



Brussels, 8.12.2022
COM(2022) 707 final

2022/0413 (CNS)

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 strategy² 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 beyond³ on 27 November 2020.

The Ecofin report to the European Council on tax issues⁴, 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 strategy⁵ 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.

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 2022⁶ and was welcomed by the G20 in the Bali Leaders' Declaration⁷ 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 through a number of amendments to the Directive on Administrative Cooperation (DAC)⁸. Nevertheless, the European Court of Auditors report⁹ and the European Parliament resolution¹⁰ 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 bank 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 framework¹¹.

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

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,%202015-16%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 2014¹² (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 2015¹³ (DAC3) as regards the mandatory automatic exchange of information on advance cross-border tax rulings;
- Council Directive (EU) 2016/881 of 25 May 2016¹⁴ (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 2016¹⁵ (DAC5) as regards access to anti-money-laundering information by tax authorities;

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 2018¹⁶ (DAC6) as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements; and
- Council Directive (EU) 2021/514¹⁷ 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 Regulation¹⁸ (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 limits 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

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 Cooperation 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 Parliament¹⁹ 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 Court 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 Directive²⁰, 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 reservations 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 assessment 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 reporting); (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 capital²¹ 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 providers 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.

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 competition.

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-asset 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 reportable 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 diligence 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 service 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 automatic 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.

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 Parliament²²,

Having regard to the opinion of the European Economic and Social Committee²³,

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/EU²⁴, 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 Council²⁶ (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 XXX²⁷ 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 Framework²⁸ 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/EU²⁹ 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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<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 Council³⁰.
- (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 extension 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 Council³¹ 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.

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:

a new action

a new action following a pilot project/preparatory action³³

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.

unlimited duration

- Implementation with a start-up period from YYYY to YYYY,
- followed by full-scale operation.

1.7. Management mode(s) planned³⁴

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 adaptations 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 Council³⁵ and Council Regulation (Euratom, EC) No 2185/96³⁶ 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
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
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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'
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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
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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	N ^o	Cost	N ^o	Cost	N ^o	Cost	N ^o	Cost	N ^o	Cost	N ^o	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 7⁴⁴ 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
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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					Enter as many years as necessary to show the duration of the impact (see point 1.6)		
		Year N	Year N+1	Year N+2	Year N+3				
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.