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Subject:	OPINION of the European Economic and Social Committee - Proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation [COM(2022) 707 final – 2022/0413 (CNS)]

Delegations will find attached the abovementioned opinion. This opinion is available in all language versions via the following link:

<https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/administrative-cooperation-taxation-dac-8>



OPINION

European Economic and Social Committee

Administrative cooperation in taxation (DAC 8)

Proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation
[COM(2022) 707 final – 2022/0413 (CNS)]

ECO/604

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Referral	Council, 07/02/2023
Legal basis	Article 113, 115 and 304 of the Treaty on the Functioning of the European Union
Section responsible	Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	02/03/2023
Adopted at plenary	22/03/2023
Plenary session No	577
Outcome of vote (for/against/abstentions)	208/0/5

1. Conclusions and recommendations

- 1.1 The EESC welcomes the Commission's proposal on DAC 8, which qualifies as a substantial step forward in improving and complementing the current DAC Directive.
- 1.2 The EESC deems the proposed improvements to the DAC Directive to be effective in deterring non-compliance with fiscal rules by crypto-asset holders, thereby reinforcing the fight against tax fraud, tax evasion, and tax avoidance, in line with several previous initiatives of the Commission.
- 1.3 The EESC deems the Commission initiative to be fully consistent with the principle of fair and effective taxation, which is a cornerstone of the European social market economy, aimed at ensuring that everybody contributes their fair share and enjoys equal and proportionate treatment, regardless of the kind of assets held.
- 1.4 The EESC notes that a global effort to regulate crypto-assets and their use is key in order to successfully address the growing issues and implications with a worldwide scope relating to such assets. The ongoing work carried out at the OECD and G20 levels for the achievement of a global agreement regarding the transparency of crypto-currencies is crucial in this respect and the EESC encourages the Commission to play an active role on the international stage.
- 1.5 The EESC appreciates that enhanced and more effective taxation of crypto-assets will help increase the coverage of taxation and boost national budgets, allowing the deployment of additional resources targeted at the common good and at the investment priorities of the Commission (green transition and digitalisation).
- 1.6 The EESC considers that the tax identification number ("TIN") reporting system is the most effective compliance method for ensuring the effectiveness of the new rules. For this reason, the EESC strongly supports the Commission's proposal on TIN since it contributes to preventing possible mistakes, thereby improving legal certainty and the predictability of the system.
- 1.7 The EESC believes that reporting obligations should not be solely limited to exchanges and transfers in crypto-assets, but should also be extended, at least during the initial phase, to overall holdings of crypto-currency assets for the sake of transparency and certainty, although it remains clear that taxation should only apply to effective gains.
- 1.8 The EESC stresses the need for effective and proportional penalties, leaving it up to the Member States to decide on the specific amounts of sanctions to be issued. The EESC also recommends that, after the implementation of the Directive, the Commission should report on the penalty structures implemented by the Member States, giving guidance on possible changes if needed.
- 1.9 The EESC hopes that the penalties and compliance measures will be able to strike a proper balance between effectiveness of the rules and adequate deterrence on the one hand and proportionality on the other hand. Proportionality could, for example, be ensured by taking

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adequate account of the number of transactions involved in infringements carried out by a given company.

- 1.10 The EESC stresses that the specific provisions and safeguards on data protection included within the proposal for a Directive, and in line with the GDPR rules, should be duly applied and respected following high standards, in order to fully protect the fundamental rights of the individuals whose data will be collected, exchanged and stored.
- 1.11 The EESC recommends that the Commission include in its draft proposal rules to enhance the cooperation between the tax authorities already covered by the current text and the authorities in charge of combatting money laundering and the financing of illegal activities and terrorism. In this context, the EESC reiterates that public authorities, in this case tax authorities, require adequate resources in terms of both qualified personnel and high-grade digital technology and standards.

2. Commission proposal

- 2.1 The Commission proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation ("DAC 8")¹ aims at updating the current Directive ("DAC") in order to expand the reporting and exchange of information between tax authorities to include income or revenue generated through crypto-assets by users residing in the European Union. Tax authorities do not currently have the necessary information to monitor proceeds obtained using crypto-assets, which are easily traded across borders.
- 2.2 The legislative initiative aims at introducing greater tax transparency on crypto-assets by means of specific provisions on the reporting and exchange of information for direct tax purposes. The proposal also refines the existing applicable provisions in order to avoid loopholes and reinforce the legal framework.
- 2.3 DAC 8 is aligned with the definitions set out in the Markets in Crypto-Assets Regulation ("MiCA")², which does not in itself provide a basis for tax authorities to collect and exchange the information needed to tax crypto-asset income. However, DAC 8 builds on the experience with the MiCA and relies on the authorisation requirement already introduced by this Regulation, thus avoiding additional administrative burdens for crypto-asset service providers.
- 2.4 The proposal is consistent with the recently approved OECD Crypto-Asset Reporting Framework ("CARF")³, as well as with amendments to its Common Reporting Standard. Such standards have also been endorsed by the G20. During the Commission's consultation, most Member States supported aligning the scope of the EU legal framework with the work done at the OECD.

¹ [COM\(2022\) 707 final](#).

² [COM\(2020\) 593 final](#).

³ [Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard](#), OECD, 2022/10/08.

- 2.5 In order to improve the Member States' ability to detect and tackle tax fraud, tax evasion and tax avoidance, all reporting crypto-asset service providers, regardless of their size or location, will be required to report the transactions of their clients residing in the EU. Domestic and cross-border transactions are both included. In some cases, reporting obligations will also cover non-fungible tokens (NFTs). Detailed rules concerning the obligations to be fulfilled by reporting crypto-asset service providers are laid down in Annex VI.
- 2.6 Reportable transactions include exchange transactions and transfers of reportable crypto-assets. Both domestic and cross-border transactions are included in the scope of the proposal and are aggregated by type of reportable crypto-assets.
- 2.7 Financial institutions will report on e-money and central bank digital currencies, while the scope of the automatic exchange of advance cross-border rulings for high net-worth individuals will be extended. Such individuals are those holding a minimum of EUR 1 000 000 in financial or investable wealth, or in assets under management. The Member States will exchange information on the advance cross-border rulings issued, amended, or renewed between 1 January 2020 and 31 December 2025.
- 2.8 The proposal will not limit the ability of the Member States to shape their compliance system. However, a common minimum level of penalties for the most serious non-compliant behaviour, such as the complete absence of reporting despite administrative reminders, will be established and enforced.

3. General comments

- 3.1 The EESC welcomes and supports the Commission's proposal on DAC 8, since it represents a substantial step further in improving and completing the DAC Directive following the recommendations of the European Court of Auditors, which warned that "if a taxpayer holds money in electronic crypto-currencies, 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"⁴.
- 3.2 The EESC deems the proposed improvements to the DAC Directive as an effective tool to deter non-compliance with fiscal rules by crypto-assets holders, thereby reinforcing the fight against tax fraud, tax evasion, and tax avoidance, in line with several initiatives undertaken by the Commission in recent years.

⁴ 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.

- 3.3 The EESC praises the broad and articulate consultation carried out by the Commission on the proposal at hand, involving all interested stakeholders as well as a more targeted audience of sector operators, who were consulted separately by the Commission. The Member States were also able to voice their position, encouraging the Commission to work closely in line with the OECD's ongoing work. The consultations made the legislative process more transparent and meaningful, notwithstanding the highly technical nature of the proposal.
- 3.4 The EESC stresses that a global effort to regulate crypto-assets and their use is necessary in order to successfully address the growing issues and implications with a worldwide scope relating to such assets. In this respect, the ongoing work and negotiations carried out at the OECD and G20 levels for the achievement of a global agreement regarding the transparency of crypto-currencies are crucial and the EESC encourages the Commission to play a leading role on the international stage.
- 3.5 The EESC deems the Commission initiative to be fully in line with the principle of fair and effective taxation, which is a cornerstone of the European social market economy, aimed at ensuring that everybody contributes their fair share and enjoys equal and proportionate treatment, regardless of the kind of assets held or the form of payments accepted.
- 3.6 The EESC appreciates that enhanced and more effective taxation of crypto-assets will help increase the coverage of taxation and boost national budgets, allowing the deployment of additional resources targeted at the common good and at the investment priorities of the Commission (green transition and digitalisation).
- 3.7 The EESC fully agrees with the Commission that more transparency will reduce discrepancies and the current unjustified differentiation in the legal framework and treatment resulting in crypto-asset users enjoying "an advantage over those who do not invest in crypto-assets", thereby hindering not only "the objective of fair taxation", but also the correct functioning of the single market and an effective level playing-field.
- 3.8 The EESC supports the combined use of both Article 113 TFEU (since the information exchanged could be also used for VAT purposes) and Article 115 TFEU as a legal basis to support the proposal. The approximation of national laws affecting the functioning of the single market, enshrined in Article 115, is indeed relevant to the case at hand, considering that crypto-assets can be used for several purposes. Discrepancies in both the general legal framework and enforcement tools should therefore be avoided across the single market, since they may harm its consolidation.

4. Specific comments

- 4.1 The EESC encourages the Commission and the Member States to include in the current proposal reporting obligations for natural persons that hold crypto-assets. This would certainly increase the effectiveness and scope of application of the proposal.

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- 4.2 The EESC considers that a tax identification number ("TIN") reporting system is the most effective compliance method in order to ensure the effectiveness of the new rules. For this reason, the EESC strongly supports the Commission's proposal on TIN, since it contributes to reinforcing the effectiveness of the proposal, given that, as a unique identification code, TIN makes it possible to avoid mistakes, thereby contributing to legal certainty and the predictability of the system.
- 4.3 The EESC notes that most Member States already have legislation or at least administrative guidance in place to tax income obtained through crypto-asset investments, but the competent authorities often lack the necessary information to put this into practice. Therefore, legal certainty and clarity can only be ensured by addressing national inefficiencies through an EU legislative initiative aimed at boosting effective and efficient collaboration among tax authorities.
- 4.4 The EESC believes that reporting obligations should not be limited solely to exchanges and transfers in crypto-assets, but should also be extended, at least in this current initial phase, to overall holdings of crypto-currency assets for the sake of transparency and certainty, even though it remains clear that taxation should only apply to effective gains.
- 4.5 The EESC stresses the need for effective and proportional penalties, leaving it up to the Member States to decide on the specific amounts of sanctions to be issued. Minimum thresholds appear to have the potential to increase the effectiveness of the new rules on the taxation of crypto-currencies. The EESC hopes that the penalties and compliance measures will be able to strike a proper balance between effectiveness of the rules and adequate deterrence on the one hand and proportionality on the other hand. Proportionality could, for example, be ensured by taking adequate account of the number of transactions involved in infringements carried out by a given company.
- 4.6 Furthermore, after the implementation of the Directive, the Commission should report on the penalty structures of the Member States and give guidance on the necessary changes to the system of penalties and compliance measures.
- 4.7 The EESC stresses that the specific provisions and safeguards on data protection included within the proposal for a Directive, and in line with the GDPR rules and principles, should be carefully applied and respected following high standards in order to fully protect the fundamental rights of the individuals whose data will be collected, exchanged and stored.
- 4.8 Again, the EESC calls on the Member States to adequately invest in its tax authorities and other administrations involved, in order to have the capabilities necessary to fulfil the task of better cooperation in the field of taxation.
- 4.9 Finally, the EESC recommends that the Commission include in its draft proposal the requirement for there to be cooperation between the tax authorities already covered by the current text and the authorities in charge of combatting money laundering and the financing of illegal activities and terrorism, since it could be that several cases of crypto-assets being used for illegal purposes and money laundering have surfaced in recent years. In this context, the

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EESC reiterates that public authorities, in this case tax authorities, require adequate resources in terms of qualified personnel and high-grade digital technology and standards.

Brussels, 22 March 2023

Christa SCHWENG
The president of the European Economic and Social Committee

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