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REGULATORY SCRUTINY BOARD OPINION

Proposal for a COUNCIL DIRECTIVE
amending Directive 2011/16/EU on administrative cooperation in the field of taxation

Strengthening existing rules and expanding exchange of information framework in the field of
taxation (DAC8)

{COM(2022) 707}
{SWD(2022) 400 - 402}



EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

Title: Impact assessment / Strengthening existing rules and expanding exchange of information framework in the field of taxation (DAC8)

Overall opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

The EU needs to adapt its tax framework to respond to the digital economy. The cross-border nature of internet-based products, services and applications such as crypto-assets, creates challenges in the field of direct taxation. Tax authorities in the EU lack the information to monitor the capital gains generated from using crypto-assets. This initiative aims to ensure that EU rules on administrative cooperation cover crypto-assets and e-money to stay in line with the evolving economy.

An evaluation of the Directive on administrative cooperation in the field of taxation was completed in 2019. This initiative complements the Regulation on Markets in Crypto-Assets (MiCA) and the Anti-Money Laundering Directive (AML). It also has a strong substantive link to the OECD discussions on tax transparency for e-money and virtual assets.

(B) Summary of findings

The Board notes the useful additional information provided in advance of the meeting and commitments to make changes to the report.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:

- (1) The report is not sufficiently clear on the scope of the initiative. It does not sufficiently describe the legislative gap it aims to address. It does not present clearly enough the close substantive link to the ongoing OECD discussions on tax transparency for e-money and virtual assets.**
- (2) The report does not bring out clearly enough all available and feasible policy choices, and the precise content of some options.**
- (3) The report does not provide sufficient context on the structure of the market and the role of SME crypto-asset service providers. It does not clearly analyse how**

This opinion concerns a draft impact assessment which may differ from the final version.

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the different options affect their competitiveness.

(C) What to improve

(1) The report should define in more depth the different types of crypto-assets, and clarify which types are in and out of scope for this initiative. This is particularly relevant as regards utility tokens and non-marketable crypto-assets. In addition, the report should provide a more detailed definition on crypto-asset service providers (CASPs) in scope.

(2) The report should clarify what legislative gaps it aims to fill. It should better explain how overlaps will be avoided with the ongoing AML Directive and how it will build on the MiCA initiative. It should describe in more detail how this initiative will build on and interact with the evolving measures emerging from the OECD discussions. It should clearly explain how this initiative will ensure compatibility and avoid duplication, including by recalling the standard practice to bring OECD agreements into EU law through directives. The report should also more explicitly describe the changes referred to as ‘fine-tuning’, clarifying their content and impact as well as to what extent there remains any policy choice.

(3) The report should outline and discuss all feasible options, realistic combinations of measures and discarded options. Based on the clarification of the crypto-assets in scope, it should present the options in a way that their differences, for instance in terms of measures included, can be effectively assessed and compared with each other. The report should present the precise content of some options as regards SME thresholds and aggregated reporting forms. It should systematically consider suitable exemptions or lighter regimes for SMEs, or explain why these are not appropriate under all options. It should explain how ‘future-proof’ the options are. It should describe how the proposed IT solutions are applicable to the different options.

(4) The report should better explain the evidence underpinning the cost and benefit estimates, as well as the robustness of the underlying assumptions and the reliability of the data used. It should assess the risk that the estimated costs and benefits may not materialise. It should undertake a sensitivity analysis on a uniform 25% tax rate used for the additional tax revenue estimates to reflect the variety of tax rates across Member States.

(5) When assessing the impacts of the different options, the report should account for the costs of second-round requests by tax administrations, both for tax administrations and service providers. It should discuss how the different types of reporting affects the effectiveness and efficiency of collecting information on crypto-assets for tax purposes. The report should also integrate the impact analysis of the options on the IT system.

(6) The report should provide a better overview of the size and role of different market actors on the EU crypto-asset market, in particular with respect to third-country players and European SMEs. It should better describe the market dynamics and assess the impacts of the options on the competitiveness of SMEs. It should better explain how proportionate the estimated costs are for SMEs and whether these may prevent the market entry of innovative EU start-ups.

(7) The description of the objectives as well as the future monitoring framework should better reflect what success would look like. The report should also better describe how the data collection and the indicators used will ensure that success can be measured. It should

explain the role that the envisaged implementing measures will play in this regard.

(8) The report should better engage with the different stakeholder views in the main analysis. It should more clearly outline the different views from the main stakeholder groups such as Member States, CASPs (including SMEs) and tax administrations.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG must revise the report in accordance with the Board's findings before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Proposal for a Council Directive amending Directive 2011/16/EU as regards measures to strengthen existing rules and expand the exchange of information framework in the field of taxation to include crypto-assets and e-money.
Reference number	PLAN/2020/8658
Submitted to RSB on	13 October 2021
Date of RSB meeting	10 November 2021

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

Overview of benefits

I. All crypto assets except non-marketable crypto assets and utility tokens		
Description	Amount (EUR billion)	Comments
<i>Direct benefits</i>		
Tax Revenues	1.7	The estimation for the tax revenues relies on several assumptions, including a 25% tax rate on realised capital gains from Bitcoin transactions.
<i>Indirect benefits</i>		
Tax fairness	n/a	Improvement in the perception of tax fairness, resulting from taxpayers paying their fair share.
Strengthening the EU social market economy	n/a	CASPs would benefit from having homogeneous compliance requirements throughout the EU, rather than having multiple standards across each Member States. This would make it easier to comply with existing tax rules and would improve tax compliance.
Improving the level playing field	n/a	Traditional financial institutions and CASPs that are currently subject to reporting obligations would benefit from ensuring equal treatment of their competitors.
II. All crypto-assets		
Description	Amount (EUR billion)	Comments
<i>Direct benefits</i>		
Tax Revenues	1.8	The estimation for the tax revenues relies on several assumptions, including a 25% tax rate on realised capital gains from Bitcoin transactions.
<i>Indirect benefits</i>		
Tax fairness	n/a	Improvement in the perception of tax fairness, resulting from taxpayers paying their fair share.
Strengthening the EU social market economy	n/a	CASPs would benefit from having homogeneous compliance requirements, rather than having multiple standards across each Member States. This would make it easier to comply with existing tax rules and would improve tax compliance.
Improving the level playing	n/a	Traditional financial institutions and CASPs would benefit from having homogeneous compliance

field		requirements throughout the EU, rather than having multiple standards across each Member States. This would make it easier to comply with existing tax rules and would improve tax compliance.
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Overview reporting costs for CASPs (in EUR millions)

I. All crypto assets except non-marketable crypto assets and utility tokens					
		Citizens/Users		CASPs	
		One-off	Recurrent	One-off	Recurrent
Administrative costs	Direct	n/a	n/a	259	22.6
	Indirect	n/a	n/a	n/a	n/a
II. All crypto-assets					
		Citizens/Users		CASPs	
		One-off	Recurrent	One-off	Recurrent
Administrative costs	Direct	n/a	n/a	276	24
	Indirect	n/a	n/a	n/a	n/a

Overview of costs for tax administrations and European Commission (in EUR million)

I. Decentralised IT solution							
		Citizens/Users		European Commission		Tax administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Administrative costs	Direct	n/a	n/a	0.8	0.1	64.8	6
	Indirect	n/a	n/a	n/a	n/a	n/a	n/a
II. Central Directory							
		Citizens/Users		European Commission		Tax administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Administrative costs	Direct	n/a	n/a	0.5	0.2	1 - 13	1 – 5.7
	Indirect	n/a	n/a	n/a	n/a	n/a	n/a
III. Single Access Point							
		Citizens/Users		European Commission		Tax administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent

Administrative costs	Direct	n/a	n/a	1.4	0.2	0.5	0.1
	Indirect	n/a	n/a	n/a	n/a	n/a	n/a