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NOTE

From: Presidency
To: Council

Subject: Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC8)
- General approach

I. INTRODUCTION

1. On 27 November 2020, the Council approved the 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.” The Council recognised that the rapid development and increasing worldwide use of alternative means of payment and investment – such as crypto-assets and e-money – may undermine the progress made on tax transparency in recent years and pose substantial risks of tax fraud, tax evasion and tax avoidance; and that it is important to discuss at technical level on how to update the rules on administrative cooperation within the EU and on a global level in order to address these potential risks.¹

¹ Doc. ST 13350/20, point 36.

2. On 7 December 2021, the Council indicated in the report to the European Council on tax issues that it expects the European Commission to table in 2022 a legislative proposal on further revision of the Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC),² concerning exchange of information on crypto-assets and tax rulings for wealthy individuals.³
3. A proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC8) was presented by the European Commission on 8 December 2022.⁴
4. The key objectives of this legislative proposal are the following:
 - a) to extend the scope of automatic exchange of information under DAC to information that will have to be reported by crypto-asset service providers on transactions (transfer or exchange) of crypto-assets and e-money. Expanding administrative cooperation to this new area is aimed at helping Member States to address the challenges posed by the digitalisation of the economy. The provisions of DAC8 on due diligence procedures, reporting requirements and other rules applicable to reporting crypto-asset service providers will reflect the Crypto-Asset Reporting Framework (“CARF”) and a set of amendments to the Common Reporting Standard (“CRS”), which were prepared by the OECD under the mandate of the G20.⁵ The G20 endorsed the CARF and the amendments to CRS, both of which it considers to be integral additions to the global standards for automatic exchange of information.⁶

² 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).

³ Doc. ST 14767/21, point 59.

⁴ Doc. ST 15829/22 + ADD1 – ADD5.

⁵ <https://www.oecd.org/tax/exchange-of-tax-information/crypto-asset-reporting-framework-and-amendments-to-the-common-reporting-standard.pdf>

⁶ G20 Bali Leaders’ Declaration of 15-16 November 2022, point 31. (https://www.g20.org/content/dam/gtwenty/gtwenty_new/about_g20/previous-summit-documents/2022-bali/G20%20Bali%20Leaders%27%20Declaration,%2015-16%20November%202022.pdf)

- b) to extend the scope of the current rules on exchange of tax-relevant information by including provisions on exchange of advance cross-border rulings concerning high-net-worth individuals, as well as provisions on automatic exchange of information on non-custodial dividends and similar revenues, in order to reduce the risks of tax evasion, tax avoidance and tax fraud, as the current provisions of DAC do not cover this type of income;
- c) to amend a number of other existing provisions of DAC. In particular, the proposal seeks to improve the rules on reporting and communication of the Tax Identification Number (TIN), in order to facilitate the task of tax authorities of identifying the relevant taxpayers and correctly assessing the related taxes, and to amend DAC provisions on penalties that are to be applied by Member States to persons for the failure of compliance with national legislation on reporting requirements adopted pursuant to DAC.

5. The opinion of the European Economic and Social Committee on this legislative proposal was delivered on 22 March 2023.⁷ The opinion of the European Data Protection Supervisor was issued on 3 April 2023.⁸ The opinion of the European Parliament is pending.

II. STATE OF PLAY

6. As announced at the Working Party on Tax Questions (WPTQ) (High Level) meeting on 31 January 2023, the Swedish Presidency has prioritised work on this file and has invited Member States to conclude the necessary preparatory work in time for the meeting of ECOFIN Council in May 2023. Nine meetings of the WPTQ have taken place (9 and 26 January, 22 and 23 February, 15 and 30 March, 3 and 19 April 2023, as well as the WPTQ (High Level) meeting on 25 April).

⁷ Doc. ST 8088/23.

⁸ Doc. ST 8283/23.

7. At the meeting of the Committee of Permanent Representatives (Part 2) on 10 May 2023, the Presidency noted that all Member States could in principle support the Presidency compromise text set out in doc. ST 8730/23 (which contained amendments to Article 2; Annex VI, Section I (deletion of paragraph BA); Annex VI, Section II (deletion of a reference to “A(1)” in paragraph D), as well as amendments to Recitals 19 and 29a). The remaining parliamentary scrutiny reservation by Estonia was lifted in the meantime. The Belgian delegation indicated that it makes a statement to the minutes of the Committee of Permanent Representatives and of the Council.⁹
8. The latest compromise text (doc. ST 8730/23) is now therefore ready for the Council, as it strikes the right balance between a number of diverging concerns and provides a good basis to finalise these negotiations. This is particularly notable regarding the provisions of the compromise text that cover the issues of reporting and exchange of the TIN and the mandatory automatic exchange of information on categories of income and capital.
9. The Presidency also notes that after agreement on DAC8, it will be necessary to continue some specific discussions and technical work on the state of play, risks and opportunities in the area of tax information exchange with non-Union jurisdictions, in particular covering aspects relating to the personal data protection framework and its correlation with work on international administrative cooperation. This work will continue after an agreement in May ECOFIN Council, still during the Swedish Presidency term, and will also build on the past discussions on these matters.¹⁰

III. WAY FORWARD

10. Against this background, the Council is invited to reach a general approach on the text of the draft Directive set out in doc. ST 8730/23, with a view to adopting the Directive, subject to receiving the opinion of the European Parliament and legal-linguistic revision.

⁹ Doc. ST 9204/23 ADD1.

¹⁰ See doc. ST 15506/22, points 46 to 48.