contract. The term 'Financial Asset' does not include a non-debt, direct interest in real property.'

(b) in paragraphs A, the following subparagraphs are added:

'9. The term 'Electronic Money' or E-money' means Electronic Money or E-money as defined in Directive 2009/110/EC. For the purposes of this Directive, the terms 'Electronic Money' or 'E-money' does not include a product created for the sole purpose of facilitating the transfer of funds from a customer to another person pursuant to instructions of the customer. A product is not created for the sole purpose of facilitating the transfer of funds if, in the ordinary course of business of the transferring Entity, either the funds connected with such product are held longer than 60 days after receipt of instructions to facilitate the transfer, or, if no instructions are received, the

funds connected with such product are held longer than 60 days after receipt of the funds.

10. The term ‘Electronic Money Token‘ or ‘E-money Token’ means Electronic Money Token or E-money Token as defined in Regulation XXX.

11. The term ‘Fiat Currency’ means the official currency of a jurisdiction, issued by a jurisdiction or by a jurisdiction’s designated Central Bank or monetary authority, as represented by physical banknotes or coins or by money in different digital forms, including bank reserves, commercial bank money, electronic money products and Central Bank Digital Currencies

12. The term ‘Central Bank Digital Currency’ means any digital Fiat Currency issued by a Central Bank or other monetary authority.

13. The term ‘Crypto-Asset’ means Crypto-Asset as defined in Regulation XXX.

14. The term ‘Reportable Crypto-Asset’ means any Crypto-Asset other than a Central Bank Digital Currency, Electronic Money, Electronic Money Token or any Crypto-Asset for which the Reporting Crypto-Asset Service Provider has adequately determined that it cannot be used for payment or investment purposes.

15. The term ‘Exchange Transaction’ means any:

(a) exchange between Reportable Crypto-Assets and Fiat Currencies;

(b) exchange between one or more forms of Reportable Crypto-Assets.

(c) subparagraph B(1), point (a) is replaced by the following:

1. The term ‘Non-Reporting Financial Institution’ means any Financial Institution that is:

(a) a Governmental Entity, International Organisation or Central Bank, other than:

(i) with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution; or

(ii) with respect to the activity of maintaining Central Bank Digital Currencies for Account Holders which are not Financial Institutions, Governmental Entities, International Organisations or Central Banks.

(d) subparagraph C(2) is replaced by the following:

‘2. The term ‘Depository Account’ includes any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a Depository Institution, A Depository Account also includes:

(a) an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest therein;

(b) an account or notional account that represents all E-money or E-money Tokens held for the benefit of a customer; and

(c) an account that holds one or more Central Bank Digital Currencies for the benefit of a customer.

(e) subparagraph C(9) and (10) are replaced by the following:

'9. The term 'Pre-existing Account' means:

(a) a Financial Account maintained by a Reporting Financial Institution as of 31 December 2015 or, if the account is treated as a Financial Account solely by virtue of the amendments to the Directive 2011/16/EU, as of 1 January 2024;

(b) any Financial Account of an Account Holder, regardless of the date such Financial Account was opened, if:

(i) the Account Holder also holds with the Reporting Financial Institution (or with a Related Entity within the same Member State as the Reporting Financial Institution) a Financial Account that is a Pre-existing Account under subparagraph C(9), point (a);

(ii) the Reporting Financial Institution (and, as applicable, the Related Entity within the same Member State as the Reporting Financial Institution) treats both of the aforementioned Financial Accounts, and any other Financial Accounts of the Account Holder that are treated as Pre-existing Accounts under point (b), as a single Financial Account for purposes of satisfying the standards of knowledge requirements set forth in paragraph A of Section VII, and for purposes of determining the balance or value of any of the Financial Accounts when applying any of the account thresholds;

(iii) with respect to a Financial Account that is subject to AML/KYC Procedures, the Reporting Financial Institution is permitted to satisfy such AML/KYC Procedures for the Financial Account by relying upon the AML/KYC Procedures performed for the Pre-existing Account described in subparagraph C(9), point (a); and

(iv) the opening of the Financial Account does not require the provision of new, additional or amended customer information by the Account Holder other than for the purposes of this Directive.

10. The term 'New Account' means a Financial Account maintained by a Reporting Financial Institution opened on or after 1 January 2016 or, if the account is treated as a Financial Account solely by virtue of the amendments to the Directive 2011/16/EU, on or after 1 January 2024.'

(f) in subparagraph (17), point (e) the following point is added:

'(v) a foundation or capital increase of a company provided that the account satisfies the following requirements:

– the account is used exclusively to deposit capital that is to be used for the purpose of the foundation or capital increase of a company, as prescribed by law;

– any amounts held in the account are blocked until the Reporting Financial Institution obtains an independent confirmation regarding the foundation or capital increase;

– the account is closed or transformed into an account in the name of the company after the foundation or capital increase;

– any repayments resulting from a failed foundation or capital increase, net of service provider and similar fees, are made solely to the persons who contributed the amounts; and

– the account has not been established more than 12 months ago'.

(g) in paragraph C(17), the following point (ee) is inserted:

'(ee) A Depository Account that represents all Electronic Money and Electronic Money Tokens held for the benefit of a customer, if the rolling average 90 days end-of-day aggregate account balance or value during any period of 90 consecutive days did not exceed USD 10 000 at any day during the calendar year or other appropriate reporting period.'

(h) paragraph D(2) is replaced by the following:

'2. The term 'Reportable Person' means a Member State Person other than (i) an Entity the stock of which is regularly traded on one or more established securities markets; (ii) any Entity that is a Related Entity of an Entity described in clause (i); (iii) a Governmental Entity; (iv) an International Organisation; (v) a Central Bank; or (vi) a Financial Institution'.

(i) in paragraph E, the following paragraph 7 is added:

'7. The term 'Identification Service' means an electronic process made available free of charge by a Member State to a Reporting Financial Institution for the purposes of ascertaining the identity and tax residence of an Account Holder or Controlling Person.'

(5) in Section IX the following subparagraph is added:

'Records referred to in point (2) of this subparagraph shall remain available not longer than necessary but in any event not shorter than 5 years to achieve the purposes of this Directive;'

(6) the following Section XI is added:

'Section XI

Transitional Measures

Under subparagraph A(1), point (b) and A (6a) of Section I, with respect to each Reportable Account that is maintained by a Reporting Financial Institution as of 1 January 2024 and for reporting periods ending by the second calendar year following such date, information with respect to the role(s) by virtue of which each Reportable Person is a Controlling Person or Equity Interest holder of the Entity is only required to be reported if such information is available in the electronically searchable data maintained by the Reporting Financial Institution.'

ANNEX II

Annex V is amended as follows:

(1) in Section I C. the following subparagraph is added.

'10. 'Identification Service' means an electronic process made available free of charge by a Member State to a Reporting Platform Operator for the purposes of ascertaining the identity and tax residence of a Seller.'

(2) in Section II subparagraph B(3) is replaced by the following:

'3. Notwithstanding subparagraphs B(1) and (2), the Reporting Platform Operator shall not be required to collect information referred to in subparagraph B(1), points (b) to (e) and subparagraph B(2), point (b) to (f) where it relies on direct confirmation of the identity and residence of the Seller through an Identification Service made available by a Member State or the Union to ascertain the identity and tax rresidence of the Seller. In case the Reporting Platform Operator relied on an Identification Service to ascertain the identity and tax residence of a Reportable Seller, the name, Identification Service identifier, and the Member State of issuance will be required;'

(3) in Section IV the introductory wording of subparagraph F(5) is replaced by the following:

'5. The Member State of single registration shall remove a Reporting Platform Operator from the central register in the following cases:

ANNEX III

'ANNEX VI
DUE DILIGENCE PROCEDURES, REPORTING REQUIREMENTS AND OTHER RULES FOR REPORTING CRYPTO-ASSET SERVICE PROVIDERS

This Annex lays down the due diligence procedures, reporting requirements and other rules that shall be applied by the Reporting Crypto-Asset Service Providers in order to enable Member States to communicate, by automatic exchange, the information referred to in Article 8ad of this Directive.

This Annex also lays down the rules and administrative procedures that Member States shall have in place to ensure effective implementation of, and compliance with, the due diligence procedures and reporting requirements set out in it.

SECTION I

OBLIGATIONS OF REPORTING CRYPTO-ASSET SERVICE PROVIDERS

A. A Reporting Crypto-Asset Service Provider as defined in Section IV subparagraph B(3) is subject to the due diligence and reporting requirements in Sections II and III in a Member State, if it is:

1. an Entity authorised under Regulation XX;

2. an Entity or individual resident for tax purposes in a Member State;

3. an Entity that (a) is incorporated or organised under the laws of a Member State and (b) either has legal personality in a Member State or has an obligation to file tax returns or tax information returns to the tax authorities in a Member State with respect to the income of the Entity;

4. an Entity managed from a Member State; or

5. an Entity or individual that has a regular place of business in a Member State and is not a Qualified Non-Union Reporting Crypto-Asset Service Provider; or

6. an Entity or individual resident for tax purposes in a non-Union jurisdiction.

B. A Reporting Crypto-Asset Service Provider is subject to the due diligence and reporting requirements in Sections II and III in a Member State in accordance with subparagraph A with respect to Reportable Transactions effectuated through a Branch based in a Member State.

C. A Reporting Crypto-Asset Service Provider that is an Entity is not required to complete the due diligence and reporting requirements in Sections II and III in a Member State it is subject to pursuant to subparagraphs A(3), (4) or (5), if such requirements are completed by such Reporting Crypto-Asset Service Provider in any other Member State by virtue of it being resident for tax purposes in such Member State.

D. A Reporting Crypto-Asset Service Provider that is an Entity is not required to complete the due diligence and reporting requirements in Sections II and III in a Member State it is subject to pursuant to subparagraph A(4) or (5), if such requirements are completed by such Reporting Crypto-Asset Service Provider in any other Member State by virtue of it being an Entity that (a) is incorporated or organised under the laws of such Member State and (b) either has legal personality in the other Member State or has an obligation to file tax returns or tax information returns to the tax authorities in the other Member State with respect to the income of the Entity.

E. A Reporting Crypto-Asset Service Provider that is an Entity is not required to complete the due diligence and reporting requirements in Sections II and III in a Member State it is subject to pursuant to subparagraph A(5), if such requirements are completed by such Reporting Crypto-Asset Service Provider in any other Member State by virtue of it being managed from such Member State.

F. A Reporting Crypto-Asset Service Provider that is an Entity is not required to complete the due diligence and reporting requirements in Sections II and III in a Member State it is subject to pursuant to subparagraph A(6), if such requirements are completed by such Reporting Crypto-Asset Service Provider in any other Qualified Non-Union Jurisdiction by virtue of it being managed from such Qualified Non-Union jurisdiction.

G.A Reporting Crypto-Asset Service Provider that is an individual is not required to complete the due diligence and reporting requirements in Sections II and III in a Member State it is subject to pursuant to subparagraph A(5), if such requirements are completed by such Reporting Crypto-Asset Service Provider in any other Member State by virtue of it being resident for tax purposes in such Member State.

H. A Reporting Crypto-Asset Service Provider that is an individual is not required to complete the due diligence and reporting requirements in Sections II and III in a Member State it is subject to pursuant to subparagraph A(6), if such requirements are completed by such Reporting Crypto-Asset Service Provider in any other Qualified Non-Union jurisdiction by virtue of it being resident for tax purposes in such Qualified Non-Union jurisdiction.

I. A Reporting Crypto-Asset Service Provider is not required to complete the due diligence and reporting requirements in Sections II and III in a Member State with respect to Reportable Transactions it effectuates through a Branch in any other Member State, if such requirements are completed by such Branch in such Member State.

J. Reporting Crypto-Asset Service Provider is not required to complete the due diligence and reporting requirements in Section II and III in a Member State it is subject to pursuant to subparagraph A(2), (3), (4) (5) or (6), if it has lodged a notification with a Member State in a format specified by a Member State confirming that such requirements are completed by such Reporting Crypto-Asset Service Provider under the rules of any other Member State pursuant to criteria that are substantially similar to subparagraphs A(2), (3), (4),(5) or (6), respectively.

K. Reporting Crypto-Asset Service Provider is not required to complete the due diligence and reporting requirements in Section II and III in a Member State it is subject to pursuant to subparagraph A(1) if it has lodged a notification with a Member State in a format specified by a Member State confirming that such requirements are completed by such Reporting Crypto-Asset Service Provider under the rules of an Effective Qualifying Competent Authority Agreement pursuant to an correspondence decision according to Article 8ad(11).

SECTION II

REPORTING REQUIREMENTS

A. A Reporting Crypto-Asset Service Provider within the meaning of paragraph A of Section I shall report to the competent authority of the Member State of its authorisation, tax residence or registration the information set out in paragraph B of this Section no later than 31 January of the year following the relevant calendar year or other appropriate reporting period of the Reportable Transaction.

B. For each relevant calendar year or other appropriate reporting period, and subject to the obligations of Reporting Crypto-Asset Service Providers in Section I and the due diligence procedures in Section III, a Reporting Crypto-Asset Service Provider shall report the following information with respect to its Crypto-Asset Users that are Reportable Users or that have Controlling Persons that are Reportable Persons:

1. the name, address, Member State(s) of residence, TIN(s) and, in case of an individual, date and place of birth of each Reportable User and, in the case of any Entity that, after application of the due diligence procedures laid down in Section III, is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, Member State(s) of residence and TIN(s) of the Entity and the name, address, Member State(s) of residence, TIN(s) and date and place of birth of each Reportable Person, as well as the role(s) by virtue of which each Reportable Person is a Controlling Person of the Entity;

2. the name, address, TIN and, if available, the individual identification number and the Global Legal Entity Identifier, of the Reporting Crypto-Asset Service Provider;

3. for each Reportable Crypto-Asset with respect to which it is has effectuated Reportable Transactions during the relevant calendar year or other appropriate reporting period, where relevant:

   (a) the full name of the type of Reportable Crypto-Asset;

(b) the aggregate gross amount paid, the aggregate number of units and the number of Reportable Transactions in respect of acquisitions against Fiat Currency;

(c) the aggregate gross amount received, the aggregate number of units and the number of Reportable Transactions in respect of disposals against Fiat Currency;

(d) the aggregate fair market value, the aggregate number of units and the number of Reportable Transactions in respect of acquisitions against other Reportable Crypto-Assets;

(e) the aggregate fair market value, the aggregate number of units and the number of Reportable Transactions in respect of disposals against other Reportable Crypto-Assets;

(f) the aggregate fair market value, the aggregate number of units and the number of Reportable Retail Payment Transactions;

(g) the aggregate fair market value, the aggregate number of units and the number of Reportable Transactions, and subdivided by transfer type where known by the Reporting Crypto-Asset Service Provider, in respect of Transfers to the Reportable User not covered by subparagraphs A(3), points (b) and (d);

(h) the aggregate fair market value, the aggregate number of units and the number of Reportable Transactions, and subdivided by transfer type where known by the Reporting Crypto-Asset Service Provider, in respect of Transfers by the Reportable User not covered by subparagraphs A(3), points (c), (e) and (f); and

(i) the aggregate fair market value, as well as the aggregate number of units of Transfers effectuated by the Reporting Crypto-Asset Service Provider to distributed ledger addresses not known to be associated with a virtual asset service provider or financial institution.

For the purposes of subparagraphs B(3), points (b) and (c), the amount paid or received shall be reported in the Fiat Currency in which it was paid or received. In case the amounts were paid or received in multiple Fiat Currencies, the amounts shall be reported in a single currency, converted at the time of each Reportable Transaction in a manner that is consistently applied by the Reporting Crypto-Asset Service Provider.

For the purposes of subparagraphs B(3), points (d) to (i), the fair market value shall be determined and reported in a single currency, valued at the time of each Reportable Transaction in a manner that is consistently applied by the Reporting Crypto-Asset Service Provider.

The information reported shall identify the Fiat Currency in which each amount is reported.

C. The information listed in paragraph 3 shall be reported by 31 January of the calendar year following the year to which the information relates. The first information shall be reported for the relevant calendar year or other appropriate reporting period as from 1 January 2026.

D. Notwithstanding subparagraph (C) of this Section, a Reporting Crypto-Asset Service Provider within the meaning of Section I, subparagraph A(6), shall not be required to provide the information set out in paragraph B of this Section with respect to Qualified Reportable Transactions, covered by an Effective Qualifying Competent Authority Agreement, which already provides for the automatic exchange of correspondent information with a Member State on Reportable Users resident in that Member State.

SECTION III

DUE DILIGENCE PROCEDURES

A Crypto-Asset User is treated as a Reportable User beginning from the date when it is identified as such pursuant to the due diligence procedures described in this Section.

A. Due Diligence Procedures for Individual Crypto-Asset Users

The following procedures apply for purposes of determining whether the Individual Crypto-Asset User is a Reportable User.

1. When establishing the relationship with the Individual Crypto-Asset User, or with respect to Pre-existing Individual Crypto-Asset Users by 12 months after the entry of force of this Directive, the Reporting Crypto-Asset Service Provider shall obtain a self-certification that allows the Reporting Crypto-Asset Service Provider to determine the Individual Crypto-Asset User's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Crypto-Asset Service Provider, including any documentation collected pursuant to Customer Due Diligence Procedures.

2. If at any point there is a change of circumstances with respect to an Individual Crypto-Asset User that causes the Reporting Crypto-Asset Service Provider to know, or have reason to know, that the original self-certification is incorrect or unreliable, the Reporting Crypto-Asset Service Provider cannot rely on the original self-certification and shall obtain a valid self-certification, or a reasonable explanation and, where appropriate, documentation supporting the validity of the original self-certification.

B. Due Diligence Procedures for Entity Crypto-Asset Users

The following procedures apply for purposes of determining whether the Entity Crypto-Asset User is a Reportable User or an Entity, other than an Excluded Person or an Active Entity, with one or more Controlling Persons who are Reportable Person.

1. Determine whether the Entity Crypto-Asset User is a Reportable Person.

   (a) When establishing the relationship with the Entity Crypto-Asset User, or with respect to Pre-existing Entity Crypto-Assets Users by 12 months after the entry of force of this Directive, the Reporting Crypto-Asset Service Provider shall obtain a self-certification that allows the Reporting Crypto-Asset Service Provider to determine the Entity Crypto-Asset User's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Crypto-Asset Service Provider, including any documentation collected pursuant to Customer Due Diligence Procedures. If the Entity Crypto-Asset User certifies that it has no residence for tax purposes, the Reporting Crypto-Asset Service Provider may rely on the place of effective management or the address of the principal office to determine the residence of the Entity Crypto-Asset User.

   (b) If the self-certification indicates that the Entity Crypto-Asset User is resident in a Member State, the Reporting Crypto-Asset Service Provider shall treat the Entity Crypto-Asset User as a Reportable User, unless it reasonably determines based on the self-certification or on information in its possession or that is publicly available, that the Entity Crypto-Asset User is an Excluded Person.

2. Determine whether the Entity has one or more Controlling Persons who are Reportable Persons. With respect to an Entity Crypto-Asset User, other than an Excluded Person, the Reporting Crypto-Asset Service Provider shall determine whether it has one or more Controlling Persons who are Reportable Persons, unless it determines that the Entity Crypto-Asset User is an Active Entity, based on a self-certification from the Entity Crypto-Asset User.

   (a) Determining the Controlling Persons of the Entity Crypto-Asset User. For the purposes of determining the Controlling Persons of the Entity Crypto-Asset User, a Reporting Crypto-Asset Service Provider may rely on information collected and maintained pursuant to Customer Due Diligence Procedures, provided that such procedures are consistent with Directive (EU) 2015/849. If the Reporting Crypto-Asset Service Provider is not legally required to apply Customer Due Diligence Procedures that are consistent with Directive (EU) 2015/849, it shall apply substantially similar procedures for the purpose of determining the Controlling Persons.

   (b) Determining whether a Controlling Person of an Entity Crypto-Asset User is a Reportable Person. For the purposes of determining whether a Controlling Person is a Reportable Person, a Reporting Crypto-Asset Service Provider shall rely on a self-certification from the Entity Crypto-Asset User or such Controlling Person that allows the Reporting Crypto-Asset Service Provider to determine the Controlling Person's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Crypto-Asset Service Provider, including any documentation collected pursuant to Customer Due Diligence Procedures.

3. If at any point there is a change of circumstances with respect to an Entity Crypto-Asset User or its Controlling Persons that causes the Reporting Crypto-Asset Service Provider to know, or have reason to know, that the original self-certification is incorrect or unreliable, the Reporting Crypto-Asset Service Provider cannot rely on the original self-certification and shall obtain a valid self-certification, or a reasonable explanation and, where appropriate, documentation supporting the validity of the original self-certification.

C. Requirements for validity of self-certifications

1. A self-certification provided by an Individual Crypto-Asset User or Controlling Person is valid only if it is signed or otherwise positively affirmed by the Individual Crypto-Asset User or Controlling Person, it is dated at the latest at the date of receipt and it contains the following information with respect to the Individual Crypto-Asset User or Controlling Person:

   (a) first and last name;

   (b) residence address;

   (c) Member State(s) of residence for tax purposes;

   (d) with respect to each Reportable Person, the TIN with respect to each Member State;

   (e) date of birth.

2. A self-certification provided by an Entity Crypto-Asset User is valid only if it is signed or otherwise positively affirmed by the Entity Crypto-Asset User, it is dated at

the latest at the date of receipt and it contains the following information with respect to the Entity Crypto-Asset User:

(a) legal name;

(b) address;

(c) Member State(s) of residence for tax purposes;

(d) with respect to each Reportable Person, the TIN with respect to each Member State;

(e) in the case of an Entity Crypto-Asset User other than Active Entity or an Excluded Person, the information described in subparagraph C(1) with respect to each Controlling Person of the Entity Crypto-Asset User, as well as the role(s) by virtue of which each Reportable User is a Controlling Person of the Entity, if not already determined on the basis of Customer Due Diligence Procedures;

(f) if applicable, information as to the criteria it meets to be treated as an Active Entity or Excluded Person.

3. Notwithstanding subparagraphs C(1) and (2), the Reporting Crypto-Asset Service Provider shall not be required to collect information referred to in subparagraph C(1), points (b) to (e), and paragraph C(2), points (b) to (f), where it relies on self-certification of the Crypto-Asset User through an Identification Service made available by a Member State or the Union to ascertain the identity and tax residence of the Crypto-Asset User, in case the Reporting Platform Operator relied on an Identification Service to ascertain the identity and tax residence of a Reportable Crypto-Asset User, the name, Identification Service identifier, and the Member State of issuance will be required.

D. General due diligence requirements

1. A Reporting Crypto-Asset Service Provider that is also a Financial Institution for the purposes of this Directive may rely on the due diligence procedures completed pursuant to Sections IV and VI of Annex I of this Directive for the purpose of the due diligence procedures pursuant to this Section. A Reporting Crypto-Asset Service Provider may also rely on a self-certification already collected for other tax purposes, provided such self-certification meets the requirements of paragraph C of this Section.

2. A Reporting Crypto-Asset Service Provider may rely on a third party to fulfil the due diligence obligations set out in this Section III, but such obligations remain the responsibility of the Reporting Crypto-Asset Service Provider.

SECTION IV

DEFINED TERMS

The following terms have the meaning set forth below:

A. Reportable Crypto-Asset

1. ‘Crypto-Asset’ means Crypto-Asset as defined in Regulation XXX.

2. ‘Central Bank Digital Currency’ means any digital Fiat Currency issued by a Central Bank or other monetary authority.

3. ‘Central Bank’ means an institution that is by law or government the principal authority, other than the government of the jurisdiction itself, issuing instruments intended to circulate as currency. Such an institution may include an instrumentality that is separate from the government of the jurisdiction, whether or not owned in whole or in part by the jurisdiction.

4. ‘Reportable Crypto-Asset’ means any Crypto-Asset other than a Central Bank Digital Currency, Electronic Money, Electronic Money Token, or any Crypto-Asset for which the Reporting Crypto-Asset Service Provider has adequately determined that it cannot be used for payment or investment purposes.

5. ‘Electronic Money’ or ‘E-money’ means Electronic Money or E-money as is defined in Directive 2009/110/EC. For the purposes of this Directive, the term ‘Electronic money’ or ‘E-money’ does not include a product created for the sole purpose of facilitating the transfer of funds from a customer to another person pursuant to instructions of the customer. A product is not created for the sole purpose of facilitating the transfer of funds if, in the ordinary course of business of the transferring Entity, either the funds connected with such product are held longer than 60 days after receipt of instructions to facilitate the transfer, or, if no instructions are received, the funds connected with such product are held longer than 60 days after receipt of the funds.

6. ‘Electronic Money Token‘ or ‘E-money Token’ means Electronic Money Token or E-money Token as defined in Regulation XXX.

7. ‘Distributed Ledger Technology (DLT)’ means Distributed Ledger Technology or DLT as defined in Regulation XXX.

B. Reporting Crypto-Asset Service Provider

1. ‘Crypto-Asset Service Provider’ means Crypto-Asset Service Provider as defined in Regulation XXX.

2. ‘Crypto-Asset Operator’ means a provider of Crypto-Asset Services other than a Crypto-Asset Service Provider.

3. ‘Reporting Crypto-Asset Service Provider’ means any Crypto-Asset Service Provider and any Crypto-Asset Operator that conducts one or more Crypto-Asset Services permitting Reportable Users to complete an Exchange Transaction and is not a Qualified Non-Union Reporting Crypto-Asset Service Provider.

4. ‘Crypto-Asset Services’ means Crypto-Asset Services as defined in Regulation XXX including staking and lending.

C. Reportable Transaction

1. ‘Reportable Transaction’ means any

   (a) Exchange Transaction; and

   (b) Transfer of Reportable Crypto-Assets.

2. ‘Exchange Transaction’ means any:

   (a) Exchange between Reportable Crypto-Assets and Fiat Currencies; and

   (b) Exchange between one or more Reportable Crypto-Assets.

3. ‘Qualified Reportable Transaction’ means all Reportable Transactions covered by the automatic exchange pursuant to an Effective Qualifying Competent Authority Agreement.

4. ‘Reportable Retail Payment Transaction’ means a Transfer of Reportable Crypto-Assets in consideration of goods or services for a value exceeding EUR 50 000.

5. ‘Transfer’ means a transaction that moves a Reportable Crypto-Asset from or to the Crypto-Asset address or account of one Crypto-Asset User, other than one maintained by the Reporting Crypto-Asset Service Provider on behalf of the same Crypto-Asset User, where, based on the knowledge available to the Reporting Crypto-Asset Service Provider at the time of transaction, the Reporting Crypto-Asset Service Provider cannot determine that the transaction is an Exchange Transaction.

6. ‘Fiat Currency’ means the official currency of a jurisdiction, issued by a jurisdiction or by a jurisdiction’s designated Central Bank or monetary authority, as represented by physical banknotes or coins or by money in different digital forms, including bank reserves or Central Bank Digital Currencies. The term also includes commercial bank money and electronic money products (including Electronic Money and E-money Token).

D. Reportable User

1. ‘Reportable User’ means a Crypto-Asset User that is a Reportable Person resident in a Member State.

2. ‘Crypto-Asset User’ means an individual or Entity that is a customer of a Reporting Crypto-Asset Service Provider for purposes of carrying out Reportable Transactions. An individual or Entity, other than a Financial Institution or a Reporting Crypto-Asset Service Provider, acting as a Crypto-Asset User for the benefit or account of another individual or Entity as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as a Crypto-Asset User, and such other individual or Entity is treated as the Crypto-Asset User. Where a Reporting Crypto-Asset Service Provider provides a service effectuating Reportable Retail Payment Transactions for or on behalf of a merchant, the Reporting Crypto-Asset Service Provider shall also treat the customer that is the counterparty to the merchant for such Reportable Retail Payment Transactions as the Crypto-Asset Users with respect to such Reportable Retail Payment Transaction, provided that the Reporting Crypto-Asset Service Provider is required to verify the identity of such customer by virtue of the Reportable Retail Payment Transaction pursuant to domestic anti-money laundering rules.

3. ‘Individual Crypto-Asset User’ means a Crypto-Asset User that is an individual.

4. ‘Pre-existing Individual Crypto-Asset User’ means an Individual Crypto-Asset User that has established a relationship with the Reporting Crypto-Asset Service Provider as of 31 December 2025

5. ‘Entity Crypto-Asset User’ means a Crypto-Asset User that is an Entity.

6. ‘Pre-existing Entity Crypto-Asset User’ means an Entity Crypto-Asset User that has established a relationship with the Reporting Crypto-Asset Service Provider as of 31 December 2025.

7. ‘Reportable Person’ means a Member State Person other than an Excluded Person.

8. ‘Member State Person’ with regard to each Member State means an Entity or individual that is resident in any other Member State under the tax laws of that other Member State, or an estate of a decedent that was a resident of any other Member State. For this purpose, an Entity such as a partnership, limited liability partnership or similar legal arrangement that has no residence for tax purposes shall be treated as resident in the jurisdiction in which its place of effective management is situated.

9. ‘Controlling Persons’ means the natural persons who exercise control over an Entity. In the case of a trust, such term means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term ‘Controlling Persons’ shall be interpreted in a manner consistent with the term of ‘beneficial owner’ as defined in the Directive (EU) 2015/849 pertaining to Crypto-Asset Service Providers.

10. ‘Active Entity’ means any Entity that meets any of the following criteria:

(a) less than 50 % of the Entity’s gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 % of the assets held by the Entity during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;

(b) substantially all of the activities of the Entity consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an Entity does not qualify for this status if the Entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;

(c) the Entity is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the Entity does not qualify for this exception after the date that is 24 months after the date of the initial organisation of the Entity;

(d) the Entity was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of a Financial Institution;

(e) the Entity primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution; or

(f) the Entity meets all of the following requirements:

(i) it is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence, and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural

organisation, civic league or an organisation operated exclusively for the promotion of social welfare;

(ii) it is exempt from income tax in its jurisdiction of residence;

(iii) it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;

(iv) the applicable laws of the Entity's jurisdiction of residence or the Entity's formation documents do not permit any income or assets of the Entity to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the Entity's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the Entity has purchased; and

(v) the applicable laws of the Entity's jurisdiction of residence or the Entity's formation documents require that, upon the Entity's liquidation or dissolution, all of its assets be distributed to a Governmental Entity or other non-profit organisation, or escheat to the government of the Entity's jurisdiction of residence or any political subdivision thereof.

E. Excluded Person

1. 'Excluded Person' means (a) an Entity the stock of which is regularly traded on one or more established securities markets; (b) any Entity that is a Related Entity of an Entity described in clause (a); (c) a Governmental Entity; (d) an International Organisation; (e) a Central Bank; or (f) a Financial Institution other than an Investment Entity described in Section IV subparagraph E(5), point (b).

2. 'Financial Institution' means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.

3. 'Custodial Institution' means any Entity that holds, as a substantial portion of its business, Financial Assets for the account of others. An Entity holds Financial Assets for the account of others as a substantial portion of its business if the Entity's gross income attributable to the holding of Financial Assets and related financial services equals or exceeds 20% of the Entity's gross income during the shorter of: (i) the three-year period that ends on 31 December (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the Entity has been in existence.

4. 'Depository Institution' means any Entity that:

(a) accepts deposits in the ordinary course of a banking or similar business; or

(b) holds Specified Electronic Money Products or Central Bank Digital Currencies for the benefit of customers.

5. 'Investment Entity' means any Entity:

(a) that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:

(i) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;

(ii) individual and collective portfolio management; or

(iii) otherwise investing, administering, or managing Financial Assets, or money, or Reportable Crypto-Assets on behalf of other persons; or

(b) the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets or Reportable Crypto-Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in paragraph E(5), point (a).

An Entity is treated as primarily conducting as a business one or more of the activities described in paragraph E(5), point (a), or an Entity's gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets or Reportable Crypto-Assets for purposes of paragraph E(5), point (b), if the Entity's gross income attributable to the relevant activities equals or exceeds 50 % of the Entity's gross income during the shorter of: (i) the three-year period ending on 31 December of the year preceding the year in which the determination is made; or (ii) the period during which the Entity has been in existence. For the purposes of paragraph E(5), point (a)(iii), the term "otherwise investing, administering, or managing Financial Assets, money, or Reportable Crypto-Assets on behalf of other persons" does not include the provision of services effectuating Exchange Transactions for or on behalf of customers. The term 'Investment Entity' does not include an Entity that is an Active Entity because it meets any of the criteria in subparagraphs D(11), points (b) to (e).

This paragraph shall be interpreted in a manner consistent with similar language set forth in the definition of 'financial institution' in Directive (EU) 2015/849.

6. 'Specified Insurance Company' means any Entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.

7. 'Governmental Entity' means the government of a jurisdiction, any political subdivision of a jurisdiction (which, for the avoidance of doubt, includes a state, province, county, or municipality), or any wholly owned agency or instrumentality of a jurisdiction or of any one or more of the foregoing. This category is comprised of the integral parts, controlled entities, and political subdivisions of a jurisdiction.

(a) An 'integral part' of a jurisdiction means any person, organisation, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of a jurisdiction. The net earnings of the governing authority shall be credited to its own account or to other accounts of the jurisdiction, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity.

(b) A 'controlled entity' means an entity that is separate in form from the jurisdiction or that otherwise constitutes a separate juridical entity, provided that:

(i) the Entity is wholly owned and controlled by one or more Governmental Entities directly or through one or more controlled entities;

(ii) the Entity's net earnings are credited to its own account or to the accounts of one or more Governmental Entities, with no portion of its income inuring to the benefit of any private person; and

(iii) the Entity's assets vest in one or more Governmental Entities upon dissolution.

(c) Income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental programme, and the programme activities are performed for the general public with respect to the common welfare or relate to the administration of some phase of government. Notwithstanding the foregoing, however, income is considered to inure to the benefit of private persons if the income is derived from the use of a governmental entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons.

8. 'International Organisation' means any international organisation or wholly owned agency or instrumentality thereof. This category includes any intergovernmental organisation (including a supranational organisation) (a) that is comprised primarily of governments; (b) that has in effect a headquarters or substantially similar agreement with the jurisdiction; and (c) the income of which does not inure to the benefit of private persons.

9. 'Financial Asset' includes a security (for example, a share of stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness), partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements), Insurance Contract or Annuity Contract, or any interest (including a futures or forward contract or option) in a security, Reportable Crypto-Asset, partnership interest, commodity, swap, Insurance Contract, or Annuity Contract. The term 'Financial Asset' does not include a non-debt, direct interest in real property.

10. 'Equity Interest' means, in the case of a partnership that is a Financial Institution, either a capital or profits interest in the partnership. In the case of a trust that is a Financial Institution, an Equity Interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. A Reportable Person will be treated as being a beneficiary of a trust if such Reportable Person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust.

11. 'Insurance Contract' means a contract (other than an Annuity Contract) under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk.

12. 'Annuity Contract' means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals. The term also includes a contract that is considered to be an Annuity Contract in accordance with the law, regulation, or practice of the jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years.

13. ‘Cash Value Insurance Contract’ means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value.

14. ‘Cash Value’ means the greater of (i) the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan), and (ii) the amount the policyholder can borrow under or with regard to the contract. Notwithstanding the foregoing, the term ‘Cash Value’ does not include an amount payable under an Insurance Contract:

(a) solely by reason of the death of an individual insured under a life insurance contract;

(b) as a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;

(c) as a refund of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an Insurance Contract (other than an investment-linked life insurance or annuity contract) due to cancellation or termination of the contract, decrease in risk exposure during the effective period of the contract, or arising from the correction of a posting or similar error with regard to the premium for the contract;

(d) as a policyholder dividend (other than a termination dividend) provided that the dividend relates to an Insurance Contract under which the only benefits payable are described in paragraph E(14), point (b); or

(e) as a return of an advance premium or premium deposit for an Insurance Contract for which the premium is payable at least annually if the amount of the advance premium or premium deposit does not exceed the next annual premium that will be payable under the contract.

F. Miscellaneous

1. ‘Customer Due Diligence Procedures’ means the customer due diligence procedures of a Reporting Crypto-Asset Service Provider pursuant to Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and Directive 2013/36/EU, as amended by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 or similar requirements to which such Reporting Crypto-Asset Service Provider is subject.

2. ‘Entity’ means a legal person or a legal arrangement, such as a corporation, partnership, trust, or foundation.

3. An Entity is a ‘Related Entity’ of another Entity if either Entity controls the other Entity, or the two Entities are under common control. For this purpose, control includes direct or indirect ownership of more than 50 % of the vote and value in an Entity.

4. ‘Branch’ means a unit, business or office of a Reporting Crypto-Asset Service Provider that is treated as a branch under the regulatory regime of a jurisdiction or that is otherwise regulated under the laws of a jurisdiction as separate from other offices, units, or branches of the Reporting Crypto-Asset Service Provider. All units, businesses, or offices of a Reporting Crypto-Asset Service Provider in a single jurisdiction shall be treated as a single branch.

5. ‘Effective Qualifying Competent Authority Agreement’ means an agreement between the competent authorities of a Member State and a non-Union jurisdiction that requires the automatic exchange of information corresponding to that specified in Section II, paragraph B of this Annex as confirmed by an implementing act in accordance with Article 8ad(11).

6. ‘Qualified Non-Union Reporting Crypto-Asset Service Provider’ means a Reporting Crypto-Asset Service Provider for which all Reportable Transactions are also Qualified Reportable Transactions and that is resident for tax purposes in a Qualified Non-Union Jurisdiction or, where such Reporting Crypto-Asset Service Provider does not have a residence for tax purposes in a Qualified Non-Union Jurisdiction, it fulfils any of the following conditions:

   (a) it is incorporated under the laws of a Qualified Non-Union Jurisdiction; or

   (b) it has its place of management (including effective management) in a Qualified Non-Union Jurisdiction.

7. ‘Qualified Non-Union Jurisdiction’ means a non-Union jurisdiction that has in effect an Effective Qualifying Competent Authority Agreement with the competent authorities of all Member States which are identified as reportable jurisdictions in a list published by the non-Union jurisdiction.

8. ‘TIN’ means Taxpayer Identification Number (or functional equivalent in the absence of a Taxpayer Identification Number). The TIN is any number or code that a competent authority uses to identify a taxpayer.

9. ‘Identification Service’ means an electronic process made available free of charge by a Member State to a Reporting Platform Operator for the purposes of ascertaining the identity and tax residence of a Crypto-Asset User.

SECTION V

EFFECTIVE IMPLEMENTATION

A. Rules to enforce the collection and verification requirements laid down in Section III.

1. Member States shall take the necessary measures to require Reporting Crypto-Asset Service Providers to enforce the collection and verification requirements under Section III in relation to their Crypto-Asset Users.

2. Where a Crypto-Asset User does not provide the information required under Section III after two reminders following the initial request by the Reporting Crypto-Asset Service Provider, but not prior to the expiration of 60 days, the Reporting Crypto-Asset Service Providers shall prevent the Crypto-Asset User from performing Exchange Transactions.

B. Rules requiring Reporting Crypto-Asset Service Provider to keep records of the steps undertaken and any information relied upon for the performance of the reporting requirements and due diligence procedures and adequate measures to obtain those records.

1. Member States shall take the necessary measures to require Reporting Crypto-Asset Service Providers to keep records of the steps undertaken and any information relied upon for the performance of the reporting requirements and due diligence procedures set out in Sections II and III. Such records shall remain available for a sufficiently

long period of time and in any event for a period of not less than 5 years but not more than 10 years following the end of the Reporing Period to which they relate.

2. Member States shall take the necessary measures, including the possibility of addressing an order for reporting to Reporting Crypto-Asset Service Providers, in order to ensure that all necessary information is reported to the competent authority so that the latter can comply with the obligation to communicate information in accordance with Article 8ad(3).

C. Administrative procedures to verify compliance of Reporting Crypto-Asset Service Providers with the reporting requirements and due diligence procedures

Member States shall lay down administrative procedures to verify the compliance of Reporting Crypto-Asset Service Providers with the reporting requirements and due diligence procedures set out in Sections II and III.

D. Administrative procedures to follow up with a Reporting Crypto-Asset Service Providers where incomplete or inaccurate information is reported

Member States shall lay down procedures for following up with Reporting Crypto-Asset Service Providers where the reported information is incomplete or inaccurate.

E. Administrative procedure for authorisation of a Reporting Crypto-Asset Service Provider

The home Member State providing authorisation to Crypto-Asset Service Providers according to Regulation XXX shall communicate on a regular basis and at the latest before 31 December to the competent authority a list of all authorised Crypto-Asset Service Providers.

F. Administrative procedure for single registration of a Crypto-Asset Operator

A Crypto-Asset Operator within the meaning of Section IV, subparagraph B(2) of this Annex shall register with the competent authority of any Member State pursuant to Article 8ad(7).

1. Before the start of each fiscal year, the Crypto-Asset Operator shall communicate to the Member State of its single registration the following information:

   (a) name;

   (b) postal address;

   (c) electronic addresses, including websites;

   (d) any TIN issued to the Crypto-Asset Operators;

   (e) Member States in which Reportable Crypto-Asset Users are residents within the meaning of Section III, paragraph A and B.

2. The Crypto-Asset Operator shall notify the Member State of single registration of any changes in the information provided under subparagraph F(1).

3. The Member State of single registration shall allocate an individual identification number to the Crypto-Asset Operator and shall notify it to the competent authorities of all Member States by electronic means.

4. The Member State of single registration shall be able to remove a Crypto-Asset Operator from the central register in the following cases:

   (a) the Crypto-Asset Operator notifies that Member State that it no longer has Reportable Crypto-Asset Users in the Union;

   (b) in the absence of a notification pursuant to point (a), there are grounds to assume that the activity of a Crypto-Asset Operator has ceased;

(c) the Crypto-Asset Operator no longer meets the conditions laid down in Section IV, subparagraph B(2); the Member State revoked the registration with its competent authority pursuant to subparagraph F(7).

5. Each Member State shall forthwith notify the Commission of any Crypto-Asset Operator within the meaning of Section IV, subparagraph B(2), that has Crypto-Asset Users resident in the Union while failing to register itself pursuant to this paragraph. Where a Crypto-Asset Operator does not comply with the obligation to register or where its registration has been revoked in accordance with subparagraph F(7) of this Section, Member States shall, without prejudice to Article 25a, take effective, proportionate and dissuasive measures to enforce compliance within their jurisdiction. The choice of such measures shall remain within the discretion of Member States. Member States shall also endeavour to coordinate their actions aimed at enforcing compliance, including the prevention of the Crypto-Asset Operator from being able to operate within the Union as a last resort.

6. Where a Crypto-Asset Operator does not comply with the obligation to report in accordance with subparagraph B of Section II of this Annex after two reminders by the Member State of single registration, the Member State shall, without prejudice to Article 25a, take the necessary measures to revoke the registration of the Crypto-Asset Operatormade pursuant to Article 8ad(7). The registration shall be revoked not later than after the expiration of 90 days but not prior to the expiration of 30 days after the second reminder.