Lena Persson

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Remiss av kommissionens förslag till direktiv om ändring av direktiv 2011/16/EU om administrativt samarbete i fråga om beskattning (DAC 8)

Remissinstanser

1 Arcane Crypto AB
2 Bokföringsnämnden
3 Bolagsverket
4 Domstolsverket
5 Ekobrottsmyndigheten
6 Euroclear Sweden AB
7 FAR
8 Finansbolagens förening
9 Finansinspektionen

10 Fondbolagens förening
11 Föreningen Svensk Värdepappersmarknad
12 Föreningen Svenskt Näringsliv
13 Företagarna
14 Förvaltningsrätten i Malmö
15 Goobit Group AB
16 Integritetsskyddsmyndigheten
17 IT&Telekomföretagen
18 Justitiekanslern
19 Kammarrätten i Stockholm
20 Kommerskollegium
21 Konkurrensverket
22 Nasdaq Stockholm AB
23 Näringslivets Regelnämnd
24 Näringslivets Skattedelegation
25 Quickbit eu AB
26 Regelrådet
27 Revisorsinspektionen
28 Riksdagens ombudsmän (JO)
29 Riksgäldskontoret
30 Safello Group AB
31 Skatterättsnämnden
32 Skatteverket
33 Sparbankernas Riksförbund
34 Stockholms universitet (Juridiska fakultetsnämnden)
35 Svensk Digital Handel
36 Svensk Försäkring
37 Svenska Bankföreningen
38 Sveriges advokatsamfund
39 Sveriges Aktiesparares Riksförbund
40 Sveriges Riksbank
41 Swedish Blockchain Association
42 Swedish FinTech Association

43 Swedish Private Equity & Venture Capital Association (SVCA)

44 Åklagarmyndigheten

Remissvaren ska ha kommit in till Finansdepartementet **senast den 20 februari 2023**. Svaren bör lämnas per e-post till fi.remissvar@regeringskansliet.se och med kopia till omar.bembli@regeringskansliet.se, marcus.sjogren@regeringskansliet.se och anders.lenfors@regeringskansliet.se. Ange diarienummer Fi2022/03329 och remissinstansens namn i ämnesraden på e-postmeddelandet.

Svaret bör lämnas i två versioner: den ena i ett bearbetningsbart format (t.ex. Word), den andra i ett format (t.ex. pdf) som följer tillgänglighetskraven enligt lagen (2018:1937) om tillgänglighet till digital offentlig service. Remissinstansens namn ska anges i namnet på respektive dokument.

I remissen ligger att regeringen vill ha synpunkter på kommissionens förslag.

För remissinstansernas information planeras kommissionens förslag att förhandlas under våren 2023. Det första rådsarbetsgruppsmötet är planerat till januari 2023.

Myndigheter under regeringen är skyldiga att svara på remissen. En myndighet avgör dock på eget ansvar om den har några synpunkter att redovisa i ett svar. Om myndigheten inte har några synpunkter, räcker det att svaret ger besked om detta. För **andra remissinstanser** innebär remissen en inbjudan att lämna synpunkter.

Råd om hur remissyttranden utformas finns i Statsrådsberedningens promemoria Svara på remiss (SB PM 2021:1). Den kan laddas ned från Regeringskansliets webbplats www.regeringen.se.

Linda Bolund Thornell
Kansliråd

Kopia till
Skatteutskottet

Hälsningar

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Council of the European Union

Brussels, 8 December 2022
(OR. en)

15829/22

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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	8 December 2022
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2022) 707 final
Subject:	Proposal for a COUNCIL DIRECTIVE amending Directive 2011/16/EU on administrative cooperation in the field of taxation

Delegations will find attached document COM(2022) 707 final.

Encl.: COM(2022) 707 final

EUROPEAN
COMMISSION

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 strategy[2] to update the directive on administrative cooperation to expand its scope to an evolving economy and strengthen the administrative cooperation framework.

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

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

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

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

2 COM(2020) 312 final.

3 Document 13350/20, FISC 226.

4 Document 14651/21, FISC 227.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- **Consistency with other EU policies**

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

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

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

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

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

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

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

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

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

• Subsidiarity (for non-exclusive competence)

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

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

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

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

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

- **Proportionality**

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

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

- **Choice of the instrument**

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

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

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

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

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

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

• Stakeholder consultations

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

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

As regards Member States, they were consulted via a questionnaire and dedicated meetings. On 13 November 2020 and 24 March 2021, the Commission services organised a meeting of

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

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.

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.

- **Impact assessment**

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

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

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

Regarding reporting crypto-asset service providers, the impact assessment indicates that the regulatory option at EU level is the most appropriate for meeting the identified policy. The *status quo* or baseline scenario was shown to be the least effective, efficient or coherent option. As opposed to the baseline scenario, an EU mandatory common standard would ensure that all EU tax administrations have access to the same type of data. In other words, EU regulatory action would put all tax authorities on an equal footing when it comes to access

to information collected for an identified tax purpose. This also provides for the automatic exchange of information at EU level based on common standards and specifications. Once implemented, it is the only scenario in which tax authorities in the Member State of a crypto-asset user can verify that the user has accurately reported its capital gains earned through crypto-asset investments, without the need for ad hoc, time-consuming requests and inquiries. In addition, an EU mandatory common reporting standard would ensure that crypto-asset service-providers do not face fragmented national solutions when it comes to tax related reporting obligations.

Economic impacts

Benefits

The obligation to report income earned through crypto-asset investments and the exchange of such information will help Member States receive a full set of information in order to collect tax revenues due. Based on estimations, additional tax revenues could reach EUR 2.4 billion. Common reporting rules will also help create a level playing field between crypto-asset providers. Transparency on income earned by crypto-asset investors would improve the level playing field with more traditional assets.

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

Costs

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

- **Regulatory fitness and simplification**

The proposal is designed to minimise regulatory burdens for reporting crypto-asset service providers, taxpayers and tax administrations. In line with the one in one out rule, reporting crypto-assets service providers will benefit from homogeneous reporting requirements throughout the EU, rather than having multiple standards across each Member State. The preferred policy response represents a proportionate answer to the identified problem since it does not exceed what is necessary for achieving the objective of the Treaties for a better functioning of the internal market without distortions. Indeed, the common rules will be limited to creating the minimum necessary common framework for reporting income earned through crypto-asset investments. For example: (i) the rules ensure that there is no double

reporting (i.e. single point oreporting); (ii) the automatic exchange is limited to the relevant Member States; and (iii) the imposition of penalties for non-compliance will remain under the sovereign control of Member States. In addition, harmonisation does not go further than ensuring that the competent authorities are informed about the income earned. Thereafter, it is for Member States to decide on the tax due in accordance with national legislation.

- **Fundamental rights**

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

4. BUDGETARY IMPLICATIONS

See legislative financial statement.

5. DETAILED EXPLANATION OF THE SPECIFIC PROVISIONS OF THE PROPOSAL

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

(i) Automatic exchange of information

- **Categories of income and capital**

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

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

Article 8a lays down rules for the automatic exchange of advance cross-border rulings and advanced pricing agreements for persons other than natural persons. This provision is extended to high-net-worth individuals who hold a minimum of EUR 1 000 000 in financial or investable wealth or assets under management, excluding that individual's main private residence. The amendment will oblige Member States to exchange with other Member States

[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

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

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

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

Scope

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

– Who bears the burden of reporting?

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

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

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

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

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

Crypto-asset service providers receive authorisation under Regulation XXX in the Member State of the legal entity and thus will report in such Member State. Whereas, to cover crypto-asset operators, the proposal lays down in Article 8ad(7) obligations for a single registration with a Member State of their choice. The reporting will take place in such Member State. Annex VI, Section V, paragraph F lays down the details of the registration process. To ensure

uniform conditions for the implementation of the proposed rules and, more precisely, the registration and identification of reporting crypto-asset service provider, subparagraph 3 of Article 8ad(11) confers implementing powers on the Commission to adopt a standard form. These powers are to be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

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

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

The Directive requires reporting by European Union and non-European Union crypto-asset operators, to the extent that such non-European Union operators have reportable users resident in the Union. This is essential to ensure a level playing field among all reporting crypto-asset service providers and prevent unfair comptetition.

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

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

– Which transactions are reportable?

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

– Whose transactions are reportable?

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

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

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

Only the transactions of a reportable user are reportable.

Due diligence procedures

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

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

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

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

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

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

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

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

Automatic exchange of information between competent authorities

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

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

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

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

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

Effective implementation and prevention of performing exchange transactions

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

(ii) Administrative cooperation

- **Penalties and other compliance measures**

Article 25(a) Penalties and other compliance measures

Effective penalties for non-compliance at national level

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

(iii) Other provisions

- **Use of information**

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

- **Reporting**

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

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

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

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

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

- **Identification services**

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

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

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

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

- **Date of application of the Directive**

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

2022/0413 (CNS)

Proposal for a

COUNCIL DIRECTIVE

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

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

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

Acting in accordance with a special legislative procedure,

Whereas:

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

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

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

(4) The European Court of Auditors published a report examining the legal framework and implementation of the Directive. That report concludes that the overall framework of Directive 2011/16/EU is solid, but that some provisions need to be strengthened in order to ensure that the full potential of the exchange of information is exploited and

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.

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

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

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

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

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

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

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

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

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.

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

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

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

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

(16) In order to ensure uniform conditions for the implementation of provisions on automatic exchange of information between competent authorities, implementing powers should be conferred on the Commission to adopt practical arrangements necessary for the implementation of the mandatory automatic exchange of information reported by reporting crypto-asset service providers, including a standard form for the

exchange of information. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[30].

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

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

[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).

competent authority agreement, the decision on correspondence should be taken in relation to the whole of the relevant framework covered by such a competent authority agreement. Nevertheless, it should still remain possible to take the decision on correspondence, where appropriate, concerning a bilateral competent authority agreement.

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

(22) Although the G20 endorsed the OECD Crypto-Asset Reporting Framework and recommended its implementation, no decision has been taken yet on whether it would be considered as a minimum standard or equivalent. Pending this decision, the proposal includes two different approaches for determining correspondence.

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

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

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

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

(27) E-money products, as defined by Directive 2009/110/EU of the European Parliament and of the Council[31] are frequently used in the Union and the volume of transactions,

[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).

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.

(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:

[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).

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

(b) the following points are added:

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

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

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

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

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

33. ‘home Member State’ means home Member State as defined in Regulation XXX.

34. ‘distributed ledger address’ means distributed ledger address as defined in Regulation XXX.

(2) Article 8 is amended as follows:

(a) paragraph 1 is amended as follows:

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

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

(a) income from employment;

(b) director’s fees;

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

(d) pensions;

(e) ownership of and income from immovable property;

(f) royalties;

(g) non-custodial dividend income.

(ii) the following subparagraph is added:

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

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

‘Member States shall, by automatic exchange, communicate to the competent authority of any other Member State information on all categories of income and capital referred to in paragraph 1, first subparagraph, concerning residents

of that other Member State. Such information shall concern taxable periods starting on or after 1 January 2026.';

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

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

(3) Article 8a is amended as follows:

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

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

(b) paragraph 2 is amended as follows:

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

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

(ii) The following subparagraph is added:

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

(c) paragraph 4 is replaced by the following:

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

(d) paragraph 6 is amended as follows:

(i) point is replaced by the following:

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

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

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

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

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

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

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

(6) the following Article is inserted:

'Article 8ad

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) the reporting requirements;

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

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

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

(7) Article 16 is amended as follows:

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

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

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

'2. With the permission of the competent authority of the Member State communicating information pursuant to this Directive, and only in so far as this is allowed under the legislation of the Member State of the competent authority

receiving the information, information and documents received pursuant to this Directive may be used for other purposes than those referred to in paragraph 1.

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

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

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

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

(c) the following paragraph 7 is added:

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

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

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

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

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

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

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

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

(9) Article 21 is amended as follows:

(a) the following paragraph 5a is inserted:

'5a. The Commission, acting on behalf of Member States, shall by 31 December 2025, develop and provide with technical and logistical support a secure Member State central directory on administrative cooperation in the field of taxation where information to be communicated in the framework of Article 8ad(2) and (3) shall be recorded in order to satisfy the automatic exchange provided for in those paragraphs.

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

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

(b) the following paragraph 8 is added:

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

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

'3. Member States shall retain the records of the information received through automatic exchange of information pursuant to Articles 8 to 8ad for no longer than

necessary but in any event not shorter than 5 years from its date of receipt to achieve the purposes of this Directive.

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

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

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

(12) Article 25 is amended as follows:

(a) paragraph 3 is replaced by the following:

'3. Reporting Financial Institutions, intermediaries, Reporting Platform Operators, Reporting Crypto-Asset Service Providers and the competent authorities of Member States shall be considered to be controllers, acting alone or jointly. When processing personal data for the purpose of this Directive the Commission shall be considered to process the personal data on behalf of the controllers and shall comply with the requirements for processors in Regulation (EU) 2018/1725. The processing shall be governed by a contract within the meaning of Article 28(3) of Regulation (EU) 2016/679 and Article 29(3) of Regulation (EU) 2018/1725.';

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

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

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

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

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

'Article 25a

Penalties and other compliance measures

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

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

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

(a) power to represent the legal person

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

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

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

(a) in case of non-compliance with national provisions adopted in order to comply with Article 8(3a) the minimum pecuniary penalty shall be not less than EUR 50 000 when the annual turnover of the Reporting Financial Institution is below EUR 6 million and EUR 150 000 when the turnover is EUR 6 million or above;

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

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

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

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

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

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

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

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

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

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

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

'2. Member States shall monitor and assess in relation to their jurisdiction, the effectiveness of administrative cooperation in accordance with this Directive in combatting tax evasion and tax avoidance and shall communicate the results of their assessment to the Commission once a year.'

(15) the following Article 27c is inserted:

'Article 27c
Reporting of TIN

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

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

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

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

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

Article 2

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

   They shall apply those provisions from 1 January 2026.

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

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

   They shall apply those provisions from 1 January 2025.

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

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

They shall apply those provisions from 1 January 2028.

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

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

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

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

1.2. Policy area(s) concerned

Tax policy.

1.3. The proposal/initiative relates to:

X a new action

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

☐ the extension of an existing action

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

1.4. Objective(s)

1.4.1. General objective(s)

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

1.4.2. Specific objective(s)

Specific objective

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

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

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

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.

Improving the existing provision should have positive impact on the efficient application of Directive 2011/16/EU on administrative cooperation. Addressing the current inefficiencies in a uniform fashion will ensure legal certainty and clarity. The reporting obligation with respect to the income earned by crypto-asset users aims to primarily inform tax authorities and enable them to assess tax due based on correct and complete information. This proposal will encompass reporting obligations and due diligence procedures for CASPs that would imply a compliance cost; however, these costs will be compensated by a higher-level playing field in the market, and the benefits derived from an increased legal certainty for all participants in the market. Not only will CASPs offer their services in a more stable market, but users will also perceive this market as a fairer and more secure market

1.4.4. Indicators of performance

Specify the indicators for monitoring progress and achievements.

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

1.5. Grounds for the proposal/initiative

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

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

For the purpose of the automatic exchange of information, the Member States will have to exchange the information required by this proposal with other Member States by means of a Central Directory accessible to all Member States. The Commission will have the task to provide Member States with the Central Directory and remains data processor with limited access. In general, the proposal will use the practical arrangements currently used under DAC.

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

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

Member States' actions do not provide an efficient and effective solution to problems that are transnational in their essence. An EU approach appears preferable to avoid a patchwork of reporting requirements unilaterally implemented by some or all Member States. An action at EU level ensures coherence, reduces administrative burden for reporting entities and tax authorities and is more robust in relation to potential loopholes due to the volatile nature of the assets concerned.

1.5.3. Lessons learned from similar experiences in the past

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

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

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

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

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

1.6. Duration and financial impact of the proposal/initiative

☐ **limited duration**

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

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

X **unlimited duration**

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

– followed by full-scale operation.

1.7. Management mode(s) planned[34]

X **Direct management** by the Commission

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

– ☐ by the executive agencies

☐ **Shared management** with the Member States

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

– ☐ third countries or the bodies they have designated;

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

– ☐ the EIB and the European Investment Fund;

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

– ☐ public law bodies;

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

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

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

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

[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

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

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

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

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

Member States undertake to:

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

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

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

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

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

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

2.2. Management and control system(s)

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

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

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

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

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

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

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

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

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

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

The main elements of the control strategy are:

Procurement contracts

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

Technical verification of procurement

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

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

Ex-ante verification of commitments

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

Ex-ante verification of payments

100% of payments are verified ex-ante. Moreover, at least one payment (from all categories of expenditures) per week is randomly selected for additional ex-ante verification performed by the head of the Finances and HR business correspondent Unit. There is no target concerning the coverage, as the purpose of this verification is to check payments "randomly" in order to verify that all payments were prepared in line with the requirements. The remaining payments are processed according to the rules in force on a daily basis.

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

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

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

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

2.3. Measures to prevent fraud and irregularities

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

The European Anti-fraud Office (OLAF) may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures

laid down in Regulation (EC) No 1073/1999 of the European Parliament and of the Council[35] and Council Regulation (Euratom, EC) No 2185/96[36] with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant agreement or grant decision or a contract funded under this Regulation

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

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

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL

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

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

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

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

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

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

3.2. Estimated financial impact of the proposal on appropriations

3.2.1. Summary of estimated impact on operational appropriations

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

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

EUR million (to three decimal places)

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

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

[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.

for DG TAXUD	Payments	=2a+2b +3		0.400	0.870	0.450	0.270	0.170	**2.160**

Heading of multiannual financial framework	7	'Administrative expenditure'

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

EUR million (to three decimal places)

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

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

EUR million (to three decimal places)

		2023	2024	2025	2026	2027	**TOTAL 2021 – 2027 MFF**
TOTAL appropriations	Commitments	0.522	1.031	0.609	0.335	0.187	**2,684**

under HEADINGS 1 to 7 of the multiannual financial framework	Payments	0.122	0.561	1.029	0.515	0.287		**2,514**
TOTAL appropriations under HEADINGS 1 to 7 of the multiannual financial framework								

3.2.2. Estimated impact on operational appropriations

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

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

Commitment appropriations in EUR million (to three decimal places)

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

[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)…'

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

3.2.3. Summary of estimated impact on administrative appropriations

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

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

EUR million (to three decimal places)

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

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

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

[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.

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

3.2.3.1. Estimated requirements of human resources

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

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

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

Estimate to be expressed in full time equivalent units

XX is the policy area or budget title concerned.

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

Description of tasks to be carried out:

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

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

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

3.2.4. Compatibility with the current multiannual financial framework

The proposal/initiative:

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

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

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

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

– ☐ requires a revision of the MFF.

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

3.2.5. Third-party contributions

The proposal/initiative:

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

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

Appropriations in EUR million (to three decimal places)

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

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

3.3. Estimated impact on revenue

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

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

☐ on own resources

☐ on other revenue

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

EUR million (to three decimal places)

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

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

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

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

Council of the European Union

Brussels, 8 December 2022
(OR. en)

Interinstitutional Files:
2022/0413(COD)
2022/0413(CNS)

15829/22
ADD 1

FISC 257
ECOFIN 1298
IA 216

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	8 December 2022
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2022) 707 final
Subject:	ANNEXES to the Proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation

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ANNEXES 1 to 3

ANNEXES

to the

Proposal for a Council Directive

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

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

ANNEX I

Annex I is amended as follows:

(1) Section I is amended as follows:

(a) paragraph A is amended as follows:

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

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

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

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

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

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

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

(ii) the following subparagraph 6a is inserted:

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

(b) paragraph C is amended as follows:

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

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

(c) the following paragraph F is added:

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

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

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

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

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

(4) Section VIII is amended as follows:

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

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

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

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

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

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

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

(ii) individual and collective portfolio management; or

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

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

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

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

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

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

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

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

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

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

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

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

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

15. The term 'Exchange Transaction' means any:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) the following Section XI is added:

'Section XI

Transitional Measures

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

ANNEX II

Annex V is amended as follows:

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

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

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

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

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

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

ANNEX III

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

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

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

SECTION I

OBLIGATIONS OF REPORTING CRYPTO-ASSET SERVICE PROVIDERS

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

1. an Entity authorised under Regulation XX;

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

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

4. an Entity managed from a Member State; or

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

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

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

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

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

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

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

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

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

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

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

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

SECTION II

REPORTING REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION III

DUE DILIGENCE PROCEDURES

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

A. Due Diligence Procedures for Individual Crypto-Asset Users

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

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

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

B. Due Diligence Procedures for Entity Crypto-Asset Users

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

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

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

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

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

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

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

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

C. Requirements for validity of self-certifications

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

   (a) first and last name;

   (b) residence address;

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

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

   (e) date of birth.

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

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

(a) legal name;

(b) address;

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

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

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

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

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

D. General due diligence requirements

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

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

SECTION IV

DEFINED TERMS

The following terms have the meaning set forth below:

A. Reportable Crypto-Asset

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

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

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

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

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

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

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

B. Reporting Crypto-Asset Service Provider

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

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

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

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

C. Reportable Transaction

1. ‘Reportable Transaction’ means any

   (a) Exchange Transaction; and

   (b) Transfer of Reportable Crypto-Assets.

2. ‘Exchange Transaction’ means any:

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

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

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

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

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

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

D. Reportable User

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. Excluded Person

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

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

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

4. 'Depository Institution' means any Entity that:

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

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

5. 'Investment Entity' means any Entity:

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

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

(ii) individual and collective portfolio management; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F. Miscellaneous

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

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

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

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

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

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

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

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

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

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

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

SECTION V

EFFECTIVE IMPLEMENTATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

   (a) name;

   (b) postal address;

   (c) electronic addresses, including websites;

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

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

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

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

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

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

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

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

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

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

Council of the European Union

Brussels, 8 December 2022
(OR. en)

Interinstitutional Files:
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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	8 December 2022
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2022) 402 final
Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT Initiative to strengthen existing rules and expand the exchange of information framework in the field of taxation so as to include crypto-assets Accompanying the document Proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation

Delegations will find attached document SWD(2022) 402 final.

Encl.: SWD(2022) 402 final

EUROPEAN
COMMISSION

Brussels, 8.12.2022
SWD(2022) 402 final

COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Initiative to strengthen existing rules and expand the exchange of information framework in the field of taxation so as to include crypto-assets

Accompanying the document

Proposal for a Council Directive

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

{COM(2022) 707 final} - {SEC(2022) 438 final} - {SWD(2022) 400 final} - {SWD(2022) 401 final}

Executive Summary Sheet
Impact assessment on an initiative to strengthen existing rules and expand the exchange of information framework in the field of taxation so as to include crypto-assets.
A. Need for action
Why? What is the problem being addressed?
The main problem addressed by the initiative is that tax authorities lack information to monitor the proceeds obtained using crypto-assets. The under-reporting of data related to revenues and income gained by crypto-asset users severely limits the ability of tax administrations to ensure that due taxes are effectively paid. Crypto-assets are currently not within the scope of the Directive on Administrative Cooperation (Council Directive 2011/16/EU (DAC)), which provides for automatic exchange of information between Member States for tax purposes. Internet-based products, services and applications, in particular those that take advantage of distributed networks, such as crypto-assets, are easily traded cross-border. This creates tax challenges in terms of access to information, which can only be solved through strong administrative cooperation between countries.
What is this initiative expected to achieve?
As a general objective, the proposal aims at ensuring a fair and efficient functioning of the single market by increasing overall tax transparency. This would benefit not only tax authorities but also users and service providers. This initiative also aims at safeguarding Member State tax revenues by extending and clarifying the reporting obligations concerning crypto-assets within the European Union. The current proposal (DAC8) should more specifically improve the ability of Member States to detect and counter tax fraud, tax evasion and tax avoidance. It should also deter non-compliance.
What is the value added of action at the EU level?
Member State actions do not provide an efficient and effective solution to problems that are transnational in essence. An EU approach appears preferable to avoid a patchwork of reporting requirements unilaterally implemented by some or all Member States. 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.
B. Solutions
What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?
The following options have been considered: a) non-legislative, soft-law option; and b) six potential legislative initiatives. The legislative initiatives would encompass as alternatives: 1) transaction by transaction; 2) transaction by transaction with an SME threshold; 3) fully aggregated reporting; 4) fully aggregated reporting with an SME threshold; 5) hybrid or middle ground option; and 6) hybrid or middle ground option with an SME threshold. The preferred choice is a legislative initiative with intermediate coverage. Hence, the hybrid or middle ground option (option 5) is the most appropriate option to meet the objectives of the initiative. All crypto-asset service providers, irrespective of their size and country of establishment, would need to report when performing transactions for clients resident in the EU. This will create a new reporting framework and exchange of information between tax administrations. The initiative will encompass marketable crypto-assets where the aim is to exchange transactional information, albeit with some degree of aggregation.

Who supports which option?
The outcomes of the public consultation and the specific consultation of crypto-asset service providers show a trend that favour a legislative initiative. Most Member States have also expressed support for the preferred choice.
C. Impacts of the preferred option
What are the benefits of the preferred option (if any, otherwise main ones)?
The initiative is expected to have significant direct economic benefits. It will have a positive impact on tax collection, with additional tax revenues estimated at EUR 1.7 billion stemming from crypto-asset transactions. Those revenues can be a source to fund Member State economic and social policies. The initiative is expected to contribute to fairness aspects and increased trust in tax systems through fair burden-sharing across taxpayers.
What are the costs of the preferred option (if any, otherwise main ones)?
The IT solution that would best facilitate reporting and exchange of information with the lowest costs and highest benefits for all parties involved – crypto-asset service providers, Member States and the Commission – is the central directory (already used for exchanges under DAC3 and DAC6). By analogy with previous reporting requirements, costs for tax administrations when dealing with crypto-assets are estimated to vary between EUR 1 million and EUR 12.96 million in one-off (development) costs and between EUR 1 million and EUR 5.67 million in recurrent costs. Crypto-asset service providers are estimated to incur around EUR 259 million in one-off costs and between EUR 22.6 million and EUR 24 million in recurrent costs. The European Commission will also incur costs and these are expected to be around EUR 0.48 million in one-off costs and EUR 0.21 million in recurrent costs. These estimates are however based on a number of assumptions and extrapolations and should be used with caution.
How will businesses, SMEs and micro-enterprises be affected?
The initiative is expected to have a limited impact on small and medium-sized businesses. The information to be reported is largely available to crypto-asset service providers for their daily operations. Furthermore, the crypto-asset market matures fast and so do service providers. While the initiative will bring compliance costs, it may be more favourable to SMEs to have a single set of rules across the EU, rather than a potential patchwork of reporting requirements across the EU. The initiative should also ensure a level playing field across all categories of players, which should benefit SMEs.
Will there be significant impacts on national budgets and administrations?
The costs that national administrations would incur depend on the IT solution used for the exchange of information. The benefits for national budgets in terms of additional tax revenues significantly outweigh costs under each and every option, and are estimated in billions of euro (about EUR 1.7 billion under the preferred option).
Will there be other significant impacts?
The initiative will comply with the General Data Protection Regulation and therefore will not negatively impact the fundamental right to protection of personal data.
D. Follow-up
When will the policy be reviewed?
The initiative will be monitored through information collected via annual assessments and discussions with tax administrations. A more comprehensive assessment will take place in compliance with the DAC's general provisions on evaluation, when the Commission is due to present a report to the European Parliament and the Council on the functioning of the Directive administrative cooperation in direct taxation.

Council of the European Union

Brussels, 8 December 2022
(OR. en)

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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	8 December 2022
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2022) 401 final
Subject:	COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT REPORT Initiative to strengthen existing rules and expand the exchange of information framework in the field of taxation so as to include crypto-assets Accompanying the document Proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation

Delegations will find attached document SWD(2022) 401 final.

Encl.: SWD(2022) 401 final

EUROPEAN
COMMISSION

Brussels, 8.12.2022
SWD(2022) 401 final

COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT REPORT

Initiative to strengthen existing rules and expand the exchange of information framework in the field of taxation so as to include crypto-assets

Accompanying the document

Proposal for a Council Directive

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

{COM(2022) 707 final} - {SEC(2022) 438 final} - {SWD(2022) 400 final} - {SWD(2022) 402 final}

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Glossary

Term or acronym	*Meaning or definition*
AML(D)	Anti-money laundering (Directive). The European Commission has presented a package of legislative proposals to strengthen these rules in July 2021.
Asset-referenced token	A type of crypto-asset that purports to maintain a stable value by referring to the value of several fiat currencies that are legal tender, one or several commodities or one or several crypto-assets, or a combination of such assets.
Binance	Binance is a CASP founded in 2017 and registered in the Cayman Islands. It is often considered as one of the largest exchange in the world in terms of daily trading volume of crypto-assets.
Bitcoin	Bitcoin (₿) is a type of crypto-asset. It is a decentralized virtual currency, without a central bank or single administrator that can be sent from user to user on the peer-to-peer bitcoin network without the need for intermediaries. Transactions are verified by network nodes through cryptography and recorded in a public distributed ledger called a blockchain.
Blockchain	A form of distributed ledger in which details of transactions are held in the ledger in the form of blocks of information. A block of new information is attached into the chain of pre-existing blocks via a computerised process by which transactions are validated.
CBDC	Central bank digital currency. A CBDC may be defined as a digital asset that only the central bank may issue or destroy, that is traded at par against banknotes and reserves, that is available 24/7, that may be used in peer-to-peer transactions and that circulates on digital media that are at least partially different from existing media.
Cold wallet	A wallet that is not connected to the internet. Cold wallets may include paper wallets (where the public and private keys are recorded on a piece of paper) and hardware wallets (where a USB stick or similar device is used as the storage medium).
Crypto-asset	A digital representation of value or rights, which may be transferred and stored electronically, using distributed ledger technology or similar technology.

Crypto-asset service	Any of the services and activities relating to any crypto-asset: the custody and administration of crypto-assets on behalf of third parties; the operation of a trading platform for crypto-assets; the exchange of crypto-assets for fiat currency that is legal tender; the exchange of crypto-assets for other crypto-assets; the execution of orders for crypto-assets on behalf of third parties; placing of crypto-assets; the reception and transmission of orders for crypto-assets on behalf of third parties; providing advice on crypto-assets.
Crypto-asset service provider or **CASP**	Any person whose occupation or business is the provision of one or more crypto-asset services to third parties on a professional basis.
Cryptocurrency	See "Virtual currency"
Cryptography	The conversion of data into private code using encryption algorithms, typically for transmission over a public network.
Custodian wallet provider	An entity that provides services to safeguard private cryptographic keys on behalf of its customers, to hold, store and transfer virtual assets.
Directive on administrative cooperation or **DAC**	Directive on administrative cooperation in the field of direct taxation. Rules and procedures under which the Member States shall cooperate with each other with a view to exchanging information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Member States concerning taxes of any kind except value added tax and customs duties, or excise duties.
Distributed ledger technology or **DLT**	A type of technology that supports the distributed recording of encrypted data.
EMA	Electronic Money Association
ECA	European Court of Auditors
E-money	Electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transaction, and which is accepted by a natural or legal person other than the electronic money issuer.
E-money token	Stands for "electronic money token". Means a type of crypto-asset mainly used as a means of exchange and

	that purports to maintain a stable value by referring to the value of a fiat currency that is legal tender.
Ethereum	Ethereum is an open source, public, blockchain-based distributed computing platform and operating system featuring smart contract functionality.
FATF	The Financial Action Task Force (FATF) is the global money laundering and terrorist financing watchdog. The inter-governmental body sets international standards that aim to prevent these illegal activities and the harm they cause to society. The FATF has developed the FATF Recommendations, or FATF Standards, which ensure a co-ordinated global response to prevent organised crime, corruption and terrorism.
Fiat currency	Fiat currency is a type of currency that is declared legal tender including money in circulation such as paper money or coins.
JRC	Joint Research Centre
KYC	For "know your customer". Customer due diligences (CDD) required by Anti Money Laundering Directive (AMLD) to identify and verify the identity of customers and beneficial owners for financial institutions and certain non-financial institutions and professionals.
Markets in Crypto-Assets or **MICA**	Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937.
Non-marketable crypto-assets	A crypto-asset that is not traded in a market or does not require intervention by a professional CASP for carrying out transactions. They are usually only transmitted through peer-to-peer transactions.
OECD	Organisation for Economic Co-operation and Development
Peer-to-peer transaction	Also known as "P2P". Individual user-to-individual user of crypto-assets transaction.
Pseudo-anonymity	The result of the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data

	are not attributed to an identified or identifiable natural person.
SMEs	Small and medium-sized enterprises
Transfer	A transfer is the movement of a crypto-asset to a different wallet. Wallets can be the so-called cold wallets which are not managed by CASPs but by the users itself, or a wallet managed by a different CASPs. All transfers and transactions are performed via blockchain.
User	Any individual or legal person who uses e-money or the services of a CASP.
Utility token	A type of crypto-asset, which is intended to provide digital access to a good or service, available on DLT, and is only accepted by the issuer of that token.
Virtual currency	A digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded electronically.
Wallet	A device, physical medium or software, used to store public and private keys and to interact with DLT to allow users to send and receive crypto-assets and monitor their balances. See also "Cold wallet" and “custodian wallet provider”.

1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT

In the political guidelines for the European Commission, President von der Leyen stressed the Commission's commitment to stepping up the fight against tax fraud, evasion and avoidance to ensure an economy that works for people[1] and where everybody pays their fair share. Fair and efficient taxation not only promotes social justice for citizens and a level playing field for businesses but also ensures that citizens and businesses can fully reap the benefits of the Internal Market. The COVID-19 pandemic has added greater urgency to the need to protect public finances and to ensure fair burden sharing.

On 15 July 2020, the European Commission adopted an Action Plan for Fair and Simple Taxation Supporting the Recovery Strategy[2] (hereafter referred to as the "Tax Action Plan"). The Tax Action Plan contains measures to reinforce the fight against tax abuse, to help tax administrations to keep pace with a constantly evolving economy and to ease the administrative burden for citizens and companies. Furthermore, the Tax Action Plan envisages improving administrative cooperation between national tax authorities in existing as well as newly developing areas.

The European Parliament has on several occasions stressed the political importance of fair taxation and of fighting tax fraud, evasion and avoidance. For example, in a resolution[3] from 2019, the European Parliament called on the Commission to do more to fight tax fraud, evasion and avoidance including through greater administrative cooperation and exchange of information between Member States. More recently, the European Parliament published a resolution about implementing the EU requirements for the exchange of tax information highlighting aspects to improve administrative cooperation, some of which are addressed by this initiative.[4]

Fair taxation and the fight against tax fraud, evasion and avoidance are priorities shared by the Council and the European Parliament. Better administrative cooperation and greater exchange of information between tax administrations are essential in the fight against tax avoidance and evasion. Major progress has been made over the past years in this respect.

The mechanism for cooperation and exchange of information within the EU for the purpose of direct taxation is framed by the Council Directive 2011/16/EU on administrative cooperation in the field of direct taxation[5] (hereafter referred to as "Directive 2011/16/EU" or "DAC"). Through the provision of an efficient mechanism for administrative cooperation and exchange of information between Member States, the DAC aims at protecting the financial interests of the Member States and the EU while fighting against tax fraud, evasion and avoidance. To this

[1] Political guidelines for the next European Commission. (2019-2024). A union that strives for more – My agenda for Europa

[2] European Commission. (2020). Communication from the Commission to the European Parliament and the Council, An action plan for fair and simple taxation supporting the recovery strategy, COM(2020) 312 final.

[3] European Parliament. (2019). European Parliament resolution of 26 March 2019 on financial crimes, tax evasion and tax avoidance (2018/2121(INI)).

[4] 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

[5] 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 64/1.

effect, it ensures a proper functioning of the Internal Market, greater transparency, as well as an overall fair taxation system. The scope of DAC has been extended six times over the last years in order to meet new challenges and adjust to new economic realities.[6]

Table 1 – DAC evolution

Directive on Administrative Cooperation – DAC							
DAC1 **2011/16/EU** Applies 1/2013 **-Exchange of information on request** **-Spontaneous exchange** of information **-Presence in adm. offices** **-Simultaneous controls** **-Request for notification** **-Sharing best practices** **-Use of standard forms**	**DAC1** **2011/16/EU** Applies 1/2015 1st exchanges 30.6.2015 **-Automatic exchange of information (AEOI) on 5 non-financial categories** -Income from employment -Directors fees -Pensions -Life insurance products -Immovable property (income and ownership)	**DAC2** **2014/107/EU** Applies 1/2016 1st exchanges 30.9.2017 Automatic exchange of **financial account information** : -Interests, dividends and other income generated by financial account; -Gross proceeds from sale or redemption; -Account balances.	**DAC3** **2015/2376/EU** Applies 1/2017 1st exchanges 30.9.2017 Automatic exchange of information of: **-Advance cross-border rulings** **-Advance pricing agreements.**	**DAC4** **2016/881/EU** Applies 6/2017 1st exchanges 30.6.2018 **Automatic exchange of information** on **country-by-country-reports** on certain financial information: -Revenues; -Profits; -Taxes paid and accrued; -Accumulated earnings; -Number of employees; -Certain assets.	**DAC5** **2016/2258/EU** Applies 1/2018 **Access by tax authorities to beneficial ownership information** as collected under AML rules.	**DAC6** **2018/822/EU** Applies 7/2020 1st exchanges 31.8.2020 **-Mandatory disclosure rules** for **intermediaries**; and **-Automatic exchange of information** on tax planning **cross-border arrangements**.	**DAC7** **2021/514/EU** Applies 1/2023 1st exchanges 2.2024 **Automatic exchange of information and reporting rules for digital Platform Operators** with respect to income earned by Sellers with the use of their platforms for the **sale of services and goods**.

The mechanism for the exchange of information under DAC is in most instances based on a two-step approach: 1. reporting to the tax authorities by the taxpayer or a third party (e.g. financial institution or service provider), and 2. exchange between the tax authorities concerned of the information that has been reported.

New challenges are constantly arising and may not be covered by the existing scope of the DAC. In particular, the emergence of alternative means of payment and investment, such as crypto-assets, which may pose new risks of tax evasion, are not covered. Therefore, this impact assessment presents policy actions to expand the exchange of information within the EU to cover income or revenue generated by these new means of payment and investment.

Crypto-assets are digital assets based on distributed ledger technology and cryptography. Crypto-asset markets have been growing fast over the past years. In September 2020, the European Commission adopted a proposal for a Regulation on Markets in Crypto-assets (hereafter referred

[6] Directive 2014/107/EU (DAC2), Directive 2015/2376/EU (DAC3), Directive 2016/881/EU (DAC4), Directive 2016/2258/EU (DAC5), Directive 2018/822/EU (DAC6), Council Directive (EU) 2021/514 (DAC7).

to as "MiCA")[7] , which will have, once agreed by the legislators, the effect of expanding the EU regulatory perimeter to a range of crypto-asset activities. The inherent cross-border nature of crypto-assets requires strong international administrative cooperation, so as to ensure effective regulation. The proposed MiCA legislation regulates the market for crypto-assets and provides for the conditions for access to the EU market for crypto-assets. This framework, once adopted, would replace national rules currently governing for example the issuance, trading and custody of crypto-assets. This framework does not by itself provide a basis for tax authorities to collect and exchange the information that they would need in order to tax crypto-asset income. This being said, the planned DAC8 proposal would build on this proposed framework, including on the definitions of crypto-assets and service providers.

The Commission's package of legislative proposals to strengthen the EU's Anti-Money Laundering/Countering the Financing of Terrorism framework (hereafter referred to as "AML/CFT")[8] includes a proposal to extend the scope of obliged entities subject to AML rules, to the virtual asset service providers regulated by MiCA. The AML package adopted by the Commission in July 2021 aims at extending the EU AML rules to all crypto-assets service providers (hereafter referred to as CASPs). This means that CASPs will have to ensure the availability of certain information relative to crypto-assets (for example as the name of the payer, the payer's payment account number, the payer's address, customer identification number or date and place of birth). Information gathered for AML purposes can be useful for tax authorities, which is demonstrated by a previous amendment to DAC (DAC5) which provides a basis for the use of AML information for tax purposes. However, the information gathered for AML purposes is not fully sufficient for tax purposes. It is intended for other purposes than taxation and neither the information collected, nor the procedure for collecting it are adapted to the needs of tackling tax fraud, evasion and avoidance.

The EU initiatives, in particular the proposed legislation on MiCA and the Anti-Money Laundering (AML) package, contribute to better regulating the crypto-assets market, improving traceability and greater transparency at large. However, it does not improve transparency for tax purposes, as envisaged by the proposal for DAC8.

An amendment of the DAC is therefore necessary in order to provide for clear reporting obligations with information that is relevant for tax purposes, due diligence rules and a specific mechanism for exchanging information between Member States, which would not be provided by the MiCA Regulation nor by the AML package.

The OECD initiative, which is currently still under negotiation at the international level, aims at introducing greater tax transparency on crypto-assets. It is important to ensure consistency between the international OECD and EU rules in order to increase effectiveness of information exchange and to reduce the administrative burden. However, an OECD framework would not eliminate the need for an EU framework. In particular, a future OECD standard is not expected to be binding and would therefore not achieve the same coordinated regulation across participating Member States. It has been standard practice to bring OECD agreements into EU

[7] European Commission. (2020). Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937, COM/2020/593 final.

[8] European Commission. (2021). Proposal for a Regulation of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing, COM (2021) 420 final, 2021/0239 (COD).

law through directives and it has been used for DAC2, 3, 4, 6 and 7. There is a need to ensure a coordinated approach within the EU with as few variations as possible. There is furthermore a need to ensure that the exchanges of information on crypto-assets can be integrated into the existing EU system of exchange of information. Finally, only an amendment to the DAC can ensure the necessary coherence of rules on reporting and exchange for tax purposes with the previously mentioned EU initiatives (proposal for a MICA regulation and AML package).

The European Court of Auditors (ECA) published a report[9] examining the legal framework and implementation of the DAC. This 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."*

It is important to clarify that this initiative focuses on the reporting and exchange of information between tax administrations on the income obtained by the users of crypto-asset services and the use of this information by tax administrations, to ensure the proper application of domestic tax rules. It does not aim at setting out new rules regarding the actual taxation of such proceeds based on each Member State's national rules, nor does it cover the taxation of the profits made by the CASPs and whether they, as companies, pay their fair share in relation to those profits. Those aspects may be addressed through separate initiatives and work streams.

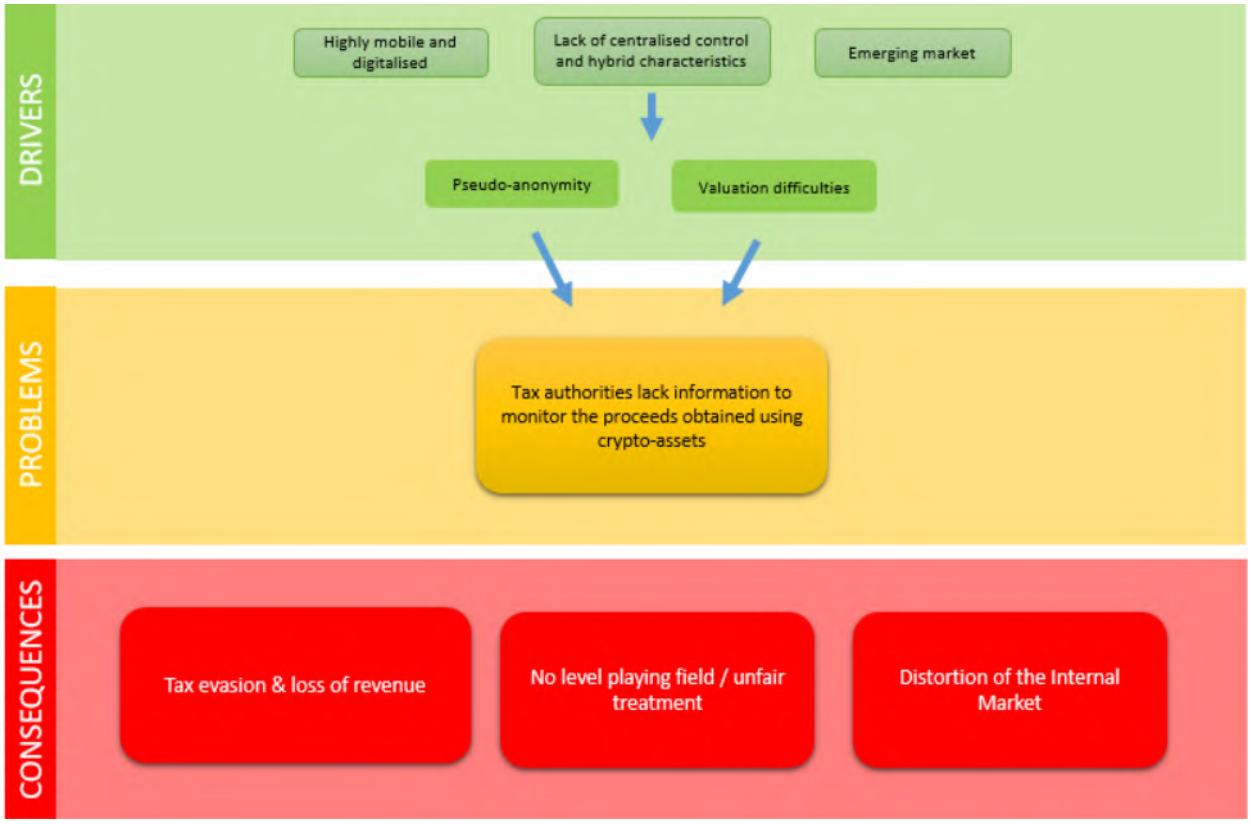
A legislative initiative addressing the issue of exchange of information on crypto-assets (DAC8) is likely to include some fine-tuning of existing concepts in the DAC and filling in some gaps. Areas that could be covered touch upon a further strengthening of administrative cooperation between tax authorities, a review of the current compliance framework, a clarification of the reporting and exchange rules applicable to information about e-money and the opening up of the information exchange on cross-border tax rulings to further types of rulings. Those improvements are briefly presented in Annex 6 but are not economically assessed in this impact assessment.

2. PROBLEM DEFINITION

The following analysis has been performed in order to estimate how significant the problem is, although the actual lack of available data has made this analysis challenging. Also, the problem drivers have been examined and the evolution of the problem - in the absence of an EU policy initiative – has been assessed. A problem tree chart has been included to visually present the problem, its drivers and consequences.

[9] European Court of Auditors. (2021). Special Report N°03/2021: Exchanging tax information in the EU: solid foundation, cracks in the implementation. Pages 20 and 29.

Figure 1 Problem Tree



2.1 What are the problems?

The key problem that this impact assessment focuses on is that tax authorities lack information to monitor the proceeds obtained using crypto-assets and the potential tax consequences of those.

In other words, there is a lack of information available to tax administrations regarding crypto-assets, while the crypto-assets market has gained in importance over the last years. The crypto-assets market capitalization has increased substantially and rapidly, reaching more than EUR 1.8 trillion in 2021.[10] Although Bitcoin[11] maintained a very high market share in the early years, its relative importance has decreased lately due to the increasing use of other new cryptocurrencies, such as Ethereum. In September 2021, Bitcoin's market share was around 42,8%, followed by Ethereum (18,8%) and Cardano (3,69%).[12]

Crypto-assets, like more traditional financial products, are a stock of wealth and can be taxed as such. But more generally, it is the capital gains arising from the trading of crypto-assets that are in principle subject to taxation under the national law of Member States. Those capital gains arise either when (i) crypto-assets are traded for other crypto-assets or (ii) a fiat currency is traded for crypto-assets and back to a fiat currency. The trading can be carried out using crypto-

[10] https://coinmarketcap.com/de/largest-companies/ (accessed on September 29, 2021).

[11] Bitcoin is a digital currency that is not backed by a central bank and is used for payment or investment purposes.

[12] https://coinmarketcap.com/charts/

asset service providers or between individuals or entities directly. Information on the details of these transactions is available through the service providers when they are involved. In cases where no service provider is involved, the information is more difficult to obtain and would require detailed knowledge of the information on the blockchain.

The fact that there is no reporting (or underreporting) and the lack of exchange of data related to revenues and income gained by investments in and transactions made with crypto-assets means that tax administrations lack the necessary information to ensure that taxes are imposed and effectively paid by taxpayers. Whilst it is difficult to precisely quantify this particular tax gap, it represents a current and future problem that needs to be addressed keeping in mind that the use of these assets is expected to increase substantially in the future. There is also significant potential for eroding the proper functioning of the existing exchanges under DAC2[13], which is a key tool in ensuring tax transparency on cross-border financial investments and tackling offshore tax evasion.

The majority of Member States already have legislation[14] or at least administrative guidance in place to tax capital gains obtained through crypto-asset investments. However, they often lack the necessary information that would enable them to do so.[15] Figure 2 shows the estimated capital gains, both realised and unrealised, of Bitcoin owners in 2020, ranked by realised capital gains. In 2020, the total realised capital gains by EU citizens amounted to EUR 3.6 billion and the total unrealised capital gains to EUR 9.1 billion, according to a study by Thiemann (2021).[16]

Assuming that the realised capital gains had been reported by the taxpayers and taxed at a rate of 25% (without any tax exemptions) by the relevant Member State, tax revenues of about EUR 0.9 billion could have been collected in 2020, taking only into consideration Bitcoin. The lack of reporting rules at national level, as well as the lack of exchange of information between Member States means that non-compliant taxpayers are difficult to detect, which leads to revenue losses. At the same time, there is no information available about how much realised capital gains have actually been taxed by the Member States. This makes it challenging to determine the exact impact of the proposed initiative.

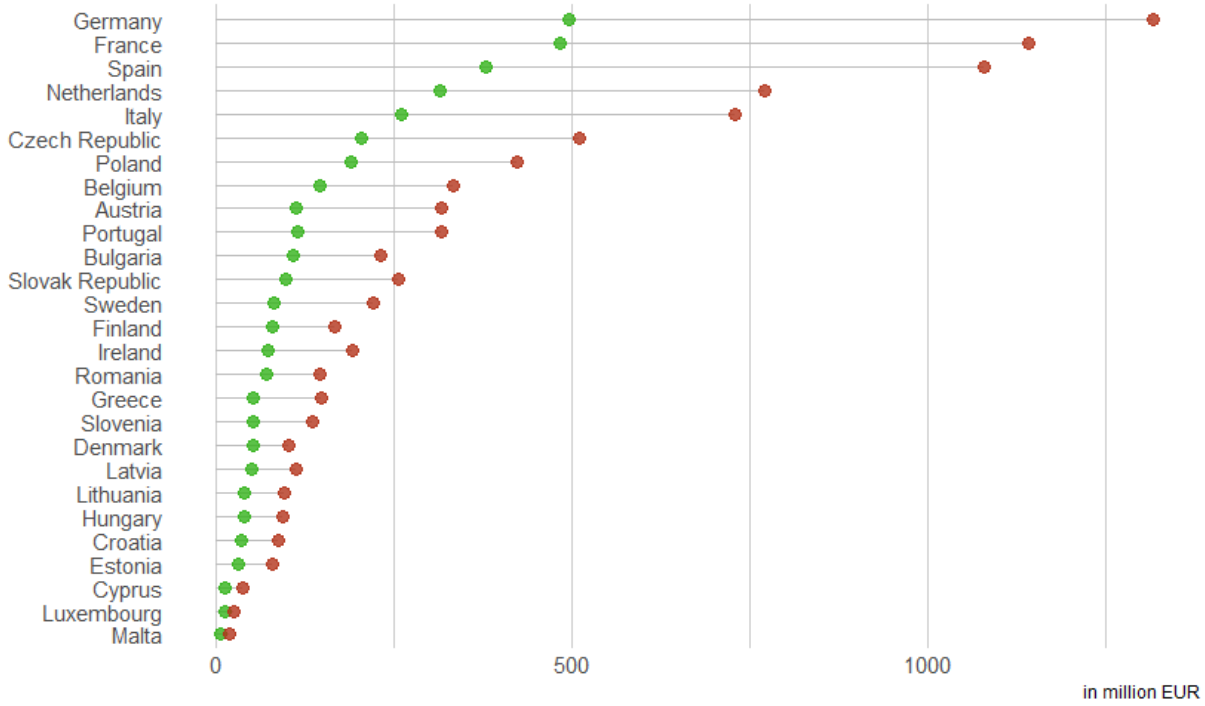
[13] Directive 2014/107/EU introducing the exchange of financial account information

[14] While some Member States are planning to introduce changes to their national legislation (e.g. Slovenia).

[15] OECD. (2020). Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Tax Policy Issues.

[16] Thiemann (2021). Cryptocurrencies: An empirical view from a tax perspective, JRC Working Papers on Taxation and Structural Reforms, No 12.

Figure 2 Estimated capital gains from Bitcoin in 2020 across EU countries, realised (green) and unrealised (red)



Source: Thiemann (2021) based on Chainalysis Inc.
Note: Flows are attributed to individual countries relying on country-based web traffic statistics, time-zone analysis of service providers' cryptocurrency activity, most popular fiat currency pairs, and additional information (see Chainalysis, 2020); exchange rate to calculate EUR values from the original USD values, as of May, 25, 2021 (1 EUR = 1.2212 USD).

It is relevant for the assessment of the problem and its impacts to note that there are already reporting obligations on financial institutions and certain assets, but they are clearly not sufficient. The existing **provisions of DAC2** lay down an obligation for financial intermediaries to report financial account information to tax administrations that are then required to exchange this information with other relevant Member States.

Crypto-assets are currently not considered a reportable information under DAC2 and thus within its scope (or its equivalent at the international level, the Common Reporting Standard or CRS). They neither represent money held in a depository accounts or in financial assets as they are not considered a commodity or security under the domestic law of most Member States. In addition, crypto-asset service providers are in most cases not considered to be covered by the existing definition of "financial institutions" under DAC2. Currently, tax administrations have few tools available to verify whether the proceeds earned through investments in crypto-assets are properly declared and, if so, whether the correct amount has been declared. As pointed out by the European Parliament, "defining tax bases requires being in possession of a full picture of a

taxpayer's situation".[17] Consequently, there might be an incentive to invest in crypto-assets rather than in traditional financial products with the aim to avoid DAC2/CRS reporting.

National tax administrations may use the information received related to crypto-assets through the exchange of information proposed under this initiative for a range of purposes, such as imposing taxes, conducting risk-assessments and tax audits relating to different tax categories including indirect taxes like Value Added Tax (VAT). The most relevant tax for the calculation of the benefits derived from this proposal are linked to income tax due to the potential capital gains that taxpayers may obtain.

The consequences of the lack of reporting and exchange of information on crypto-assets indirectly affects all EU citizens and businesses. Tax fraud, evasion and avoidance lead to fewer resources to fund public services such as education, healthcare, pensions and infrastructure. To maintain the level of public services, everybody must contribute according to the legal framework in force. To support and sustain the recovery from the deep economic crisis caused by COVID-19, it is necessary to ensure that a fair taxation system contributes to this objective. Compliant taxpayers, who pay their fair share of taxes, are particularly affected as they may be asked to pay higher taxes and/or they may have to accept a lower level of public services. Cost reduction achieved by not paying taxes is not an acceptable practice in the EU or elsewhere. Furthermore, the absence of a reporting standard for crypto-assets could be considered an incentive to invest in such products since users/investors would not be subject to the same verification regime as other traditional financial assets. This may affect the level playing field, fairness and integrity of the EU Internal Market.

2.2 What are the problem drivers?

The problem related to the lack of information available to tax authorities regarding the proceeds obtained using crypto-assets has various drivers and causes:

The lack of centralized control for crypto-assets, hybrid characteristics, and the rapid evolution of the underlying technology and its form present challenges from a taxation perspective. The said characteristics mean that reporting and taxation obligations are unclear and can be easily avoided. These assets escape current definitions in tax law in part due to the targeted nature of those definitions. Furthermore, users or investors can use this form of assets for payment as well as trading purposes, which is different from how traditional assets are traded and invested and which makes its taxonomy and the potential tax compliance framework more complex to design. These difficulties follow from the need to identify the relevant intermediaries, the reportable event, the valuation of crypto-assets and the available information, among other things. Like traditional financial assets, income or capital gains derived from crypto-assets may be subject to taxation depending on each Member State's legal framework. However, proper enforcement of tax obligations relies on high-quality reporting and the ability of tax administrations to have access to the information.

[17] European Parliament. (2019). European Parliament resolution of 26 March 2019 on financial crimes, tax evasion and tax avoidance (2018/2121(INI)).

The crypto-asset market is **highly mobile and digitalised**. Crypto-assets are traded all over the world through service providers that, in turn, have great mobility since they can be located anywhere in the world. The cross-border nature of crypto-assets means that reporting rules at national level are unlikely to adequately capture all necessary information.

It represents overall an emerging market. The first cryptocurrency, Bitcoin, was launched in 2009. As of today, there is a huge number of crypto-assets and CASPs and total crypto-asset users have increased from 5 million in 2016 to at least 100 million in 2020 with a market capitalization of total cryptocurrencies reaching EUR 1.8 trillion in September 2021. The crypto-asset markets are very dynamic. New crypto-assets with new features appear almost every day all over the world. There are more than 9,000 different crypto-assets currently available. Although this is both an emerging and rapidly evolving market, the Commission proposals such as MiCA provide for the necessary level of consistency and clarity by defining what crypto-asset service providers and crypto-assets are.

Pseudo-anonymity. Overall, in the crypto-asset markets, the level of transparency for tax purposes is deficient. This new technology is used to create, hold and transfer crypto-assets without traditional third-party intermediaries clearly covered by existing legislation. The lack of a central authority, combined with pseudo-anonymity applying in some cases, may lead to risks of tax fraud, evasion and avoidance. The Commission proposal for a Regulation on MiCA establishes uniform requirements for transparency and disclosure for crypto-asset service providers and issuers. The proposed new AML rules will also require CASPs to identify their customers through customer due diligence measures, to comply with new information obligations linked to crypto-assets transfers and to report possible suspicious transactions involving crypto-assets.[18] The DAC8 proposal intends to solve the pseudo-anonymity feature from a tax perspective.

In addition, there are substantial **valuation difficulties** due to the high level of price fluctuations, which poses a major problem to the computation of the overall holdings and capital gains for tax purposes. For instance, Bitcoin investors have experienced considerable volatility over the last ten years. The current absence of financial markets regulation for crypto-assets, pending adoption of the Regulation on MiCA, feeds into its volatility. This volatility may have been curbed to some extent as a result of the implementation by Member States of the Fourth and Fifth Anti-Money Laundering Directive[19], but is still significant. Apart from daily volatility, in which double-digit increases and decreases of its price are common, there were periods when the crypto-assets' price changes have outpaced even their usually volatile swings, resulting in massive price bubbles. The unstable value of crypto-assets makes it difficult for tax administration to carry out their core tasks. The value is one of the essential data components that tax administrations need to be able to perform a high-level risk assessment.

[18] European Commission. (2021). Proposal for a Regulation of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, COM(2021)420 final.

[19] Designation of competent authorities for CASPs, honourability checks, etc

2.3 How will the problem evolve in the absence of an EU policy initiative?

In the absence of an EU policy initiative, the underreporting of income and revenues will increase in proportion to the growth of the crypto-asset market. Bearing in mind that this market is growing at a double-digit annual pace, the relevance of this proposal is clear. Tax fraud, evasion and avoidance and the associated loss of tax revenues affect Member States' resources and therefore their capacity to develop their policies. Indirectly all citizens are impacted.

In the absence of a European framework for the reporting and exchange of information on crypto-assets for tax purposes, some Member States may decide to implement a domestic reporting framework for crypto-asset transactions. However, such domestic reporting framework would not be sufficient given the international and highly mobile character of the market. Furthermore, Member States are likely to take different approaches to reporting and there will be no efficient exchange of such information amongst them. This would increase the risk of tax fraud, evasion and avoidance.

With regard to peer-to-peer transactions, the risk of tax fraud, evasion and avoidance is even higher given that these transactions cannot be traced. The risk is that crypto-asset users could decide to change to peer-to-peer transaction in order to evade reporting. Consequently, the main difficulty stems from the fact that no CASPs are in-between and therefore, no reporting is possible.

According to the targeted consultation of the Member States, most Member States have not yet introduced any tax provisions or guidance at national level concerning the reporting of crypto-assets for tax purposes. The introduction of divergent reporting requirements would result in a more complex business environment: for a hypothetical CASP operating across 27 Member States. Costs of compliance with 27 different requirements would be higher than having to deal with one standard for reporting. Eventually, this would also create distortions in the Internal Market. If a CASP is based in a Member State without any requirement for reporting, yet operating in several Member States, it may have a competitive advantage vis-à-vis a CASP that provides the same services but is based in a Member State with a reporting requirement. More subtly, distortions may be created by differences between regulatory frameworks leading to a different compliance burden depending on the Member State.

3. WHY SHOULD THE EU ACT?

3.1 Legal basis

The legal basis of DAC relies on Articles 113 and 115 of the Treaty on the Functioning of the European Union (TFEU), which aim at ensuring the proper functioning of the Internal Market. Article 113 of the TFEU provides a legal basis for the harmonisation of indirect tax systems of Member States, as far as needed to ensure the functioning of the Internal Market and to avoid distortion of competition. Article 115 of the TFEU provides for the approximation of such laws, regulations or administrative provisions of the Member States, which directly affect the establishment or functioning of the Internal Market and make the approximation of laws necessary.

The aim of the DAC is to ensure a legal instrument of high quality for enhancing administrative cooperation in the field of direct taxation, in order to allow functioning of the Internal Market by reducing the negative effects of tax avoidance and evasion. Applying the same conditions, the same methods and the same practices for administrative cooperation facilitates the work and efficiency of the authorities in the fight against tax fraud, evasion and avoidance in the European Union.

3.2 Subsidiarity: Necessity of EU action

Based on their current national legislations, most Member States may not be able to access information about crypto-asset users that are not resident in that Member State. This is relevant for the taxation of the capital gains from crypto-assets, where taxation rights are usually based on the users' tax residency.

According to the current state of play of the Member States' legislation, the national legal basis is insufficient for effectively collecting information from CASPs. In some countries, there is no legislation for third party reporting. In other countries, the current state of legislation does not cover CASPs residing in other countries and through which their residents engage in crypto-asset transactions.

Furthermore, there are uncertainties as to whether domestic legislation applies to and can be enforced upon CASPs resident outside the jurisdiction. Given that crypto-assets markets are internationalised and that CASPs can easily operate remotely, this calls for a coordinated EU action. There is a need to act at the EU level to ensure that Member States can effectively access information on their tax residents, irrespective of the location of the service provider.

3.3 Proportionality: The added value of EU action

Given the need to act and the nature and extent of the problem set out in chapter 2, an EU approach to tax transparency on crypto-assets appears to be the best solution in order to avoid a patchwork of reporting requirements unilaterally implemented by some or all Member States. The information needs to reach the Member State where the income and revenues are due to be

taxed. Still, it is often likely to be held by intermediaries located in another Member State or even in third countries.

Since the scope of a new reporting framework should define the (i) type of CASPs in scope, (ii) the crypto-asset users in scope, (iii) content of the information and (iv) timing of collection of the data, a coherent and comprehensive solution at EU level would result in a relatively lower administrative burden for both tax administrations, reporters and taxpayers. Furthermore, to ensure coherence, to reduce administrative burden for reporting entities and administrations and in order to close potential loopholes considering the volatile nature of the assets in question it appears justified to also include domestic CASPs and users in the scope.

Given the developments at the international level, in particular work led by the OECD, some form of regulation is likely to be introduced by Member States at a certain stage. The fact that today there might be a lack of regulation in certain Member States does not imply that an EU initiative would cause disproportionate burden for administrations or reporting entities. Quite the contrary, the introduction of new EU provisions and procedures is expected to be less burdensome overall than the introduction of 27 different frameworks.

The added value of EU action is broadly confirmed in the public consultation where the vast majority of respondents from different categories and sizes stated that CASPs should have the same reporting obligations for tax purposes throughout the EU in terms of laying down a single set of rules.

4. OBJECTIVES: WHAT IS TO BE ACHIEVED?

4.1 General objectives

The general objective is to ensure a **fair and efficient functioning of the Internal Market** where all taxpayers pay their fair share of taxes.

In general, it can be observed that tax authorities characterise the crypto-assets market as a tax opaque market. This initiative will increase the transparency of the crypto-asset market by providing tax administrations with information that can reduce tax fraud, evasion and avoidance and better ensure a level playing field with the more traditional financial markets.

The crypto-asset market continues to increase in popularity. This new market brings with it benefits but also challenges, particularly when it comes to taxation and the risk of non-compliance with tax obligations.

The crypto-asset market is an international market where users worldwide invest through different CASPs established in or outside the European Union. Its international nature leads to cross-border transactions, which makes it difficult for tax administrations to access tax-relevant information without an exchange of information.

Extending and clarifying the reporting obligations concerning the creation, transactions and holdings of crypto-assets will provide legal certainty and increased transparency for the crypto-assets market, in a manner that enables tax administrations to reduce tax evasion, avoidance and fraud. This initiative therefore also aims at **safeguarding Member States' revenues**.

This initiative should therefore benefit national treasuries and tax administrations. At the same time, users and service providers will benefit from such an initiative because of the harmonised reporting framework across the EU. This will avoid a situation where individual Member States put in place national reporting frameworks, which may differ from jurisdiction to jurisdiction and would make it hard and more burdensome for service providers to comply. This element is one that applied equally to previous DAC amendments.

This proposal intends to set a reporting framework regarding crypto-assets exchanges. The proposal does not regulate how Member States tax the users' capital gains, the holdings or any other direct or indirect tax related to crypto-assets.

A CASP may be established in a jurisdiction that is not currently taxing any income derived from crypto-asset transactions, but its users might be tax resident in a different jurisdiction that taxes income derived from crypto-assets transactions.

4.2 Specific objectives

Specific objectives are to enhance the relevant information available to tax administrations to perform their duties more effectively and to reinforce the general compliance with the provisions of the DAC. This would allow tax administrations to monitor the risk of non-compliance with tax

rules and ensure proper tax collection. More specifically, **the initiative will improve the ability of Member States to detect and counter tax fraud, evasion and avoidance**.

The initiative would require CASPs to report relevant information to tax administrations across the EU thereby ensuring a level playing field across the Union.

Tax authorities' tasks to ensure the correctness of tax returns and to counter tax fraud, evasion and avoidance relies upon good quality and relevant information. If tax officers have the information they need, at the right time, to check that crypto-asset users declare what they obtained, it will be possible for them to better assess the tax due and ensure that tax is paid.

In addition to the ability to actively detect and counter tax fraud, evasion and avoidance, this initiative, once adopted, would also have deterrent effects. There is evidence that taxpayers are aware of a higher probability of being caught for avoiding and evading taxes[20] with automatic exchange of information measures in place. Automatic exchange of information is a most effective tool to foster voluntary compliance.[21] In other words, by increasing the probability of detecting non-compliance, the initiative is expected to provide an incentive to declare and pay taxes owed.

The monitoring of the implementation and the effects of the initiative will be carried out through yearly assessments where Member States provide quantitative and qualitative information to the Commission, including references to key performance indicators.

[20] Shaw, J., Slemrod, J., & Whiting, J. (2010). Administration and compliance. Dimensions of Tax Design. The Mirrlees Review. Oxford University Press, chapter 12, p. 1126.

[21] Beer, S, Coelho, M. and Leduc, S. (2019) Hidden Treasures: the impact of automatic exchange of information on cross-border tax evasion, IMF working paper, WP/19/286.

5. WHAT ARE THE AVAILABLE POLICY OPTIONS?

The starting point is the baseline scenario, against which various options are assessed. This chapter describes the options identified.

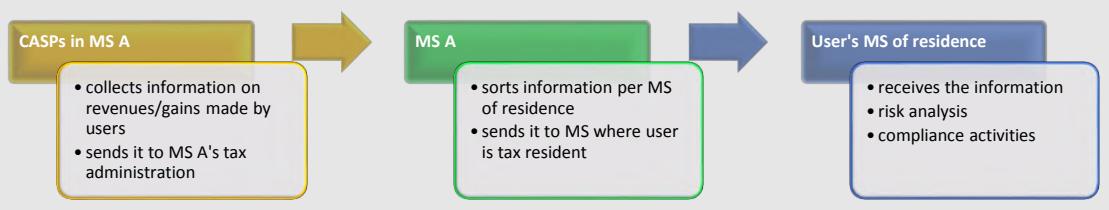
The baseline scenario is based on the assumption that the EU level would not act and would leave any potential action or non-action to the Member States.

A soft-law approach would establish some requirements for Member States to act but would not be legally binding, thereby providing them with some leeway to design an appropriate solution for the existing problem.

A legislative option would imply a legally binding framework to encompass reporting by CASPs and the relevant exchange of information. Concerning the expansion of the scope of DAC to crypto-assets, the EU would intervene to regulate the adoption of reporting and exchange of information obligations, building on the work of the OECD and existing EU proposals.[22] In the broad lines, CASPs would be subject to reporting obligations under the DAC, and would therefore be required to collect information on users and report such information to the tax authority. Tax authorities would then be required to exchange this information with the relevant other Member State(s).

In practice, the obligations that would fall on CASPs under the DAC would be largely equivalent to the ones already imposed on reporting subjects under DAC, such as financial institutions under DAC2 or digital platform operators under DAC7. Those obligations would mainly consist of collecting and verifying relevant data to identify taxpayers and their respective Member State of residence and reporting information relative to the proceeds and holding of crypto-assets.

Figure 3. Overview of Reporting and Exchange Mechanism



The design of the legislative options is influenced by the following building blocks:

- **Which crypto-assets are in scope?**

Crypto-asset definitions commonly refer to digital or virtual assets based on distributed ledger technology (DLT) and cryptography as part of their perceived or inherent value. Additionally, these assets can be held and transferred in a decentralised manner without the intervention of

[22] MiCA and AML package.

traditional financial intermediaries. These two key elements distinguish crypto-assets from traditional financial assets already covered under DAC2.

The proposal for a Regulation on MiCA defines crypto-assets as *"a digital representation of value or rights which may be transferred and stored electronically, using distributed ledger technology or similar technology."*[23]

The group of crypto-assets covered by the scope of the initiative is to a great extent similar to that of the proposal for the Markets in Crypto-Assets (MiCA) Regulation. The general definition used is the same and includes payment tokens, asset-referenced tokens and e-money tokens defined as follows:

- The most well-known crypto-assets covered by the suggested definition, such as Bitcoin or Ethereum and Litecoin, are designed to serve as a general purpose store of value, medium of exchange or means of payment, and/or unit of account. They are sometimes referred to as "crypto currencies" or "payment tokens".
- "Asset-referenced tokens" aim to maintain a stable value by referencing several currencies that are legal tender, one or several commodities, one or several crypto-assets, or a basket of such assets and subsequently act as a means of payment to buy goods and services and as a store of value. It is suggested to report and exchange information on these crypto-assets under the new regime for crypto-assets. Examples are LAToken, Salt and Tether. Asset-reference tokens together with e-money tokens make up what is called "stablecoins".
- "E-money tokens" are crypto-assets with a stable value based on only one fiat currency that aims to function in a similar way to electronic money. However, different from e-money, e-money tokens referencing one fiat currency which is legal tender do not provide their holders with a claim on the issuers of such assets.
- "Central bank digital currencies" refers to digital currencies representing a claim on an issuing Central Bank.
- Equity tokens are digital tokens or "coins" that represent equity shares in a corporation or organization. Debt tokens are tokenized assets that represent debt instruments such as real estate mortgages or corporate bonds.
- Non-fungible tokens: A non-fungible token (NFT) is a unique and non-interchangeable unit of data stored on a digital ledger (blockchain). NFTs can be associated with reproducible digital files such as photos, videos, and audio. NFTs use a digital ledger to provide a public certificate of authenticity or proof of ownership, but it does not restrict the sharing or copying of the underlying digital file. The lack of interchangeability (fungibility) distinguishes NFTs from blockchain cryptocurrencies, such as Bitcoin.

[23] Article 3.1(2) of the proposed Regulation on MICA.

Two types of assets would not be reported under the crypto-asset reporting obligation framework, given their features:

- "Utility tokens" are intended to provide digital access to a good or service, available on DLT, and are only accepted by the issuer of that token.[24] Utility tokens are issued with non-financial purposes to digitally provide access to an application, services or resources available on distributed ledger networks. Due to the absence of financial purposes these assets are rarely relevant for tax purposes. A start-up can create utility tokens for access to the services or products it is developing. Filecoin (FIL) is an example of a utility token. FIL holders gain access to the platform's decentralized cloud storage services.
- "Non-marketable crypto-assets" are not traded in a publicly available market or do not require intervention by a CASP. These assets are not covered by the initiative due to the fact that they are not usually subject to trading. An example is Sorare, a fantasy football trading card game, where users can exchange the cards of real players and manage their team to win prizes every week. The cards are all non-marketable and are stored on blockchain.

CRYPTO-ASSETS TAXONOMY		
New Crypto-assets reporting framework (CARF)	DAC2	Not covered by the crypto-assets reporting obligation
Payment tokens or exchange tokens (Bitcoin, Ethereum)	E-money tokens	Utility tokens
Asset-reference tokens (such as Tether, USD Coin, Binance)	CBDC	Non-marketable crypto-assets
Equity and debt tokens		
NFT		

- **Which CASPs are in scope regarding reporting obligations?**

CASPs are defined as any person whose occupation or business is the provision of one or more crypto-asset services to third parties on a professional basis.[25] They can perform exchanges between crypto-assets and fiat currencies or exchanges between one or more forms of crypto-assets. The above definition is narrower than the definition provided in the proposal for

[24] OECD uses the term Closed-Loop Crypto-Assets to refer to those crypto-Assets redeemed for a specified good or service and transferred with the intervention of the issuer or the supplier of such good or service. (e.g. currency in a video game, a tokenised representation of frequent flyer miles, or a tokenised redemption right to a consumer good)

[25] According to MICA: 'crypto-asset service' means any of the services and activities listed below relating to any crypto-asset:
(a) the custody and administration of crypto-assets on behalf of third parties; (b) the operation of a trading platform for crypto-assets; (c) the exchange of crypto-assets for fiat currency that is legal tender; (d) the exchange of crypto-assets for other crypto-assets; (e) the execution of orders for crypto-assets on behalf of third parties; (f) placing of crypto-assets; (g) the reception and transmission of orders for crypto-assets on behalf of third parties; (h) providing advice on crypto-assets.

a MiCA Regulation. This is because services such as "providing advice", covered in the MiCA Regulation proposal, do not have any relevance for establishing holdings or capital gains that would be relevant for tax purposes. The "issuance" of crypto-assets is not covered either since it is not a transaction that will give rise to a measurable capital gain.

CASPs can be, among others, exchanges, brokers and dealers, trading platforms (DEFi) as well as crypto-asset ATMs. They play a crucial role in facilitating a market for crypto-assets and are therefore best placed to collect and report information relevant for assessing tax liabilities (i.e. capital gains and income), including details of gross proceeds. In general, these intermediaries have access to the value of the crypto-assets and the transactions carried out.

The proposal would contemplate that the new reporting and exchange framework will impose reporting requirements solely on CASPs that are in the professional business of conducting exchanges of crypto-assets. CASPs already fall under the scope of obliged entities under the Financial Action Task Force (FATF) Recommendations[26] and are consequently expected to efficiently collect and review the required documentation of their customers on the basis of the AML/KYC[27] requirements.

In order to determine which CASPs are in scope regarding reporting obligations, two dimensions are being considered: size and location. As far as size is concerned, it can be envisaged whether (i) all CASPs should report, irrespective of their size, or whether (ii) an exclusion based on size should be introduced (i.e. SME CASPs).

As far as location is concerned, it can be considered whether non-EU based CASPs should be subject or not to the reporting obligations[28], in addition to EU-based CASPs. In this respect, it should be noted that, once adopted, the Regulation on MiCA will oblige CASPs operating on the EU market to have their services authorized in the EU.[29] This would facilitate the identification of non-EU based CASPs.

CASPs that would be subject to an equivalent reporting standard, following an agreement on a standard in the OECD, may be excluded from the scope of EU obligations. This would require an equivalence decision from the EU, similar to what has been adopted in the context of DAC 7 for reporting by non-EU digital platform operators.

- **Which type of reporting?**

[26] Definition of "Virtual assets service providers", retrieved from: https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf

[27] Anti-money laundering/know your client

[28] It should be noted that CASPs that would be subject to an equivalent reporting standard, following agreement in the OECD negotiations, may be excluded from the scope of an EU standard. This would require an equivalence decision from the EU, similar to what has been adopted in the context of DAC 7 for reporting by non-EU digital platform operators.

[29] According to Title V (articles 53 to 75) of MICA: CASPs will need to have a registered office in a Member State of the Union and obtain an administrative authorisation to operate in the EU in accordance with article 55. In some cases, they may be subject to additional requirements.

CASPs can provide services related to different types of crypto-assets, and to different types of transactions such as acquisitions, sales and transfers of crypto-assets but also safekeeping of assets and provision of financial services related to i.a. issuance of assets. The inclusion of crypto-asset transfers[30] under the reporting and exchange framework would help catch transfers to cold wallets and track the wealth of a particular taxpayer. It would assist tax authorities to reconcile information reported from several CASPs, in case a taxpayer uses multiple providers for acquiring and/or selling crypto-assets.

The reporting requirements need to take into account the characteristics of the asset and the type of information to be reported. Most crypto-assets are subject to very frequent transactions and their value can vary significantly even within very short timeframes. However, some crypto-assets are more stable in value and are in most cases not subject to daily multiple transactions. Two examples of the latter category are Central bank digital currency (CBDCs) and e-money tokens which are not subject to high fluctuations in value and are used mainly for payment purposes.

Different reporting possibilities could be considered for crypto-asset reporting:

The reporting of ***balances*** is an option under which the CASPSs would provide information about the crypto-assets balances of each user. This type of reporting is similar to what is required under DAC2 for traditional financial assets, where information is exchanged on end-of-year account balance.

For assets that are characterised by a stable value and which are not subject to very frequent transactions, such as CBDC and e-money tokens, it would not be necessary to require detailed reporting. For such assets, it would be sufficient to require reporting of balances and other relevant information, similar to what is the case under the current provisions of the DAC for financial assets.

In terms of reporting of ***transaction-based*** information, three alternatives can be considered in terms of level of granularity: reporting (i) on a fully aggregated basis, (ii) on a transaction-by-transaction basis, (iii) on an aggregated basis with some breakdowns (hybrid option).

During a meeting organised by the Commission services in November 2020, Member States expressed diverging views on the desired level of granularity of reporting of gross proceeds derived from crypto-asset transactions. Most Member States favoured a fully aggregated reporting of gross proceeds that would both have a deterrent effect and allow tax authorities to perform a high-level tax risk assessment before further investigation. Other Member States were in favour of an approach whereby the concrete tax liabilities of taxpayers could be identified, requiring a transaction-by-transaction reporting scheme.

With an ***aggregate reporting***, tax administrations would receive a global picture of the value of and proceeds derived from all crypto-assets held by a taxpayer. Furthermore, the data transferred

[30] A transfer is the movement of a crypto-asset to a different wallet. These wallets can be the so-called cold wallets which are not managed by CASPs but by the users itself, or a wallet managed by a different CASPs. All transfers and transactions are performed via blockchain.

to the tax administration would be compressed and limited. However, this information may not always be sufficient to allow tax administrations to assess the actual tax liability associated with specific transactions in crypto-assets and it may require additional requests for further information resulting in time-consuming contacts between tax administrations and reporting entities.

With a ***transaction-by-transaction reporting***, tax authorities would receive for each taxpayer an overview of each transaction it has engaged over the year (with information on type of transaction, type of crypto-asset, value and proceed of each transaction). Tax administrations would therefore have immediate access to all available information, which would remove the need for follow-up contacts with other Member States or with CASPs also to ensure the necessary tax treatment in other tax areas such as indirect taxation. However, the volumes of information would be considerable and it would entail high administrative burden and costs for tax administrations.

In a ***"hybrid" or middle-ground*** scenario, reporting would be in-between aggregate gross proceeds reporting and full transaction-by-transaction reporting. It would require aggregate reporting on acquisitions, transfers and disposals per type of crypto-asset. It would also require distinguishing between crypto-to-crypto and crypto-for-fiat transactions to enhance the usability of the data for the receiving tax administrations. Additional financial information would be provided for further granularity, such as the number of transactions, the number of units transacted and the amount of any fees and commissions withheld by the CASPs in respect of relevant transactions.

If relevant, the reporting on transaction-based information can be complemented with information on balances.

On the basis of these building blocks, various options are assessed in the following analysis.

The proposed IT implementation choices[31] are feasible no matter which policy option is chosen. The feasibility of the IT solution depends neither on the size of the CASPs, nor on the types of crypto-assets in scope nor the reporting method. The issue to determine with regard to the IT solution is more about the efficiency of the different IT solutions in achieving the initiative's objectives.

5.1 Baseline scenario (Option 0)

Under this option, the EU would not act. However, other actors, mainly the Member States as well as the OECD, might still act. The use of crypto-assets has been growing a lot recently. While some Member States have not yet addressed the problem domestically, it does not mean that they will not act in the near future. Different approaches to the reporting for tax purposes across the EU may also have a negative effect on the crypto-asset market and the issuance and use of crypto-assets.

[31] See Annex 5.

The OECD is currently working on developing a new international standard intended to impose reporting obligations on CASPs and subsequent exchange of information between jurisdictions. A new international standard would include an obligation for CASPs to collect and provide tax authorities with certain aggregated information. The granularity of the information that CASPs would be required to provide would enable tax authorities to carry out effective tax risk assessments and provide visibility on transactions and holding patterns. Member States are likely to rely on this to implement rules at national level. However, there is a risk of divergences among the Member States' legal frameworks that would jeopardize the coherence of the system for exchange of information within the EU as established by the DAC. It would also put at risk the integrity of the EU market in crypto-assets as regulated by the proposed MiCA Regulation. The OECD standard would not necessarily be adapted to the domestic provisions, leading to the reporting of third country CASPs risking to be less effective.

5.2 Recommendation for the implementation of a global standard

Under this option, the Commission would propose a legally non-binding recommendation addressed to Member States to implement consistent rules addressing the lack of reporting and exchange of information related to the taxation of income or revenue generated through the use of crypto-assets. Such a recommendation would call on the Member States to implement a future OECD standard and, to the extent needed, be complemented by guidance adapting such rules for the Internal Market. A non-legally binding option may imply that Member States do not implement the international standard uniformly, giving rise to differences that could affect the functioning of the Internal Market.

5.3 EU legislative initiative – Six options regarding the type of reporting and the impact of having a threshold for SME- (Options 1-6)

Under the EU legislative option, the reporting and exchange of information would apply to **all crypto-assets, which are relevant from a tax perspective (i.e. all crypto-assets except non-marketable crypto-assets and utility tokens).**

Under this option, the coverage would not include certain types of crypto-assets in the scope. This would be based on the fact that non-marketable crypto-assets and utility tokens are not traded on exchanges and mostly do not have a value outside the context of their issuer. Their use does generally not have any tax consequences and the information would therefore not be useful for tax administrations.

As discussed above, the reporting would focus on transactional information, which would allow tax administrations to make a more precise risk assessment. Considering that many users make many transactions within short time frames, a reporting of information based on balances only would in many cases require tax administrations to ask the CASPs for more detailed information, thus creating a second round of more detailed reporting. For the CASPs, the option would mean that less information would need to be reported initially, which would keep the administrative burden low. However, due to the likely frequent need for more detailed information, there would be an increased administrative burden in the second step of follow-up requests for information.

Regarding the type of transactional information to be reported, we may distinguish three sub-options: Aggregated reporting, transaction by transaction and hybrid. In all cases, a SME[32] threshold is analysed against any of these three sub-options making them in total six sub-options.

Option 1. Transaction by transaction.

Under this policy option, the reporting and exchange of information would apply to all crypto-assets, except non-marketable crypto-assets and utility tokens, introducing a reporting obligation on all CASPs that have EU users. In this case, the information would be reported on a transaction by transaction basis which means that each and every transaction made by a CASP for a crypto-asset user will have to be reported.

Under this option, CASPs would report the data concerning each transaction with crypto-assets owned by EU users. In the same way, as under Option 3 and 5, all CASPs would need to report as far as they intermediate EU users' transactions, regardless of where they are located.

The reported information would consist of detailed transactional information per crypto-asset user. Consequently, the level of information would be so precise that tax administrations would not need to seek additional information to calculate the taxes due by crypto-asset users. However, the mass of data that would have to be managed by CASPs and tax administrations would entail higher investments in IT infrastructure to guarantee its functionality and operability, resulting in higher costs than other options.

Option 2. Transaction by transaction with a SME threshold.

This option is similar to the previous one, but it introduces a threshold for CASPs that are SMEs. In this case SMEs would not need to report.

The costs associated to the initiative could be contained by introducing an SME threshold as the amount of information would be reduced. However, these thresholds would constitute a loophole in the system as some users would prefer to use SME CASPS to avoid having information concerning their crypto-assets transactions reported, even though large value transactions could still be performed through SME CASPs.

Option 3. Fully aggregated reporting:

Under this policy option, the reporting and exchange of information would apply to all crypto-assets, except non-marketable crypto-assets and utility tokens, introducing a reporting obligation of fully aggregated information on all CASPs that have EU users. Fully aggregated information would provide a general picture of the crypto-asset user's transactions, which could only be used for risk assessment purposes. In case of need for additional information, tax administrations would have to request it from CASPs through a second round of reporting on request. Consequently, the fully aggregated option would require follow-up action from the tax administration concerning taxpayers that present a higher level of risk.

[32] As defined in Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises OJ L 124, 20.5.2003, p. 36.

The absence of a threshold on the size of the CASPs would result in a more significant volume of information being reported to tax administrations. This would result in a higher administrative burden for tax administrations, but would equip tax administrations with different means to combat tax fraud, evasion and avoidance. However, this would lead to additional administrative burden for the CASPs of a smaller size, which would be proportionately more burdensome than for CASPs of a bigger size.

Option 4. Fully aggregated reporting with an SME threshold:

This option introduces a SME threshold to allow smaller CASPs not to be subject to the reporting obligations.

A threshold on the size of CASPs would have two effects. Firstly, tax administrations would get a lower amount of information as more minor entities would not be reporting. Secondly, for CASPs below a specific size, it would mean that the administrative burden of reporting, which would be more significant as a share of the overall administrative burden than for larger CASPs, would be removed. However, there could be incentives for those users who intend to conceal their crypto-assets tax information to act through those SME CASPs.

Option 5. Hybrid or middle ground option:

In the hybrid or middle-ground option, the tax administrations would receive more granular information than in a fully aggregated reporting system, allowing tax administrations to perform a high-level risk assessment and calculate the crypto-asset user's capital gains. The type of additional data to be reported would be, for instance, the number of crypto-assets exchanged, the type of crypto-assets exchanged and the costs charged by CASPs for the transactions. As in the other options, all CASPS would need to report no matter where they are established, and only non-marketable crypto-assets and utility tokens would be out of scope.

The main advantage of this reporting method is that the amount of information to be managed by tax authorities and CASPs would be moderate as they would not be obliged to report each transactional data. However, it would allow tax administrations to obtain the data required to limit the follow-up requests for information to the CASPs. The detailed information would in many cases suffice to directly calculate the potential capital gains of a user.

Option 7. Hybrid or middle ground option with a SME threshold:

Under this policy option, the reporting and exchange of information would apply to all crypto-assets, except non-marketable crypto-assets and utility tokens, and for all CASPs that have EU users. The information here would be reported on a middle ground basis.

The introduction of a SME threshold would mean that SMEs do not incur the costs to aggregate and report the information. However, as in the previous analyses, this option would not avoid creating a potential loophole and distorting the EU market of crypto-assets. The effort that SME would need to perform to comply with this information requirement would be within the proportionality framework, and therefore, it would be justified not to have any threshold on SME.

5.4 Options discarded at an early stage

Some of the options highlighted above were considered as not a viable way forward either because there was no deemed added value or because experience with similar approaches has proven ineffective in the past:

Table 2 Options Discarded

Option discarded	Section	Explanation
Non-legislative approach	5.2	This option would bring no added value as the OECD framework would be developed and Member States that would wish to do so would implement the framework. A Commission Recommendation would bring no added value as it would not be legally binding, hence it would not address the issue of fragmentation of reporting requirements across the EU. In particular, it would still be for each Member State to decide on the introduction of such reporting obligations and on their precise scope. In addition, the difficulty of enforcing domestic legislation vis-à-vis CASPs resident in another jurisdiction would not be addressed. Other potential consequences would be heterogeneous reporting obligations throughout the EU and distortion of internal market.
Only EU-based CASPs would be within the scope of the reporting framework.	5	Some of the intrinsic characteristics of crypto- assets are that they are highly mobile and digitalized and can therefore be exchanged all over the world. That means that European users can use the exchanges services of any CASPs no matter where the CASPs have their jurisdiction. A reporting of information framework where only EU-based CASPS would need to report would favour non-EU-based CASPS against their European competitors, and would only provide limited information to EU tax adminsitrations.

6. WHAT ARE THE IMPACTS OF THE POLICY OPTIONS?

6.1 Overview of options

The expected impacts of the options presented are discussed in more detail in the following section. These cover economic impacts (costs and benefits) on CASPs, national tax administrations and the Commission, impacts on sectors competitiveness and SMEs, as well as social and environmental impacts. All the policy options have been assessed against the baseline scenario.

The table below provides an overview of available policy options considered in the analysis.

Table 3 Policy options

Option 1	Option 2	Option 3	Option 4	Option 5	Option 6
CASPs report **detailed** transactional information on all assets types **except for non-marketable crypto-assets and utility tokens.** Threshold on CASP size **does not apply.**	CASPs report **detailed** transactional information on all assets types **except for non-marketable crypto-assets and utility tokens.** Threshold on CASP size **applies**.	CASPs report **aggregated** transactional information on all assets types **except for non-marketable crypto-assets and utility tokens.** Threshold on CASP size **does not apply.**	CASPs report **aggregated** transactional information on all assets types **except for non-marketable crypto-assets and utility tokens.** Threshold on CASP size **applies**.	CASPs report **hybrid** transactional information on all assets types **except for non-marketable crypto-assets and utility tokens.** Threshold on CASP size **does not apply.**	CASPs report **hybrid** transactional information on all assets types **except for non-marketable crypto-assets and utility tokens.** Threshold on CASP size **applies**.

6.2. Economic impacts

The various options focus on improving the reporting and exchange of information relative to crypto-assets transactions. Still, there is a lack of official statistics on service providers and the underlying transactions they tend to facilitate, which would be needed to estimate the economic impacts of the initiative in a reliable manner. We do, however, estimate as much as possible both the benefits and the costs of the measure on the basis of reasonable and sound assumptions combined with extrapolations based on available data. Despite the said limitations, these estimates can still provide a solid basis for policy-making purposes and the achievement of the objectives under this proposal. This should be taken as the best effort by the Commission services, to assess the most significant impacts of the initiative.

6.2.1. Benefits

One of the key aims of this initiative is to prevent tax fraud, evasion and avoidance stemming from crypto-asset transactions. As previously discussed, revenues earned through these are currently under-reported. Better reporting and exchange of information should therefore have a positive impact on the revenues to be collected by tax administrations, which we try to estimate.

Central to the benefits estimation stands the concept of capital gains.[33] Realised capital gains accrue when the selling price of a crypto-asset exceeds the price of their initial purchase and the asset is sold or exchanged.[34] Such income may be subject to tax. The estimates provided hereafter are therefore based on the previously mentioned exchange dynamics. Information related to Bitcoin has been used due to its prevalence on the cryptocurrency market and the availability of data. Data regarding other crypto market players is difficult to acquire and it is doubtful whether it would be reliable. Detailed information on the methodology used to estimate the benefits and the employed assumptions can be found in Annex 4.

In 2020, the total realised capital gains by EU citizens from Bitcoin amounted to EUR 3.6 billion according to a study by Thiemann (2021).[35,36] The employed data had been tracked by Chainalysis (a blockchain data platform) who are considered a trusted source of information.[37] The distribution of capital gains across the Member States is uneven. Member States have different approaches when it comes to taxing realised capital gains, with some Member States not taxing them at all. The above-mentioned study has found that, by applying a uniform 25% tax rate on realised capital gains from Bitcoin across all Member States, approximately EUR 0.9 billion of tax revenue could have been collected in 2020. The alternative scenario, the one applying the actual tax rates on realised capital gains in the Member States, has produced similar results yielding roughly EUR 0.85 billion of tax revenue.

For simplicity reasons and taking into account the narrow difference in tax revenues between the two analysed approaches in the study, our benefit estimations are henceforth based on the application of the 25% uniform tax rate on total capital gains from all crypto-assets. However, since crypto-assets are prone to high volatility, as explained in the previous chapters, we have also performed a sensitivity analysis by introducing two additional rates of 15% and 35%. Besides this, and as explained in chapter 5, we have excluded non-marketable crypto-assets and utility tokens (as these types of crypto-assets are not relevant for tax purposes). The benefit estimates and the corresponding sensitivity analysis are presented in Table 4 below, while the rationale behind the estimated figures and the employed assumptions are detailed in Annex 4.

Table 4 Tax revenue estimates from realised capital gains in 2020 and sensitivity analysis

Uniform tax rates on capital gains	Tax revenues estimates (in billion EUR)
15%	1.0
25%	1.7
35%	2.4

[33] Capital gains can be realised or unrealised. The latter is not being addressed in this section as only realised capital gains concern the analysis.

[34] Hungerford (2010). "The Redistributive Effect of Selected Federal Transfer and Tax Provisions".

[35] Thiemann (2021). Cryptocurrencies: An empirical view from a tax perspective, JRC Working Papers on Taxation and Structural Reforms, No 12.

[36] The analysis includes capital losses, but the aggregate outcome is positive (i.e. capital gains).

[37] Chainalysis has been commissioned by various governments, research agencies, financial institutions and insurance and cybersecurity companies worldwide, but even them experience limitations in collecting data (e.g. the use of VPN networks that hide the true location of transacting parties).

When applying different uniform tax rates (as shown in the table above), the estimated tax revenues range between EUR 1 and 2.4 billion. These figures should be interpreted with caution as crypto-assets (i.e. Bitcoin) may suffer even greater value oscillations (according to the available statistics) than what has been captured by our sensitivity analysis. This considerable volatility of the crypto-assets' value hinders reliable growth projections. Besides capital gains, crypto-assets could be subject to other types of taxes (e.g. wealth tax) and these additional tax revenues have not been reflected in the above estimates due to lack of data. Moreover, the benefit estimates cannot take into account behavioural responses and arbitrages. For example, some users might rely on peer-to-peer transactions instead of relying on services transactions, which could obfuscate reporting and identification of crypto-asset generated profits.

Nevertheless, the crypto market has grown exponentially thus far and it is likely to continue expanding. It can therefore be expected that the related tax revenues should increase over time as well.

The estimated benefits in relation to the available options are summarised in the table below.

Table 5 Assessment of benefits per policy option

Option	Assessment
1	Direct benefits in terms of additional tax revenues are expected to exceed EUR 1 billion (i.e. the lower bound). All CASPs with EU users regardless of the size would report detailed transactions to tax administrations. While all the necessary information will be available to tax administration, detailed data could overburden them, leading to inefficiencies linked to possible processing omissions and consequently less tax revenue.
2	Direct benefits in terms of additional tax revenues are expected to be lower than in Option 1, but still above the lower bound of EUR 1 billion. This is due to the exclusion criteria based on size, which reduces the number of reporting CASPs. Even though we do not have reliable information on how many SMEs operate as CASPs, it cannot be excluded that those smaller business have large(r) customer bases (i.e. there could be possibly a higher amount of unreported transactions).
3	Direct benefits in terms of additional tax revenues could amount to EUR 1.7 billion (i.e. the middle bound). All CASPs with EU users regardless of the size would report aggregated transactional information to tax administrations. The aggregated data, however, might not always provide enough information to ensure proper taxation, which would imply the need for the second round of information requests by the tax administrations that come with higher costs. The net benefits (taking into account the second-round information) are therefore likely to be lower compared to Option 1.
4	This option is similar to the previous one, but it applies a threshold based on size, which could likely result in less benefits (direct and net) in terms of additional tax revenues. These benefits are expected to be close to the middle bound nevertheless.
5	Direct benefits in terms of additional tax revenues could reach EUR 2.4 billion (i.e. the upper bound). The hybrid reporting approach would ensure a balance between too detailed transactional information to be reported by all CASPs with EU users regardless of the size (Option 1), and the need for second round information requests (Option 3).
6	This option is similar to the previous one, but it applies a threshold based on size, which could likely result in less benefits (direct and net) in terms of additional tax revenues. These benefits are expected to be close to the upper bound nevertheless.

Even though the above benefit estimates give a quantitative indication concerning the impact of this legislative initiative, their materialisation may come with certain risks. In particular, the main risk lies with the actual use of the information obtained by Member States. While Member

States are expected to take this new information into account to ensure proper taxation, there are variations across Member States regarding their ability to make the best use of the data.

6.2.2. Costs

Requirements for CASPs to report data and for tax administrations to exchange them will entail costs. The costs can be categorised as:

- One-off, substantive compliance costs, incurred when a new (IT) system is introduced or when the existing one is being updated (i.e. development costs).
- Recurrent administrative and, for tax administrations, compliance measure costs, to operate the systems once it has been set up and to ensure it works as expected.

The cost analysis is built upon the costs of setting up and operating DAC2,[38] which resembles most of the reporting obligations of this initiative. Additionally, the IT costs for tax administrations (see Annex 5) have been predicted with a relatively higher degree of precision due to the experience gained with previous amendments of the DAC. Even so, these calculations must overall be approached with caution considering the absence of precise information on the market structure and scope of the transactions on the market. However, since the costs estimates must consider specificities of the crypto-market, additional assumptions and extrapolations had to be introduced. These were based on the analytical documents and statistics from Chainalysis (a blockchain data platform), Binance (a crypto-currency exchange) and Coin Market Cap (a price-tracking website for crypto-assets). The need for combining various sources of information is a result of the restricted availability of data, which consequently reduces the overall certainty of the projected costs. The computed estimates are therefore indirect and as such, fragile. Annex 4 provides additional information on the categories of costs and benefits and on the assumptions made.

In order to quantify the costs for service providers, as well as tax administrations, the following factors needed to be estimated:

- The number of service providers (and accounts) facilitating transactions. Such a figure may vary depending on whether there are exemptions and thresholds. If the overall scope is broad and some exemptions are introduced, the number of reportable service providers will be lower than if the scope were without exemptions.
- The cost of complying with the initiative, ideally per service provider and tax administration. The hypothesis is that, the more users (i.e. accounts) a certain provider has, the higher the costs. Therefore, providers with a relatively low number of accounts will bear lower costs than larger market players. At the same time, we would expect that the costs, one-off and recurrent, for one tax administration running controls on a higher number of accounts to be higher than for an administration running controls on fewer of them.

[38] Evaluation of the Council Directive 2011/16/EU (2019).

We estimate that there are around 168 CASPs with EU users. In addition to this, we quantify the number of active accounts under the available service providers. It should be noted that for the sake of estimation, we use the available data on Bitcoin users (for CASPs). There, we assume that the number of accounts equals the number of users, even though having one or more accounts per user and investing in other cryptocurrencies on top of Bitcoin remains a possibility. Furthermore, in the absence of precise market data on crypto-assets, we have assumed that each asset category to be excluded represented a 3% market share (similar to benefit estimation). Given that two types of assets are to be excluded, this represents 6%. A sensitivity analysis has been performed as well to account for crypto-asset value volatility that may affect the customer base of a CASP, and for the possibility of providing additional information (second round requests) to the tax administrations should they ask for it explicitly.

The table below shows the summary of the estimated costs for CASPs. To estimate these, several assumptions have been used (see Annex 4). Detailed information in relation to the policy options considered is provided in the next section.

Table 6 Summary of estimated costs for CASPs and sensitivity analysis (in EUR million)

	One-off			Recurrent		
Sensitivity interval	-10%	0	+10%	-10%	0	+10%
Reporting on all crypto-assets, except non-marketable crypto-assets and utility tokens	233.1	259	284	20.3	22.6	24.9

In terms of IT implementation, three solutions can be envisaged (see Annex 5 for details): (i) a decentralised system, which is the approach taken in DAC 1, 2 and 4 with bilateral exchanges of information between Member States, (ii) a centralised system, which has been implemented for DAC3 and DAC6, where the information is made available by one Member State to the other Member States via a central Directory, and (iii) a single access point, which would be a completely innovative solution, whereby CASPs would directly report into a central system accessible to all relevant Member States. The proposed IT implementation choices are feasible no matter which policy option is chosen. The feasibility of the IT solution depends neither on the size of the CASPs, nor on the types of crypto-assets in scope nor the reporting method. The question here is more about the efficiency of the different IT solutions in achieving the initiative's objectives.

The type of IT solution comes with different costs both, for the Commission and the national tax administrations. These are summarised in the table below and explained in more detail in the coming sections.

Table 7 Summary of estimated costs for tax administrations and European Commission (in EUR million)

	Tax administrations		**European Commission**	
IT solution	One-off	Recurrent	One-off	Recurrent
Single Access Point	0.5	0.2	1.4	0.2
Central Directory	1 – 13	1 – 5.7	0.5	0.2
Decentralised IT solution	64.8	6	0.8	0.1

Largely, the risk of non-materialisation of the estimated costs is rather limited. The forthcoming initiative would oblige tax administrations to make adjustments to their IT systems and include efforts to process and exchange the received information from CASPs. These actions will entail costs and as such, they have been accounted for in this impact assessment.

6.2.2.1 Impact on CASPs

As displayed in Table 5, one-off cost estimates for CASPs will vary between EUR 233.1 million and EUR 284 million, or roughly between EUR 1.4 million and EUR 1.7 million per service provider respectively. The total recurrent costs, on the other hand, are estimated to range between EUR 20.3 million and EUR 24.9 million, or roughly between EUR 120 000 and EUR 150 000 per entity respectively. These estimates cover all CASPs with EU users (see Annex 4).

The costs[39] are largely dependent on their customer base (on how many users they will need to report). It should be stressed that these estimates, including on number of users, are based on several assumptions and they do not necessarily reflect the actual costs service providers will incur, especially those having to report a relatively low number of transactions. Additionally, there is a risk, though limited, for CASPs to pass through their costs onto consumers. In particular, due to the increased costs arising from this initiative, service providers might raise their service fees paid by their customers so as to offset (partly) the newly incurred costs. However, this is likely to be minimal since the crypto-market offers a possibility of transacting with crypto-assets without intermediation.

Table 8 Assessment of costs per policy option (CASPs)

Option	Assessment
1	Total one-off costs estimate is likely to surpass EUR 233.1 million (i.e. the lower bound). The SME (size) threshold does not apply. On an individual basis, this means approximately EUR 1.4 million in one-off costs per CASP. Analogously, recurrent costs incurred by CASPs would amount to EUR 20.3 million in total or roughly EUR 121 000 individually. These relatively lower costs compared to other options (except for Option 2) are due to transaction-by-transaction reporting, which does not require additional processing of data by CASPs before submitting it to tax administrations.
2	The projected costs (both aggregated one-off and recurrent) are likely to be lower than in Option 1, but still above the lower bound. This is due to the SME threshold that here applies, and which means that a more reduced number of entities will incur costs.
3	One-off costs are estimated to reach the upper bound of EUR 284 million (or EUR 1.7 million per CASP). The recurrent costs are estimated not to surpass EUR 149 000 (upper bound) per entity on a yearly basis. This option entails a slightly heavier reporting since service providers need aggregate data before sending it over to the tax administrations. The cost upper bound also reflects the need of providing additional information to the tax administrations (second round of information requests) since data aggregation does not necessarily disclose all the relevant information needed for tax purposes.
4	This option is similar to the previous one, but it applies a threshold based on size, which is likely to

[39] The costs will likely benefit from the effects of the economy of scale: decreasing marginal costs, so that as more sellers are covered, the price per seller for setting up the system decreases.

	result in lower costs (aggregated one-off and recurrent). These costs are expected to be close to the upper bound nevertheless.
5	Total one-off costs estimate are likely to reach EUR 259 million (or EUR 1.5 million per CASP). The recurrent costs are estimated not to surpass EUR 135 000 per entity on a yearly basis. The hybrid reporting approach would ensure a balance between too detailed transactional information to be reported by all CASPs with EU users regardless of the size (Option 1), and the need for second round information requests (Option 3).
6	This option is similar to Option 5, but with lower costs (one-off and recurrent) due to the exclusion criteria based on size, which reduces the number of reporting CASPs. These costs are expected to be close to the middle bound nevertheless.

6.2.2.2 Impact on tax administrations and Commission

The estimated costs incurred by tax administrations and the European Commission are largely dependent on the IT solution needed for the reporting by CASPs and the subsequent exchange of information by tax administrations. These have been quantified and the relevant information is available in Table 6 above and Annex 5.

One-off costs by tax administrations in the EU-27 when processing crypto-asset transactions are estimated to range between EUR 500 000 and EUR 64.8 million or between EUR 18 000 and EUR 2.4 million per tax administration on average, depending on the IT solution chosen. The estimated recurrent costs vary approximately between EUR 100 000 and EUR 6 million on a yearly basis, or between EUR 3 700 and EUR 220 000 on average per Member State. These estimates are extrapolated from the costs incurred by Member States under previous editions of DAC. They broadly aim at estimating costs for information on all crypto-assets in the EU.

Furthermore, the type of reporting and scope under the various options, will also affect recurrent costs for tax administrations. These are qualitatively assessed, however, and summarised in the table below.

Table 9 Assessment of costs per policy option (tax administrations)

Option	Assessment
1	The transaction-by-transaction reporting would bring increased costs for tax administrations, as the information received would be much more voluminous, thus requiring more time to process. Compared to aggregate or hybrid reporting, transaction-by-transaction reporting is likely to be quite significant with respect to processing a much higher amount of untreated data, as all transactions by a single taxpayer would have to be made available. Therefore, more information will need to be processed by tax authorities, with an impact on IT infrastructure needed.
2	The potential issues remain the same as in Option 1, but the estimated costs (recurrent in particular) are likely to be lower, as there is a threshold on CASP size, meaning less data will be transmitted to the tax authorities. Reporting less data, however, might be problematic since even smaller CASPs can still have relatively large customer bases, which could lead to less tax income (this is also applicable to Options 4 and 6).
3	The data sent to the tax authorities by CASPs should contain aggregate information. While the volume of information is likely to be lower than under Options 1 and 2, the tax administrations might need additional clarifications leading to second round of inquiries to the CASPs. However, it cannot be precisely predicted how often will this occur, but the costs are still expected to be lesser than in previous two options.

4	This option is similar to Option 3, but the estimated costs (recurrent in particular) are likely to be lower, as there is a threshold on CASP size, meaning less data will be transmitted to the tax authorities.
5	This option encompasses hybrid reporting by the CASPs, which is the most cost efficient modality for the tax administrations. This is due to the fact that the data received is predominantly aggregated (i.e. no large data volumes to process) and detailed information is requested to the CASPs only when necessary (i.e. the need for the second round of information is being significantly reduced).
6	This option is similar to Option 4, but the estimated costs (recurrent in particular) are likely to be lower, as there is a threshold on CASP size, meaning less data will be transmitted to the tax authorities.

Besides tax administrations, the Commission would also bear costs. In any legislative option, on the basis of current and past experience, it is likely that the Commission would incur development costs for defining the common EU reporting specifications (i.e. the type of data to be reported, collected and exchanged), and for setting up new and/or adapting the existing IT systems to enable the exchange of information. Commission's one-off costs could vary between EUR 500 000 and EUR 1.4 million.

The recurrent costs for the European Commission are estimated to range between EUR 100 000 and EUR 200 000 on a yearly basis, and mainly relate to operating and maintaining the IT system for data storage and exchange relative to crypto-assets. There are different IT solutions for exchange of information available, which influence the costs range and are described in more detail in Annex 5.

6.2.3. Impact on sector's competitiveness and SMEs

The rapid digitalisation of the economy suggests that the economic role of CASPs as facilitators in crypto-asset transactions is becoming increasingly relevant. The users engaging in such transactions through service providers appreciate the speed of exchanges, availability of the amenities and anonymity.

It cannot be excluded that this legislative initiative may affect the competitiveness of certain service providers that, in a baseline scenario, do not currently have any reporting obligations. Looking ahead, it is expected that reporting rules will however be put in place in more countries, even in the absence of a European initiative. The proposal aims at providing a single set of rules throughout the EU, thereby reducing the compliance burden at least for those operators that are active in various countries and subject to different rules. Introducing reporting rules could also affect the service providers' customer base. The initiative could decrease the number of users that transact via the service providers, most likely from those users who want to avoid complying with their tax obligations. On the other hand, the initiative could increase the trust in the system and attract new users who appreciate reputational and trusted providers. This would positively affect the competitiveness of CASPs, and could compensate, in part, for the loss of the clients favouring unregulated environments.

A level playing field requires all to be subject to the same rules, which makes the competition fair and efficient. That is, the available policy options do not differentiate between CASPs based on location, meaning all service providers with EU users will have to report and face the same compliance costs. The EU initiative would also level the playing field within the EU as it would

also prevent competitive disadvantages arising from possible differentiated reporting requirements across the Member States. In addition to ensuring fairness within the crypto-asset market, it would also positively affect competition with respect to the traditional financial institutions. This is because CASPs would be subject to reporting obligations like traditional financial institutions.

When CASPs are SMEs, they tend to face a relatively higher administrative burden when fulfilling tax requirements due to their relatively small size and limited resources. However, since most of the information that needs to be collected is already collected for AML/KYC purposes, it is largely available to CASPs for their daily operations. Furthermore, the crypto market matures relatively fast and so do the SMEs by becoming big players on the market (provided they enable transactions of high value increasing their turnover). Regardless of the size, SMEs can still have large user bases since high digitalisation facilitates the management and processing of vast volumes of transactions. Impact on SMEs and competitiveness as per available policy options is qualitatively described in the table below.

Table 10 Policy options impacting competitiveness and SMEs

Option	Assessment
1	Common rules at EU level would be beneficial for competitiveness of the Single Market as the level playing field between the countries would be guaranteed, thus not leaving certain business in a less advantageous position. SMEs would not be carved out from the initiative, which would likely increase their compliance costs. However, transaction-by-transaction reporting is less cumbersome for SMEs compared to other reporting modalities. This would also exclude second round information requests by tax administrations (also applicable to Option 2).
2	Competitiveness of the Single Market is expected to be worse off than in Option 1. Since SMEs would be considered out of scope, this would mean that potentially large user bases they may have and their underlying transactions would not be reported. SMEs would avoid some administrative burden, which would be beneficial at first. Implementing the right reporting framework once they grow bigger might be more burdensome than having it in place from the beginning (this also applies to Options 4 and 6). Nevertheless, transaction-by transaction reporting would entail less administrative burden.
3	Common rules at EU level would be beneficial for competitiveness in the Single Market as the level playing field between the countries would be guaranteed, thus not leaving certain business in a less advantageous position. SMEs would not be carved out from the initiative, which would likely increase their compliance costs (higher than under Option 1).This is due to aggregate reporting which is more cumbersome for SMEs compared to other reporting modalities. Second round information requests by tax administrations are also likely (applicable to Option 4).
4	Competitiveness of the Single Market is expected to be worse off than in Option 3. Since SMEs would be considered out of scope, this would mean that potentially large user bases that they would not be reported. If SMEs grow bigger over time, aggregate reporting would still bring about higher compliance costs than under Option 2.
5	Common rules at EU level would be beneficial for competitiveness of the Single Market as the level playing field between the countries would be guaranteed, thus not leaving certain business in a less advantageous position. SMEs would not be carved out from the initiative. The hybrid reporting modality would make compliance costs relatively manageable (somewhere in between Options 1 and 3), with limited amount of second round information requests by tax administrations.
6	Competitiveness of the Single Market is expected to be worse off than in Option 5. SMEs would be carved out from the initiative. If they grow bigger over time, the hybrid reporting modality would make compliance costs relatively manageable (somewhere in between Options 2 and 4), with limited amount of second round information requests by tax administrations.

6.2.4. Social and environmental impacts

Expanding the automatic exchange of information and administrative cooperation would yield positive social and environmental impacts. As discussed above, the proposal is expected to lead to an increase in tax revenues, which can be used to fund (green) economic and social policies of the Member States. The initiative would also contribute to a positive perception of tax fairness and to fair burden sharing across taxpayers, while at the same time resulting in more trust and transparency from the side of the intermediaries.

The EU would be directly tackling the challenge of unreported income earned through service providers active in EU Member States. Tax evasion matters to a vast majority of the EU citizens.[40] The perception of tax fairness, together with the EU's role in shaping it, is expected to improve with such an initiative. The same reasoning applies to benefits in terms of fair burden-sharing as the Member States would ensure that taxes due are effectively collected.

The total environmental effects are unclear but likely to be minimal given that the proposed initiative only introduces a reporting and information exchange obligation for existing players without provisioning, for example, the use of technology behind crypto-assets.

Furthermore, the existing DAC includes specific provisions and safeguards on data protection in line with the GDPR. The reporting under previous iterations of the DAC concerns different types of income, financial assets, the content of rulings decided by the tax authorities, reports from multinationals, arrangements facilitated by intermediaries and income from transactions using on-line platforms. The reporting in all of these categories has been considered to be in line with the provisions of the GDPR. Any legal initiative based on further amendments to this Directive will then continue to follow and respect these provisions and will have to comply with GDPR from the start. In terms of information reported, it is worthwhile noting that under this legislative proposal, reporting entities will be transmitting user/account details as well as information related to crypto-assets proceeds and holdings. As a consequence, crypto-asset users that carry out transactions using CASPs will be subject to reporting of a number of basic points of information. This is the same situation as under the current provisions of the DAC, where persons investing in shares or saving in a bank account will be subject to the same kind of reporting. The information included typically covers information needed to identify the taxpayer (i.e. the Tax Identification Number(s), the first and last name of the user, the primary address of the user, the date of birth of the user) and then specific information about the transaction. The information will be made available to the relevant tax administrations.

Thus far, one of the main benefits for taxpayers of crypto-asset exchanges was the pseudo-anonymity of its users, and only a relatively restricted number of service providers have been asking for taxpayers' identification numbers (TIN) upon their registration.[41] TIN information,

[40] "Tax fraud: 75% of Europeans want EU to do more to fight it", European Parliament News, 29-07-2016. https://www.europarl.europa.eu/news/en/headlines/economy/20160707STO36204/tax-fraud-75-of-europeans-want-eu-to-do-more-to-fight-it

[41] Information obtained during the stakeholder consultation process.

together with information such as first names and surnames, are the most important data to ensure that the information exchanged can be used for the purpose of tax control.[42] This information will be given to the tax administrations by CASPs. This does not mean that tax authorities will not be engaging in processes of their own to find taxpayers behind the transactions.

From the public perspective, an EU legislative proposal would also lead to an indisputable percentage of cost savings and public revenue gains due to the relevant information that will reach tax authorities. There would possibly be a better compliance effect stemming from taxpayers who know that tax authorities have access to the information related to their transactions with crypto-assets.

[42] European Commission. (2018). Report from the Commission to the European Parliament and the Council on overview and assessment of the statistics and information on the automatic exchanges in the field of direct taxation COM(2018)844 final.

7. HOW DO THE OPTIONS COMPARE?

This section compares the impacts of the available options (see section 6.1). The options are assessed against the criteria of effectiveness in reaching the policy objectives, efficiency (in terms of costs and benefits) as well as coherence with other EU policies, namely GDPR. For each category, the options have been rated on a scale from minus three to plus three. The baseline is used as point of comparison, and it is scored as zero. The same zero mark has been given to categories that produce no effects whatsoever under the available options. Scores one, two and three indicate limited, sizeable and strong impacts[43] respectively, while the signs (pluses and minuses) reflect their positive or negative direction. The table below shows the summarised assessment and displays ranks between different options.

Table 11 Comparison of options

Options / Category	Baseline	1	2	3	4	5	6
Effectiveness of the options							
Consistent functioning of the internal market	0	3	2	3	2	3	2
Safeguarding tax revenues in Member States and improving fairness of tax systems	0	2	2	2	2	3	3
Improved ability of Member States to detect and counter tax fraud, evasion and avoidance	0	1	1	2	2	3	2
Deterrent effects	0	3	2	3	2	3	2
Efficiency of the options							
Impact on compliance costs for service providers	0	-2	-1	-3	-2	-3	-2
Impact on enforcement costs for tax administrations	0	-3	-3	-2	-2	-1	-1
Impact on tax collection	0	1	1	1	1	3	2
Impact on SMEs	0	-2	-1	-3	-1	-2	-1
Coherence with other EU policies							
Coherence with GDPR	0	2	2	2	2	2	2

As displayed in the above tables, all options would contribute to the safeguarding of tax revenues in the Member States. The available options also improve the effectiveness aspects by increasing the fairness and transparency of tax systems', reducing cross-border tax evasion and improving the overall functioning of the internal market.

Without a binding regulation on EU level, there is a risk that the functioning of the Internal Market is not ensured in the same way as in the presence of binding EU legislation. This is also the case when SMEs are being excluded (Options 2, 4 and 6) as there is an obvious lack of level playing field.

The efficiency of different options varies since the type of reporting, as well as the application of a size threshold, affects CASPs and tax administrations oppositely (i.e. what is more costly for CASPs is more cost-saving for tax administrations and vice versa). In particular, providing a

[43] Estimated impacts may look at the amount, range or degree of a certain criteria. Limited indicates impacts that are not quite great, sizeable refers to ones that are large, considerable or substantial, while strong indicates extremely powerful impacts.

larger amount of information to the tax administrations (Options 1 and 2) may result in more control and taxes, but the additional costs stemming from the excess of data possibly leading to overburdening may not outweigh the benefits.[44] For service providers, reporting detailed (transaction-by-transaction) information is relatively easy with lesser costs since the data provided is raw, while data aggregation would require additional costs (Options 3 and 4). Hybrid reporting (Options 5 and 6) provides for a middle-ground solution when it comes to bearing costs as it considers data aggregation (more work on the CASP side) while processing additionally requested raw data only when relevant (more work for tax administrations). Size thresholds also affects costs for both CASPs and tax administrations. This is due to positive correlation between the two variables (number of service providers needing to report and costs).

The deterrent effect and tax collection are improved with more detailed information and with a wider scope. Reporting of information on transactions rather than balances will therefore have a stronger deterrent effect and will improve tax collection. The increased scope and the transactional reporting will also improve the ability to detect and counter tax fraud, evasion and avoidance as there is more information on a wider scope of taxpayers. In the end, this will contribute to safeguarding tax revenues and bolster the fairness of the tax system.

To sum up, all options share certain similarities once contrasted with the baseline scenario. Nevertheless, larger effectiveness and efficiency gains for service providers and tax administrations are obtainable under hybrid reporting and with no differentiation in terms of size.

The absence of a threshold would mean that SMEs face an administrative burden, which is proportionately heavier than for larger CASPs. However, the fast evolution of the market and the participating entities' growth pattern mean that CASPs can easily and quickly grow in size. As the market grows fast, they could within a very short time change from being out of scope to being in scope, which would make it difficult for CASPs to collect the necessary data on short notice. Setting a threshold to leave out of scope CASPs that have a more limited size is therefore not necessarily a better option for SMEs. In addition, this threshold could lead to a non-desired fragmentation of the market and imply risks of not detecting transactions that are potentially significant from a tax perspective.

[44] The granularity of information reported plays an important role when accounting for both benefits and costs. The more data is transmitted to tax administrations, the more transparency is provided, leading to a higher degree of discretion when shaping tax policies. At the same time, though, the authorities are likely to become overflown with data, which can likely decrease their ability to properly analyse the received information.

8. PREFERRED OPTION

The above analysis indicates that Option 5 hybrid reporting by all CASPs, irrespective of size, is the most appropriate option to meet the objectives of the initiative. The *status quo* baseline scenario is the least effective, efficient and coherent. When compared with the baseline scenario, having an EU mandatory common standard would ensure that all EU tax administrations have access to the same type of information. In other words, an EU legislative initiative would put all tax authorities on an equal footing. A legislative initiative is also the only one that allows for the automatic exchange of information at the EU level, based on common standards and specifications.

The approach outlined under Option 5, once implemented, would allow the tax authorities where a crypto-asset user is a resident to verify that the user has accurately reported their proceeds obtained through crypto-asset transactions. Besides, it would positively influence sector competitiveness because it would level the playing field between actors of the traditional financial sector and crypto-assets, as well as bring a higher degree of tax fairness, increasing trust in all sector players.

This proposal would design a legal framework to report and exchange tax-related information efficiently, effectively, and securely.

All CASPs regardless of their size and location need to collect and report information on their customers that are resident in the EU. This would ensure a level playing field in the Internal Market. Moreover all CASPs offering their services to EU resident users would have to be registered in the EU in accordance with the proposed Regulation on MiCA.

This initiative would not set a threshold for reporting obligations to apply, which would reduce the risk of creating loopholes and contribute to creating a level playing field in the global crypto-asset market. CASPs already need to gather information for AML/KYC purposes hence they are already obliged to identify their customers. The administrative burden linked to data collection would therefore remain limited for service providers.

Concerning the scope in terms of crypto-assets, the preferred option would aim at setting rules for the exchange of information concerning marketable crypto-assets.

Concerning the transmission and reporting of information for crypto-assets, the preferred option would be a middle-ground between aggregate reporting and transaction-by-transaction reporting. Some additional data such as number of transactions or any commissions or fees, would be collected as well in order to enable a faster, more accurate and effective tax assessment by tax authorities. This system would allow tax administrations to enhance the usability of the data and increase the efficiency of implementing risk analysis for tax purposes. For two types of crypto-assets, CBDCs and e-money tokens CASPs would exchange information on balances and not on transactions, under similar conditions to those that apply to financial assets. The IT solution that would best facilitate reporting and exchange of information with the best available balance between costs and usability benefits for all parties involved – CASPs, the Member States and the

Commission – is the one of Central Directory (already used for exchanges under DAC3 and DAC6).

The preferred option would be proportionate and would not go beyond what is needed to achieve the goals. The data that crypto-asset service providers would need to provide, according to the experience with previous DACs, is the minimum required to ensure that tax administrations can adequately execute their tax control commitments. The cost-benefit ratio is positive: the expected return in terms of additional tax revenues is higher than the estimated costs. While there is an administrative burden for businesses and tax administrations linked to the proposed initiative, it is less burdensome than having a patchwork of national rules. The impact on personal data protection is in line with data protection rules, and the expected effect on the sector's competitiveness and the overall social impact is deemed positive.

Concerning the administrative costs related to the 'one in, one out' approach, there will be administrative costs for crypto-assets service providers. The total one-off costs for crypto-assets service providers are estimated at EUR 259 million (or EUR 1.5 million per CASP) while the recurrent costs are estimated at 22.6 million for all CASPs but it is estimated that they will not surpass EUR 135 000 per entity on a yearly basis. However, as a result of the directive crypto-assets service providers will benefit from homogeneous reporting requirements throughout the EU, rather than having multiple standards across each Member State. They will not be faced with burdensome individual information requests as the preferred option provides tax administrations with the right level of information and the process to report the information will be very much automated and digitalised.

It would also respect the principle of subsidiarity, as the main problem – which is that tax authorities lack the information necessary to monitor the income obtained using crypto-assets – requires EU solutions, providing new tools to enable tax administrations to do their job efficiently. In the absence of administrative cooperation, a Member State on its own would not be able to ensure the correct compliance of its residents. Therefore, the possibility for tax authorities to obtain the necessary information clearly offers EU added-value, over and above what can be achieved at the individual Member State level.

9. HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?

9.1 Indicators for monitoring and evaluation

The table below gives an overview of the objectives, the indicators to measure whether they will be achieved, the tool for monitoring them and the operational objective. In the medium term, the initiative is expected to have a positive impact with respect to the general objectives presented in chapter 4.

Table 12 Indicators for monitoring

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)
	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)

9.2. Monitoring and reporting

The results of the yearly assessment by Member States are presented and discussed in the Expert Group on Administrative Cooperation in Direct Taxation Commission. The yearly assessment is conducted on the basis of the relevant provisions of the DAC and its implementing regulation.

As the implementation of the initiative is likely to start after 2022, the Commission will report on this initiative as part of the third report to the European Parliament and the Council on the effectiveness and efficiency of the application of the DAC, currently due by 1 January 2028.[45]

The initiative's overall success would mean Member States' tax authorities obtain the necessary information to complete one of their core missions, which is to efficiently control and assess the correctness of taxpayers' income tax returns. In other words, it would improve the ability of Member States to detect and address cross-border tax fraud, tax evasion and tax avoidance.

[45] The first report on the application of the DAC was due by 1 January 2018. Report from the Commission to the European Parliament and the Council on the application of Council Directive (EU) 2011/16/EU on administrative cooperation in the field of direct taxation. COM/2017/0781 final. The second report is due by 2023.

Currently, tax authorities lack the necessary information to control the correctness of the capital gains resulting from crypto-assets declared. Success would also mean that taxpayers would be deterred from non-complying with their tax obligation, would change their behaviour and correctly report their income.

The data used to measure the success of this initiative, such as the number of controls carried out based on data tax administrations gather via the initiative, the additional tax revenues secured thanks to the initiative or the rate of compliance, are collected mainly through the yearly assessment of the automatic exchange of information. Based on existing provisions of DAC, each Member State has to complete annually a questionnaire ("the DAC yearly assessment") by providing information on the effectiveness of the automatic exchange of information and the practical results. This questionnaire will be expanded to include this initiative. Similarly to what exists for other provisions of DAC, the Commission will determine, by means of an implementing regulation, a list of statistical data which shall be provided by the Member States for the purposes of the evaluation of this initiative. In particular, the outcome of a Fiscalis Working Group on Key Performance Indicators for DAC will be used in order to improve indicators and controls of the performance of the initiative. This would measure for instance the number of times information received is used as part of a compliance intervention and the number of times the tax base of a taxpayer is adjusted as a result of received information.

ANNEX 1: PROCEDURAL INFORMATION

DG TAXUD, PLAN/2020/8658.

The initiative is part of the Action plan for fair and simple taxation supporting the recovery strategy[46] and listed in the Commission Work Program 2021, Annex I, priority: "An economy that works for people", initiative number 15.

Organisation and timing

An inter-service steering group was set up to steer and provide input to this impact assessment report. The steering group met 3 times before the report was submitted to the Regulatory Scrutiny Board.

Consultation of the Regulatory Scrutiny Board

On 11 October 2021, a draft version of the impact assessment was presented to the Regulatory Scrutiny Board. On 12 November 2021, the RSB issued a positive opinion with reservations. Afterwards, the draft report has been revised in order to take into account the recommendations for improvement, as explained in more detail in the table below.

RSB recommendations	How have the recommendations led to changes to the report?
The report should define in more depth the different types of crypto-assets, and clarify which types are in and out of scope for this initiative. This is particularly relevant as regards utility tokens and non-marketable crypto-assets. In addition, the report should provide a more detailed definition on crypto-asset service providers (CASPs) in scope.	Further definitions have been added in chapter 5.
The report should clarify what legislative gaps it aims to fill. It should better explain how overlaps will be avoided with the ongoing AML Directive and how it will build on the MiCA initiative. It should describe in more detail how this initiative will build on and interact with the evolving measures emerging from the OECD discussions. It should clearly explain how this initiative will ensure compatibility and avoid duplication,	Explanations have been developed further in Chapter 2 and annex 6 has been added.

[46] European Commission. (2020). Communication from the Commission to the European Parliament and the Council, An action plan for fair and simple taxation supporting the recovery strategy.

including by recalling the standard practice to bring OECD agreements into EU law through directives. The report should also more explicitly describe the changes referred to as 'fine-tuning', clarifying their content and impact as well as to what extent there remains any policy choice.	
The report should outline and discuss all feasible options, realistic combinations of measures and discarded options. Based on the clarification of the crypto-assets in scope, it should present the options in a way that their differences, for instance in terms of measures included, can be effectively assessed and compared with each other. The report should present the precise content of some options as regards SME thresholds and aggregated reporting forms. It should systematically consider suitable exemptions or lighter regimes for SMEs, or explain why these are not appropriate under all options. It should explain how 'future-proof' the options are. It should describe how the proposed IT solutions are applicable to the different options.	The options have been re-worked for increased clarity in Chapter 5. SME thresholds are discussed. The different IT solutions are analysed further in Annex 5.
The report should better explain the evidence underpinning the cost and benefit estimates, as well as the robustness of the underlying assumptions and the reliability of the data used. It should assess the risk that the estimated costs and benefits may not materialise. It should undertake a sensitivity analysis on a uniform 25% tax rate used for the additional tax revenue estimates to reflect the variety of tax rates across Member States.	The evidence and the robustness of assumptions has been explained further in Chapter 6. A sensitivity analysis of the tax rate used has also been carried out.
When assessing the impacts of the different options, the report should account for the costs of second-round requests by tax administrations, both for tax administrations and service providers. It should discuss how the different types of reporting affects the effectiveness and efficiency of collecting information on crypto-assets for tax purposes. The report should also integrate the impact analysis of the options on the IT system.	Further explanations and clarifications are provided in Chapter 6 and Annexes 3 and 4.

The report should provide a better overview of the size and role of different market actors on the EU crypto-asset market, in particular with respect to third-country players and European SMEs. It should better describe the market dynamics and assess the impacts of the options on the competitiveness of SMEs. It should better explain how proportionate the estimated costs are for SMEs and whether these may prevent the market entry of innovative EU start-ups.	Further descriptions of the market and the assets and actors has been added. The potential effects on SMEs have been elaborated further in Chapters 5 and 6.
The description of the objectives as well as the future monitoring framework should better reflect what success would look like. The report should also better describe how the data collection and the indicators used will ensure that success can be measured. It should explain the role that the envisaged implementing measures will play in this regard.	A description of what success should look like as well as of how to measure results has been added to chapter 9.
The report should better engage with the different stakeholder views in the main analysis. It should more clearly outline the different views from the main stakeholder groups such as Member States, CASPs (including SMEs) and tax administrations.	Further details on consultations have been added to Annex 2.

Evidence, sources and consultations

The evidence for the impact assessment report was gathered through various activities and from different sources:

- Consultation with the Working Party IV Commission Expert group on direct taxation
- Targeted consultation with relevant stakeholders, such as business associations and leading corporations in the global market
- Targeted consultation addressed to tax authorities on the problems covered by the initiative and possible solutions
- Public consultation
- Feedback on the inception impact assessment
- Joint Research Centre (JRC) study[47]: Crypto-currencies – An empirical view from a tax perspective
- Desk research

[47] See Footnote 16

ANNEX 2: STAKEHOLDER CONSULTATION

I. Introduction

For the preparation of this initiative, the European Commission designed a stakeholder's consultation strategy, which is summarized in this synopsis report. The aim of the synopsis report is to present the outcome of the consultation activities and to show how the input has been taken into account.

The consultation strategy encompasses both, public and targeted consultations. Further details are provided in the table below:

Table 2 Overview of consultation activities

Methods of consultation		Stakeholder group	Consultation period	Objective/Scope of consultation
Inception Impact Assessment (feedback mechanism)		Academic/research institution Business association Company EU citizen Non-EU citizen Trade Union	23 Nov. 2020 – 21 Dec. 2020	Collect feedback on the Inception Impact Assessment outlining the initial structure of the project.
Targeted Consultation	Working Party on Taxation	Public authorities	13 Nov. 2020	Investigate the need for EU action. Gather views on a possible EU initiative. Define possible scope of an EU initiative.
	Working Party on Taxation	Public authorities	24 Mar. 2021	Investigate the need for EU action. Gather views on a possible EU initiative. Define possible scope of an EU initiative.
	Private Stakeholder's meetings	Business involved	23 Mar. 2021	Gather experience from service providers on their current reporting requirements. Gather views on a possible EU initiative.
Public Consultation		Academic/research institution Business association Company	10 Mar. – 2 Jun 2021	Ascertain the views of a broad range of stakeholders mainly on the added value

	EU citizen Non-EU citizen Trade union NGOs		of a European action and the potential scope of the initiative

The different objectives of the different consultations were to:

- Provide stakeholders and the wider public with the opportunity to express their views on all relevant elements.
- Gather specialised input to support the analysis of the impact of the initiative.
- Contribute to the design of the technical aspects of the future initiative.
- Satisfy transparency principles and help to define priorities for the future initiative.

As reflected above by the different methods of consultation used and the stakeholders' groups consulted, the stakeholder consultation strategy has formed an integral part of the policy development process. The consultation began with the launch of the Inception Impact Assessment published on 23 November 2020 and continued until 2 June 2021 when the Public Consultation ended.

II. Consultation participation

1. Feedback on the Inception Impact Assessment

The consultation period through this feedback mechanism took place between 23 November and 21 December 2020 via the Commission website[48]. The period started when the Inception Impact Assessment was published outlining the initial structure and options of the project. Nine comments were submitted during this consultation period by individuals, service providers and umbrella organisations for the crypto/e-money sectors.

2. Targeted consultation

2.1. Targeted consultation via an expert group (Working Party IV)

The Working Party IV met on two occasions on 13 November 2020 and 24 March 2021 in order to discuss the future possible amendments to DAC.A draft concept paper *"Possible expansion of the exchange of information framework in the field of taxation to include crypto-assets and e-money"* prepared by TAXUD D2 on crypto-assets and e-money was discussed. Participating Member States took the floor and expressed their support for an expansion of the existing DAC to encompass the sharing of information reported on crypto-assets and e-money. However, Member States emphasised the importance of closely following the work of the OECD on the same subject in order to avoid two different reporting frameworks.

In order to complement the discussions with the Member States, a questionnaire, which was based on the draft concept paper and issues that were raised during the November 2020 meeting, was circulated to the Member States for input.

[48] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12632-Tax-fraud-evasion-strengthening-rules-on-administrative-cooperation-and-expanding-the-exchange-of-information_en

2.2.Targeted consultation via private stakeholders' meeting

On 23 March 2021, a meeting with six representatives of different service providers and delegates of 24 Member States (BE, BG, DK, DE, EE, IE, EL, ES, HR, IT, CY, LV, LT, LU, HU, MT, NL, AT, PL, RO, SI, SK, FI, SE) was held virtually. Large as well as small service providers active in different sectors were represented: crypto-asset exchanges, other types of CASPS and digital assets associations.

The objective of the meeting was to gather views from stakeholders on their current experience with respect to reporting requirements based on national provisions, as well as to gather their views on a possible EU initiative to provide tax administrations with information on taxpayers who generate income and revenues through crypto-assets and e-money. Ahead of the meeting, a questionnaire was issued.

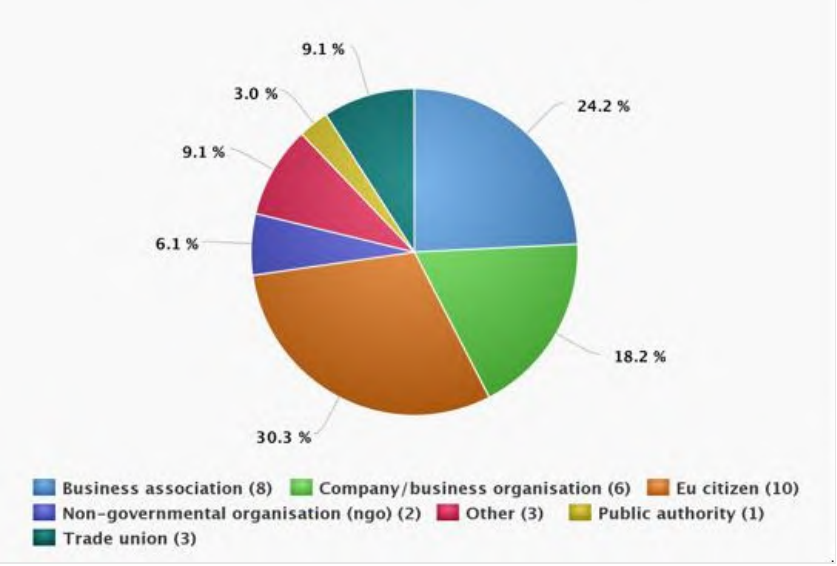
3. Public Consultation

The public consultation was launched on 10 March 2021. It remained open until 2 June 2021 respecting the usual 12 weeks limit.

In addition to the general identification questions, the public consultation questionnaire consisted of 36 questions which covered all elements of the impact assessment; problem, subsidiarity, options and impacts of the initiative. Stakeholders could also upload additional contributions. In order to increase the visibility of the public consultation, the Commission promoted this consultation on social media. Despite the diversity of channels used, the number of contributions received remained small. Such a limited response to the public consultation could be explained by the rather widespread support and non-contentious character of the initiative at stake or the still small but growing market.

In total, 33 responses were received, coming from the following respondents:

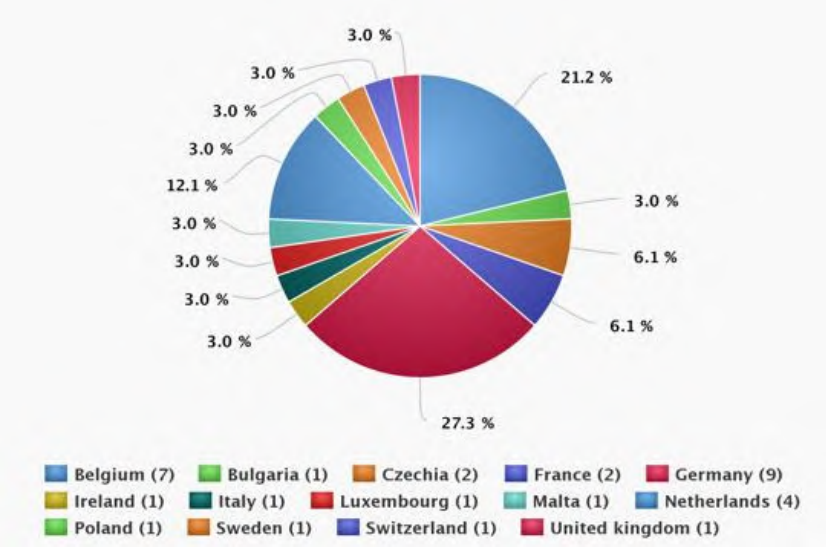
Annex figure 1: categories of stakeholders commenting on the public consultation



Source: responses to the public consultation questionnaire

In terms of breakdown by country of origin of the respondents, the chart below shows a diverse representation:

Annex figure 2: Stakeholder's origin country



Source: responses to the public consultation questionnaire

With regard to the publication of privacy settings, 2 respondents agreed to the publication of their personal details and 31 answered as anonymous participants. From the point of view of the size of the organizations involved, 7 are micro (1 to 9 employees), 4 small (10 to 49 employees), 4 medium (50 to 249 employees) and 8 large (more than 250 employees).

From the replies received, at least 7 of them acknowledged using crypto-assets for investment and/or payment purposes.

Twelve position papers were submitted by stakeholders in addition to the answers provided by them to the standardized questionnaire. Position papers were submitted, mainly, by business associations.

III. Methodology and tools for processing the data

The consultation activities allowed for the collection of data of both qualitative and quantitative nature, which were processed and analysed systematically. Qualitative data was structured according to key themes. Quantitative data (including survey responses and figures provided by stakeholders) was processed using an Excel spreadsheet, and analysed using statistical methods, ensuring the appropriate protection of personal data without publishing the information of the respondents that did not provide their consent.

IV. Consultation result

1. Inception Impact Assessment feedback

Overall, the initiative to create a common EU framework for reporting obligations was welcomed by the majority of stakeholders involved. Several comments concerned the need for clearly defining crypto-assets and e-money, as well as the service providers in scope of the amendment to the DAC. Most agreed that MiCA's definitional framework should be used as starting point. Furthermore, stakeholders pointed out the need for aligning any action with the ongoing work being undertaken by the OECD and the FATF on the regulation of cryptocurrencies.

Some stakeholders insisted on keeping the global approach - *"combat tax evasion by taxpayers seeking to hide their assets in offshore accounts and at the same time ensures a global level playing field"*. It was highlighted that the principles of subsidiarity and proportionality should be the drivers when scoping out the amendments to the DAC.

There was widespread agreement on the need for providing a harmonized, fair and robust tax system. While a precise and targeted regulation is needed to address illicit activity, it is important that such a regulation is proportional and not prohibitively complex to adversely affect crypto-assets as an important component of the financial services industry.

2. Targeted consultation

2.1 Targeted consultation via expert group (Working Party IV)[49]

The expert group of Working Party IV met in November 2020, where the European Commission presented for the first time the proposal to expand the scope of the DAC to include crypto-assets and e-money. The corresponding concept note on expanding the scope of automatic exchange of information to crypto-assets and e-money was presented and discussed with the Member States during this meeting.

In general, Member States expressed strong support for the expansion of the scope of automatic exchange of information to include crypto-assets and e-money. Questions raised by the Member States mostly revolved around the level of detail of such reporting, the extent of such reporting (in terms of assets covered, intermediaries covered, etc.) or the consistency with the OECD work in this area.

The transfers from one wallet to another wallet held by the same taxpayer was seen as the only valid exemption. Another aspect raised was the consideration of data protection in case of reporting on transaction-by-transaction basis. In this context, some Member States highlighted that an aggregate approach would be easier to reconcile with GDPR obligations.

The questionnaire circulated to Member States consisted of questions about the treatment of crypto-assets and e-money as well as their tax treatment in each specific Member State.

[49] Information on this Commission expert group is available at:
https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=953&NewSearch=1&NewSearch=1

Regarding the treatment of e-money, Member States agreed that e-money providers just like financial institutions must determine whether they are a reporting Financial Institution according to DAC2. Thus, most Member States apply the CRS related FAQs to E-money providers. In terms of crypto-assets, the outcome of the questionnaire showed that most Member States have not introduced specific provisions for crypto-assets and even those who have find it difficult to obtain the necessary information for taxation based on their national legislation.

Member States considered that the expansion of the scope of reportable information under DAC2 may not be entirely sufficient and as such should be adapted for crypto-assets.

Stakeholders expressed a preference to exchange the information on an aggregate basis. Similarly, most of the Member States were in favour of aggregate reporting as a basis for carrying out risk assessments although some still expressed their preference for transaction-by-transaction reporting for the purpose of tax assessments. Furthermore, Member States discussed the possibility of obliging CASPs to report more than once a year or to adapt the standard to the reporting entities or reported taxpayers.

Member States expressed the need for considering the MiCA and AML proposals for extending the scope of the DAC. Some Member States consider that the provisions in these proposals may offer possibilities for the enforcement of reporting obligations for third country CASPs. Regarding cold wallets, Member States agreed that it would be difficult to cover them due to the difficulties in having information on crypto-assets held but not exchanged.

As a summary of both meetings, the Member States agreed on the need to expand the scope of automatic exchange of information to crypto-assets. In addition, the reporting framework including aggregate versus transaction-by-transaction and the reporting frequency remained as open issues.

2.2 Targeted consultation via stakeholder's meeting

On the topic of the crypto-assets in scope, stakeholders highlighted that important discussions on definitions are still ongoing on MiCA and AML. Therefore, the majority of stakeholders signaled the need to follow existing provisions from MiCA and AML, as well as the work done by the OECD on cryptocurrencies. Some stakeholders consider crypto-assets to be similar to financial assets and even money. Therefore, this initiative should only target crypto-assets that are admitted to trading. This is also due to the fact, as stakeholders unanimously say, that information on peer-to-peer transactions cannot be easily obtained through private or cold wallets.

There was a general consensus on the need to maintain a level playing field with traditional financial institutions subject to DAC2 reporting obligations and thus to avoid unnecessary administrative burdens. There was unanimous support for the view that keeping it simple will help to define a successful reporting standard.

On the reporting, stakeholders supported the idea of reporting aggregate data rather than transaction-by-transaction. According to the stakeholders, it is more appropriate from the IT

point of view as there may be an excessive volume of transactional data to be reported. In this regard, the objective should be the targeting of tax evasion and not the collection of mass data that cannot be processed. Consequently, stakeholders also proposed the introduction of a reporting threshold in order to reduce the administrative burden.

Based on the AML/KYC due diligence procedures, stakeholders also confirmed that they could track information by jurisdiction.

In summary, stakeholders and Member States agreed that the expansion of the scope of automatic exchange of information to crypto-assets would increase legal certainty resulting in benefits for stakeholders and tax administrations. Tax administrations will obtain the ability to increase tax revenues and stakeholders may achieve a better-regulated market.

3. Public Consultation

A concerted effort was made to ensure that the views and concerns of all affected stakeholders were carefully considered throughout the impact assessment exercise.

Overall, there has been strong support to lay down a single set of rules across the EU for CASPs, e-money service providers and other financial institutions operating with crypto-assets and to have the same reporting obligations for tax purposes throughout the EU (18 affirmative responses out of 33 – 11 no answers). The reason might be that most of the respondents consider that common reporting obligations in the EU would reduce the administrative burden for service providers and/or users, while, at the same time, ensuring a level playing field with traditional service providers (19 out of 33 confirm this statement – 12 no answers).

In relation to the perception of the problem, 11 respondents from different categories and also sizes of stakeholders (be it EU citizens, business associations, trade unions, companies/business organisations or non-governmental organisations between micro and large of size) confirmed that there is significant lack of reporting for tax purposes of revenues obtained through crypto-assets. Only six disagree and five neither agree nor disagree with this statement. Thirteen respondents of different categories and sizes of stakeholders agree that the lack of tax revenues obtained through crypto-asset investments negatively impacts fair competition between the traditional and crypto-asset economy, whereas 6 EU citizens disagree strongly with this statement. Two respondents neither agree nor disagree. It seems that this problem comes from the fact that individual Member States are insufficiently equipped to track revenues generated through crypto-assets as pointed out by 13 respondents.

The conclusion is that there is support for an EU action.

When it comes to introducing harmonised reporting obligations for tax purposes, respondents are of the opinion that the main challenges are the cost of implementation, the complexity of handling and migrating existing accounts and the achievement of a level playing field in the EU. Furthermore, disadvantages for EU companies on a global level need to be avoided. A harmonised reporting framework may result in operations re-locating out of the EU to

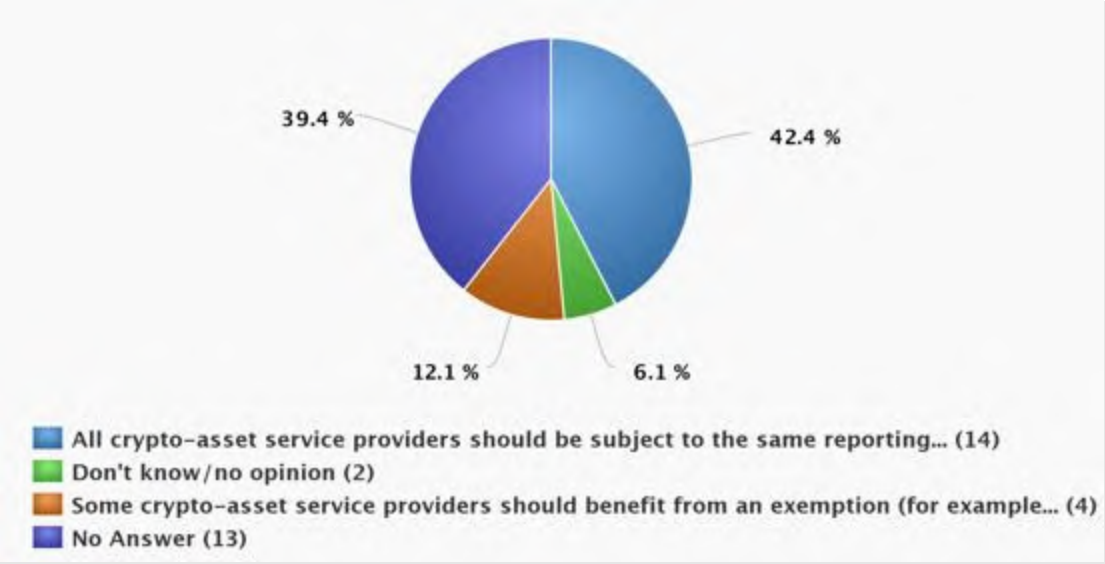
jurisdictions where reporting is not mandatory. Another challenge for harmonised reporting obligations is the issue of double reporting where the same information is already collected and exchanged under other legislation. Ensuring an accurate, transparent and efficient identification mechanism on the crypto-asset and e-money service providers, as well as the financial institutions involved in these transactions will not be an easy task. Finally, the decentralized nature of cryptocurrencies makes it almost impossible to capture all cryptocurrencies within an EU reporting framework.

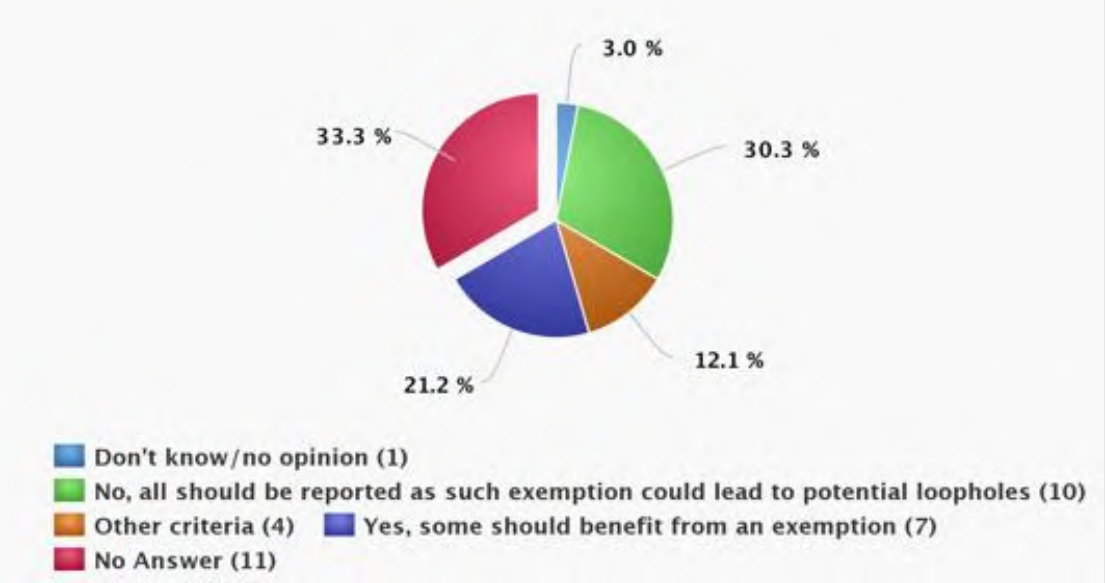
In relation to the entities in scope of a crypto-asset reporting framework, 14 respondents of which 28% were EU citizens and the rest divided between the different categories, deem that all entities providing services in the crypto-asset field should be subject to reporting obligations in order to avoid potential loopholes. Only four respondents (two EU citizens, one large business organization and one business association) would allow some exemptions. 13 provided no answer.

With regard to entities that could benefit from a reporting exemption, respondents indicated providers primarily concerned with enabling the use of blockchain without direct links to marketplaces, such as custodial wallet providers without an investment focus, tax reporting services, account software, and portfolio tracking applications as well as small companies.

In relation to crypto-asset operations in scope of reporting, 10 respondents from different categories and sizes of stakeholder deem that all crypto-asset operations should be reported in order to avoid potential loopholes, whereas some respondents (three EU citizens, three business associations and one business organization) indicated supporting some exemptions from reporting. 11 contributors did not provide an answer.

Annex figure 3: Public consultation results – respondents' opinions on main policy options





Source: responses to the public consultation questionnaire

V. Conclusion

The results of the public and targeted consultations allowed the European Commission to collect a number of views and opinions on the initiative.

Both public and targeted consultations showed wide agreement about the existence of the problems identified in the impact assessment: no reporting of income and revenues earned through crypto-assets.

Regarding the reporting of information on crypto-asset users, a broad majority of stakeholders (Member States, private entities and EU citizens) agreed on the need for a European framework for reporting obligations in favour of achieving a sound level playing field and a true internal market.

As a conclusion, during the different consultations, neither stakeholders nor Member States questioned the need of a reporting framework. In general, there was a unanimous consent in going forward with a legal proposal. The main point of divergence was on the type and granularity of reporting.

Finally, it is worth noting that the feedback received throughout the public and the targeted consultations has been used to inform the choice of the preferred policy options.

ANNEX 3: WHO IS AFFECTED AND HOW?

1. Practical implications of the initiative

Under the preferred option, the initiative is meant to provide a legal basis at the EU level for setting up a reporting and exchange system that will allow (i) CASPs to collect and transmit periodically (once a year) to the tax administrations aggregate tax relevant information on its users and their underlying transactions and, (ii) tax administrations to then exchange the reported information with relevant Member States, in order to use it for the administration and enforcement of relevant tax laws (e.g. tax code on personal income).

Due to the existence of other EU initiatives relative to crypto-assets, in particular the MiCA Regulation and AML Package (i.e. Transfers of Funds Regulation), the estimated costs for DAC8 should be considered upper bound as there could be commonalities already taken into account in the estimations of those other initiatives. Furthermore, these figures took into account the volatility of the crypto-assets market as well as cost-savings stemming from the harmonisation of legal requirements.

2. Summary of costs and benefits

I. Overview of Benefits (total for all provisions) – Preferred option 5 – Hybrid reporting by all CASPs		
Description	***Amount***	***Comments***
Direct benefits		
Crypto-assets users – More tax transparency will result in increasing legal certainty and a fairer taxation of the revenues and income earned on crypto-assets.	No quantification available.	Crypto-assets users will benefit of a more transparent crypto-assets market. Some tax authorities may even be able to pre-fill tax income statements making easier for the users to comply with their tax duties.
Tax administrations – Gaining access to the relevant information will enable tax administrations to ensure that taxes due are paid (e.g. improved risk analysis and accuracy of tax audits).	Direct benefits in terms of additional tax revenues could reach EUR 2.4 billion. The hybrid reporting approach (preferred option) would ensure a balance between too detailed transactional information to be reported by all CASPs with EU users regardless of the size, and the need for second round information requests.	Tax administrations will benefit from the reporting and exchange of information, which they can use to ensure that taxes dues are paid. The extent of the benefits will depend on how adequate Member States' internal systems are to utilise such data. Benefits will also depend on the profitability and size of the crypto-assets market. Periods of intense growth of the market will translate into more public revenue that will be transparently reported.
Crypto-assets service providers	No quantification available.	There will be benefits derived from having homogeneous reporting requirements throughout the EU, rather than having multiple standards across each Member States. This would make it easier to comply with existing tax rules and would improve compliance. Providers will not be faced with burdensome individualised information requests that would be needed

		by tax authorities to make their control/checks in the absence of automatic reporting.
Indirect benefits		
Member States – macro-economic impact	The increase in tax revenues stemming from greater transparency will indirectly benefit the economy as a whole as it will provide revenues to fund Member States' economic and social policies,	
Crypto-assets users	No quantification available	Improvement in the perception of tax fairness, resulting from taxpayers paying their fair share in all Member States equally.
Crypto-assets service providers -	No quantification available	Greater transparency and standardisation of rules will increase the trust in the system and could even attract new users who appreciate reputational and trusted providers.
Administrative cost savings related to the 'one in, one out' approach*		
(direct/indirect)	There will be a decrease in costs for crypto-assets service providers due to homogeneous compliance requirements throughout the EU, rather than having multiple standards across each Member State. However, there is no quantification available.	
	Crypto-assets service providers will also benefit from not to being in a situation where there is need to answer a multitude of individual information requests from tax authorities.	

*(1) Estimates are gross values relative to the baseline for the preferred option as a whole (i.e. the impact of individual actions/obligations of the preferred option are aggregated together); (2) Please indicate which stakeholder group is the main recipient of the benefit in the comment section;(3) For reductions in regulatory costs, please describe details as to how the saving arises (e.g. reductions in adjustment costs, administrative costs, regulatory charges, enforcement costs, etc.;); (4) Cost savings related to the 'one in, one out' approach are detailed in Tool #58 and #59 of the 'better regulation' toolbox. * if relevant*

II. Overview of costs – Preferred option- option 5 - Hybrid reporting by all CASPs[50]			
	Crypto-assets service providers	**Tax Administrations (Member States)**	**European Commission**

[50] Due to existence of EU initiatives relative to crypto-assets, in particular the MiCA Regulation and AML Package (i.e. transfers of Funds Regulation), the estimated costs for DAC8 should be considered an upper bound as there could be commonalities already taken into account in the estimations of those proposals.

		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Implementing an IT tool (Central Directory)	Direct administrative costs			1-13	0.1-5.7	0.48	0.21
	Direct adjustment costs						
	Direct regulatory fees and charges						
	Direct enforcement costs						
	Indirect costs						
Reporting requirements	Direct administrative costs	Total one-off costs estimate are estimated at EUR 259 million (or EUR 1.5 million per CASP).	The recurrent costs are estimated at 22.6 million for all CASPs and it is estimated that they will not surpass EUR 135 000 per entity on a yearly basis.	One-off costs incurred by tax administrations in the EU-27 are estimated to range between EUR 500 000 and EUR 64.8 million or between EUR 18 000 and EUR 2.4 million per tax administration on average, depending on the IT solution chosen.	The estimated recurrent costs vary approximately between EUR 100 000 and EUR 6 million on a yearly basis for all Member States, or between EUR 3 700 and EUR 220 000 on average per Member State.	The development costs for defining the common EU reporting specifications (i.e. the type of data to be reported, collected and exchanged), and for setting up new and/or adapting the existing IT systems to enable the exchange of information could vary between EUR 500 000 and EUR 1.4 million.	The recurrent costs are estimated to range between EUR 100 000 and EUR 200 000 on a yearly basis, and mainly relate to operating and maintaining the IT system for data storage and exchange relative to crypto-assets
	Direct adjustment costs						
	Direct regulatory fees and charges						
	Direct enforcement costs						
	Indirect costs						

Costs related to the 'one in, one out' approach							
Total	Direct adjustment costs						
	Indirect adjustment costs						
	Administrative costs (for offsetting)	Total one-off costs are estimated at EUR 259 million (or EUR 1.5 million per CASP).	The recurrent costs are estimated at 22.6 million for all CASPs and it is estimated that they will not surpass EUR 135 000 per entity on a yearly basis.				

(1) Estimates (gross values) to be provided with respect to the baseline; (2) costs are provided for each identifiable action/obligation of the preferred option otherwise for all retained options when no preferred option is specified; (3) If relevant and available, please present information on costs according to the standard typology of costs (adjustment costs, administrative costs, regulatory charges, enforcement costs, indirect costs;). (4) Administrative costs for offsetting as explained in Tool #58 and #59 of the 'better regulation' toolbox. The total adjustment costs should equal the sum of the adjustment costs presented in the upper part of the table (whenever they are quantifiable and/or can be monetised). Measures taken with a view to compensate adjustment costs to the greatest extent possible are presented in the section of the impact assessment report presenting the preferred option.

3. Relevant sustainable development goals

III. Overview of relevant Sustainable Development Goals – Preferred option(s)		
Relevant SDG	**Expected progress towards the Goal**	**Comments**
SDG – 8 Decent work and economic growth	The initiative will have a positive effect on tax revenues, which can in turn be used to fund Member States' economic and social policies. Common rules at EU level would also be beneficial for competitiveness of the Single Market as the level playing field would be guaranteed, thus not leaving certain business in a less advantageous position;	
SDG – 9 Industry, innovation and infrastructure	Having a streamlined process to report electronically all the specified data will promote digitalisation and the upgrading of technology.	
SDG 10 - "Reduced	The initiative aims at fighting tax evasion	

inequalities”	through greater tax transparency. Ensuring that all taxpayers pay the taxes dues contributes to greater equality because Member States can avail themselves of more revenues to fund their policies and because it prevents that some taxpayers escape their obligations leaving it to other taxpayers to shoulder the burden.	

ANNEX 4: ANALYTICAL METHODS

In this section, we explain the underlying assumptions relevant for estimating both benefit and cost estimates. It is worthwhile noting that the estimates presented below are significantly limited as the data on crypto-assets is scarce.

Benefits

- We first estimate the number of CASPs operating in the EU by assuming the following:
    - Exchanges are defined as businesses that allow customers to trade cryptocurrency for fiat money or other cryptocurrency.[51] Our assumption is that this definition comes close enough in describing CASPs and thus, we give equal footing to the two notions.
    - In August 2021, there were 672 exchanges worldwide.[52] Therefore, **672 CASPs.**
    - 25% share of global cryptocurrency value is received by Central, Northern & Western Europe.[53]
    - By applying the aforesaid share (i.e. 25%) to the overall number of CASPs, we approximate that there are **168 CASPs with EU users**. This assumption is simplistic and significantly limited as users and intermediaries cannot be equaled, but it gives an indication on how many CASPs operate in the EU (the real number might be higher). Any conclusion stemming from it should therefore be interpreted with caution.
- In order to estimate the benefits of introducing a compulsory reporting and exchange of information on crypto-assets, we rely on the findings from a study by Thiemann (2021) on realised capital gains[54,55] in the EU Member States. Realised capital gains accrue when the selling price of an asset exceeds the price of their initial purchase and the asset is sold.[56] The study based its findings on Bitcoin data only that had been received from Chainalysis (a blockchain data platform).
- In 2020, EU citizens accrued EUR 3.6 billion of total realised capital gains according to the analysis by Thiemann (2021). This amount is unevenly distributed amongst the EU countries and unevenly taxed (if at all). In the study, a uniform EU tax rate of 25% is therefore applied, leading to an estimated EUR 0.9 billion of tax revenues from Bitcoin.
- In order to estimate tax revenues from all crypto-assets (all options) we assume the following:
    - We approximate Bitcoin market share to 50% (47% dominance according to Coin Market Cap as of 27/6/2021).

[51] Coin Market Cap (2021).

[52] Chainalysis (2021). The 2021 Geography of Cryptocurrency Report. Analysis of Geographic Trends in Cryptocurrency Adoption and Usage.

[53] Idem.

[54] Thiemann (2021). Cryptocurrencies: An empirical view from a tax perspective, JRC Working Papers on Taxation and Structural Reforms, No 12, also footnote 16.

[55] The analysis includes capital losses. The aggregate outcome is positive however (i.e. capital gains).

[56] Hungerford (2010). The Redistributive Effect of Selected Federal Transfer and Tax Provisions.

- The other 50% is relative to the remaining cryptocurrencies on the market (almost 11 000 cryptocurrencies in total according to Coin Market Cap).
- In order to estimate revenues from all crypto-assets, we double the tax revenues previously projected by the above-mentioned study and estimate a new figure of EUR 1.8 billion (EUR 0.9 * 2). Please note that this is a simplifying assumption since cryptocurrencies differ in value and consequently in possible realised capital gains. For a more precise estimate one should dispose of reliable data on cryptocurrencies other than Bitcoin, and employ sophisticated empirical methods. Since we do not have such data, caution in interpreting the results is advised.
- From newly estimated tax revenues, we further exclude the transactions under the following crypto-asset categories (i.e. discarded options): non-marketable crypto-assets and utility tokens. Determining their respective shares in the total crypto-asset market, however, is challenging due to lack of official statistics. Bitcoin remains the dominant cryptocurrency representing almost half of the total market according to Coin Market Cap. The market share of the remaining cryptocurrencies is relatively small. To illustrate this better, already the sixth most dominant crypto-asset (XRP) comes with a share of less than 3% in the total cryptocurrency spectrum. As we are unable to sum up different cryptocurrencies per asset type and determine their corresponding shares in the total market, we artificially assign a **3% share per reported asset category (i.e. 6% in total) to be excluded in these options**. This assumption is imperfect and might also be inflated. Any estimates deriving from it should be therefore be cautiously interpreted.
- By reducing the benefits by 3% per asset category, this gives roughly **EUR 1.7 billion** (EUR 1.8 - EUR 1.8 * 0.06) in tax revenues.
- As gains from crypto-assets are subject to high volatility, this consequently affects collected tax revenues from such gains. We have therefore performed a sensitivity analysis on the applied 25% uniform tax rate (i.e. adding 15% and 35% tax rates to the analysis). This increase/decrease of 10 percentage points was motivated by the current use of tax rates on capital gains in the Member States (see the table below). As the majority of countries legislates tax rates above 15%, this has been used as the lower bound. A 35% tax rate has been used as the upper bound to maintain the same sensitivity interval from the central rate and to signal that no capital gains are being taxed above this rate.

Table 7 EU country distribution based on legislated tax rates on capital gains

Tax rates on capital gains	0-5%	6-10%	11-15%	16-20%	21-25%	26-30%	31-35%
Number of countries	1	2	1	8	10	2	3

Notes: In cases where countries do not legislate tax rates on capital gains specifically, corporate income tax rate is used instead. **Source:** Own work based on information from Taxes in Europe Data Base (TEDB).

- By applying a 15% tax rate and also accounting for the crypto assets on top of Bitcoin (i.e. the other 50% of the market as done above), this gives EUR 1.08 billion (3.6 * 0.15 * 2). We further exclude the two non-considered crypto-asset types, which brings the total amount down to **EUR 1.02 billion** (1.08 – 1.08 * 0.06).
- By applying a 35% tax rate and also accounting for the crypto assets on top of Bitcoin (i.e. the other 50% of the market as done above), this gives EUR 2.52 billion (3.6 * 0.35 * 2). We further exclude the two non-considered crypto-asset types, which brings the total amount down to EUR **2.37 billion** (2.52 – 2.52 * 0.06).
- We estimate an absolute difference of EUR 1.35 billion between the lower and the higher bound. Please note, however, that the oscillations in cryptocurrency value may be higher than the ones employed in this sensitivity analysis.

Costs

The methodology employed for the estimation of the costs follows the Standard Cost Model, where each option can be projected and monetised by multiplying the total quantity (estimate) of reportable users (Qs) under each option by a cost (P).

$$Costs = Qs * P$$

The average costs per service provider, as shown in the equation below, are obtained by dividing the total estimated costs (one-off or recurrent) by the number of service providers that would have to comply. The average costs per tax administrations are obtained by dividing the total costs (one-off or recurrent) for tax administrations by twenty-seven. These are simplifying assumptions and the costs will vary given the size of the service provider and of the tax administration. We lack available data for a more granular estimation.

$$\frac{Costs}{CASPs\ or\ Tax\ Authorities}$$

Table 1 below summarises all the cost estimates for all parties concerns (CASPs, tax administrations and the European Commission). The total costs that would be incurred due to these legislative interventions are grouped according to the available options under the intervention.

Table 8 Estimated costs and comparison (DAC2 vs DAC8)

DAC2 estimate (DAC evaluation)		
Affected Party / Costs	**One-off**	**Recurrent**
Traditional financial institutions	EUR 491 million	EUR 42 million
TA	EUR 49.1 million	EUR 4.2 million
European Commission	n/a	n/a
DAC8 own estimates		
Affected Party / Costs	**One-off**	**Recurrent**

CASPs (all crypto-assets, except non-marketable crypto-assets and utility tokens)	EUR 233.1 – 284 million (EUR 1.4 – 1.7 million/CASP)	EUR 20.3 – 24.9 million (EUR 0.12 – 0.14 million/CASP)
TA (decentralised IT solution)	EUR 64.8 million (EUR 2.4 million/TA)	EUR 6 million (EUR 0.22 million/TA)
TA (Central Directory)	EUR 1 – 12.96 million (EUR 0.03 – 0.48 million/TA)	EUR 1 – 5.67 million (EUR 0.03 – 0.21 million/TA)
TA (Single Access Point)	EUR 0.5 million (EUR 0.02 million/TA)	EUR 0.1 million (EUR 3 703 per TA)
EC (decentralised IT solution)	EUR 0.8 million	EUR 0.1 million
EC (Central Directory)	EUR 0.48 million	EUR 0.21 million
EC (Single Access Point)	EUR 1.35 million	EUR 0.21 million

Notes: (1) The figures in the table are rounded. (2) TA = tax administration in EU. EC = European Commission. (3) For costing details relative to TA and EC see Annex 5. CASPs costs are assumed not to be affected by the IT solution used for reporting/information exchange.

In order to estimate the ***costs for CASPs***, both recurrent and one-off, a number of assumptions needed to be employed.

a) Assumptions used to estimate the number of crypto-asset users:
   - According to Binance (2021), there were more than 100 million users of crypto-assets worldwide in 2020.
   - Bitcoin remains the dominant cryptocurrency with a 47% total market share (Coin Market Cap as at 27/6/2021). In the absence of the official statistics, we use this dominance indicator and estimate 47 million Bitcoin users worldwide.
   - In order to estimate the number of users in the EU or, more precisely, in the internal market, we rely on the data from Chainalysis. As they focus on Bitcoin information, they find that just over 25% of all Bitcoins are held at service-based addresses in Northern and Western Europe. As we lack a more granular, per country, information, we assume that there are roughly **12 million Bitcoin users in EU** by applying the same 25% rate to the number of worldwide Bitcoin users.
   - We also use a simplifying assumption 'one user, one account' in the absence of more precise data, which lets us estimate **12 million accounts in the EU**. This assumption is imperfect as a single user can own more accounts simultaneously and/or operate with cryptocurrencies other than Bitcoin. Any further estimates employing this assumption should be interpreted with caution.

b) Assumptions used to estimate total costs
   - In order to estimate the total costs for CASPs, we rely on projected DAC2 costs incurred by the traditional financial institutions when implementing the directive. The data employed derive from the Commission's DAC evaluation report from 2019.

- The DAC2 average cost per account is estimated at EUR 6.4 for automatic exchanges between tax administrations, but the traditional financial institutions incurred 10 times higher costs than the authorities (i.e. EUR 64). A share of 92% and 8% of total costs were relative to one-off and recurrent costs respectively (Commission's DAC Evaluation 2019).
- In the DAC7 impact assessment, by taking DAC2 as a comparable set of obligations imposed on the reporting subject, it has been assumed that the total costs for the traditional financial institutions were higher than for digital platform operators (in scope of DAC7), given that the costs incurred by financial institutions encompassed the costs stemming from the reporting requirements under FATCA and CRS under which the due diligence procedure is more stringent. Furthermore, given the digital model of platform operators and the development of the IT infrastructure, it was assumed that access to the data was less costly. These assumptions significantly lowered total reporting costs per account. We consider that these assumptions remain valid for CASPs as well. Hence, we assume that the total costs for CASPs will be **EUR 25** per account reported, of which **EUR 23** for one-off and **EUR 2** for recurrent costs (when applying the before said rates as per the Commission's DAC Evaluation report).
- When multiplying the retrieved costs per account by the number of accounts, this gives total recurrent costs of EUR 24 million (12 million accounts * EUR 2) and total one-off costs of EUR 276 million (12 million accounts * EUR 23).
- Similar to what we did for estimating the benefits, the costs are adjusted by 6% (assumed to be the market share of non-marketable crypto-assets and utility tokens) in the options where the crypto-assets in scope exclude non-marketable crypto-assets and utility tokens.
- By reducing the costs by 3% per assets category, this gives **EUR 22.6 million** in recurrent (24 - 24 * 0.06) and **EUR 259 million** in one-off costs (276 - 276 * 0.06).
- Furthermore, we also performed a sensitivity analysis (+/- 10% applied to the above estimated costs. This was done so as to account for (i) price volatility of crypto-assets which can result in having more or less crypto-asset users (depending on the direction of the prices) and (ii) potential need for the second round of reporting requests by tax administrations. This gives one-off cost ranging from EUR 233.1 to 284 million, and recurrent costs from EUR 20.3 to 24.9 million.

c) Assumptions used to estimate the number of CASPs
- We estimate that there are **168 CASPs operating in the EU** (see the assumptions made above under the benefits section).
- In order to estimate recurrent and one-of costs per CASP, we divide the estimated cost figures (see section b) above) by 168 for each of the scopes. The retrieved amounts are presented in the table above.

In order to estimate the ***costs for tax administrations***, both recurrent and one-off, a number of assumptions needed to be employed:

- The estimated costs for the exchange of information relative to crypto-assets depend on the IT solution provided. We differentiate between three IT options, the specifications of which are detailed in Annex 5.
- For the decentralized IT solution in particular, we rely on reported DAC2 costs, divided by the number of accounts, which amounts to EUR 5.4 for one-off and EUR 0.5 for recurrent costs (i.e. 92% and 8% respectively of total costs as per Commission's DAC Evaluation report). We assume that tax administrations will incur exactly the same costs when exchanging information under DAC8 provisions. This gives EUR 6 million (12 million CASP accounts * EUR 0.5) in recurrent and EUR 64.8 million (12 million CASP accounts * EUR 5.4 in one-off costs).
- The total one-off costs for tax administrations when dealing with CASPs are estimated to range from **EUR 0.5 million** to **EUR 64.8 million**, while the total recurrent costs are estimated to vary between **EUR 0.1 million** and **EUR 6 million**.

In order to estimate the ***costs for the European Commission***, both recurrent and one-off, we assume that:

- CASP related costs will depend on the IT solution provided. We differentiate between three IT options, the specifications of which are detailed in Annex 5.
- The one-off costs for the European Commission when dealing with crypto-assets exchanges are estimated to range from **EUR 0.48 million to EUR 1.35 million**, while the recurrent costs are expected to vary between **EUR 0.1 and EUR 0.21 million**.

ANNEX 5: IT SOLUTION

1. General description of DAC IT solutions

The Directive on Administrative Cooperation (DAC) sets in Section II, the legal basis for the automatic exchange of different types of information between the competent authorities of each Member State.

There are four particularities concerning the reporting and exchange of information of the different DACs:

i) DAC1 and DAC3 exchanges deal with information held by the competent authorities;
ii) DAC2, DAC4, DAC6 and DAC7 exchanges deal with information that the competent authority receives from a reporting entity, be it a financial institution, a large multinational enterprise, an intermediary or a digital platform operator;
iii) DAC3 and DAC6 information is uploaded by each competent authority on a Central Directory, where it is available to the other competent authorities, and
iv) DAC1, DAC2, DAC4 and DAC7 information is automatically exchanged between competent authorities by using the Commission Communication Network (CCN).

The Commission provides the IT infrastructure making these automatic exchanges possible, i.e. the transmission channel (CCN), the XML schemas and the XSD User Guide.[57] The Commission is a data processor. Except for DAC1 and DAC3, the exchange of information under the other DAC's consists of a three-step approach: First, the information is collected and reported by a reporting entity; second, it is received by the relevant competent authority and finally, it is exchanged by this competent authority either with other relevant competent authorities or to the Central Directory.

This proposal would introduce a reporting standard to provide competent authorities with essential information about crypto-assets. Regardless of the complexity of the policy options that will be chosen, there are in principle three main IT solutions for implementing an efficient exchange of information:

I. <u>Decentralised system – the traditional DAC three stage approach</u>

- This system would assume that the CASPs report the information to the competent authority of their tax residence or where they are authorised to operate.[58] These competent authorities would in turn then exchange the concerned information with the competent authorities of other relevant Member States. As a result, each EU tax administration receives a maximum of 26 "blocks" of reportable information, which have to be further processed in order to be

[57] XML schema is used to describe and validate the structure and the content of XML data. XML schema defines the elements, attributes and data types. These are filled in with the information to be exchanged under DAC.

[58] Those CASPs that are not already authorised and registered under the MiCA registration would be registered in a separate register for direct tax purposes. Member States would feed the register while the Commission services would provide the infrastructure. This is a similar approach to DAC7.

integrated in the national IT systems and then used for the envisaged purposes (risk assessment, etc.). The exchange (send/receive) takes place at regular intervals (once per year or each quarter), which are generally defined by the Directive. Each competent authority has to set-up and maintain a national IT system implementing the processes described above. This is the option that has been used for the implementation of the provisions laid down in DAC2 and DAC4 and the recently agreed DAC7.

II. Centralised system – the traditional DAC - Central Directory

- As for DAC 3 and 6, this system would assume that the CASPs report the information to the competent authority of their tax residence or where they are authorised to operate. These competent authorities would in turn then upload the reported information to the Central Directory to which competent authority of each Member State can connect for consulting and downloading relevant information (information related to its taxpayers only).

III. Single access point – new IT alternative

- Under this new IT alternative, the reporting entity would no longer report information in a given country but instead directly into a general database (the "Single Access Point").
- More specifically, the first step would be that the competent authority authorizes/grants access (after receiving the request) to the CASPs to upload data to the Single Access Point maintained by the European Commission. In this phase, the competent authority would check that the requesting CASP fulfils the requirements laid down in the Directive (i.e. registration, TIN, etc.). Once authorized, the CASP may upload the relevant information to the Single Access Point.
- The authorisation to report information to the Single Access Point would be managed by the Member State of residence of the CASP or in the Member State where they are authorized to operate.
- The reporting of information would happen in a standardised way like for traditional DAC exchanges through an XML schema and a XSD User Guide, XML schema and a XSD User Guide.
- Consequently, CASPs would only be allowed to upload standardised information to the Single Access Point. Competent authorities of each Member State would have the right to access the information.
- As in the Central Directory, the Commission would have limited or no access to the data. Consequently, the Commission would play a data processor role only.

The second and third IT solutions could appear similar as they are both centralised and the infrastructure is provided by the Commission services. However, the difference is the necessity of an intermediary. In the second IT solution, the tax administration has to be in possession of information or data in order to be able to upload it to the Central Directory and make it available to other tax administrations, i.e. the tax administration takes the role of an intermediary between the reporting entity and the central platform.

In the third IT solution there is no intermediary between the reporting entity and the database where the information will be available to tax administrations in the new IT solution. There would therefore be no development costs of a national IT infrastructure for the collection of information and export to the Central Directory. This being said, the national tax administrations are likely to incur a certain level of IT costs as they would need to download in their own national system the data that is made available through the Single Access Point to be able to use them. This means that mainly the reporting entity and the Single Access Point will bear costs for the IT development, be it implementing the reporting format or updating an existing IT interface.

For the three proposed exchange IT solutions, the GDPR requirements remain the same as the information collected and exchanged and the access of Member States to that information will be of the same nature regardless of the method selected.

2. Cost-benefit analysis

Having an IT solution that will allow a proper exchange of information relative to crypto-assets will come with both benefits and costs. As these differ between available IT options, the quantification of costs is based on the cost information (one-off and recurrent) incurred for setting up and operating DAC6,[59] as well as DAC2[60] and DAC7[61] (see the table below). Benefits, on the other hand, have been assessed qualitatively due to limited data.

Table 9 Summary of costs relative to IT solution (in EUR million)

	IT solution					
	Decentralised		**Central Directory**		**Single Access Point**	
Costs / Entities	**MS**	**Commission**	**MS**	**Commission**	**MS**	**Commission**
One-off	64.8	0.8	1 - 12.96	0.48	0.5	1.35
Recurrent (annual)	6	0.1	1- 5.67	0.21	0.1	0.21
Total	**70.8**	**0.9**	**2 - 18.63**	**0.69**	**0.6**	**1.56**

A decentralised approach means that the Member States are responsible for setting up, maintaining and updating their national IT systems so as to abide by the provisions set out in the DAC. The cost estimates stemming from the decentralised approach are based on DAC2 costs incurred by tax administrations, which are further adapted to the population of crypto-asset accounts (see Annex 4). Even though these costs are likely to be substantial, the maximum amount should not surpass EUR 64.8 million in one-off and EUR 6 million in recurrent costs. Due to lack of official data, however, precise estimates on the costs to be incurred in the Member

[59] European Commission (2017). Commission staff working document- Impact Assessment Accompanying the document Proposal for a COUNCIL DIRECTIVE amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements, SWD/2017/0236 final.

[60] European Commission. (2019). Evaluation of the Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, SWD(2019) 327 final

[61] European Commission. (2020). Commission Staff Working Document – Impact assessment accompanying the Proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation, SWD(2020) 131 final.

States cannot be made. Moreover, the costs for the Commission under this option are likely to be relatively low.[62]

The second option would entail relying on the existing system of information exchange, namely the Central Directory set-up and managed by the European Commission. The total one-off costs of upgrading and updating the Central Directory are estimated to be EUR 480 000, while the recurrent costs would amount to EUR 210 000. Since some IT infrastructure has already been developed and is operational, the projected cost is likely to be similar to those of running DAC6. Moreover, under this option, the national tax authorities are also likely to bear costs as they may extract relevant information from the Central Directory into national databases and have an upgraded (or newly built) IT infrastructure for data downloading and uploading operations. Since precise cost estimates are challenging to make, we assume that such costs could be in the order of millions of euros, but not higher than EUR 12.96 million (one-off) and EUR 5.67 (recurrent). This can be explained by the Commission's effort to provide a centralised IT architecture that can significantly reduce costs for national administrations.

Finally, a new Single Access Point would bring about greater centralisation since CASPs would be directly linked to the Commission's IT interface. This new IT solution will likely entail higher costs for the Commission to develop it as the number of connected entities will be higher than usual (i.e. around 168 CASPs[63] vs 27 national tax administrations). Considering the costs incurred for developing the IT interface under DAC6, we assume that the total one-off costs for the Commission will reach EUR 1.35 million as a minimum. The recurrent costs will be approximately EUR 210 000. The Commission costs for developing the Single Access Point are expected to be higher compared to the ones needed to update the Central Directory. However, for the Member States, it remains challenging to precisely assess the costs that will be incurred for adapting their systems to the Single Access Point. While we estimate, as a minimum, EUR 500 000 and EUR 100 000 for the one-off and recurrent costs respectively, we are unable to quantify the cost ceilings which might be substantial (in the order of millions of euros). This is due to the fact that the Member States remain responsible to ensuring that CASPs have fulfilled their legal obligations and might still opt for setting up national databases to store previously extracted data.

Taking into account uncertainty on the actual size of the benefits in the absence of reliable data, no quantification of benefits has been provided. Possible benefits stemming from the initiative can be looked at qualitatively through cost reduction for the Member States. Even though some savings can be obtained via the Single Access Point where the Commission provides the necessary infrastructure and CASPs report directly into the new interface, a reliable cost estimation leading to proper IT solution comparison remains challenging to make. Conversely, some IT infrastructure already exists for the use of the existing Central Directory as this IT solution could be delivered/deployed within a shorter legal base deadline, thus likely having a positive impact on savings. This point is of particular importance in this case where the need to regulate reporting and ensure exchanges of information on crypto-assets is urgent and a

[62] European Commission. (2020). Commission Staff Working Document – Impact assessment accompanying the Proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation, SWD(2020) 131 final.

[63] Information on how we estimate the number of CASPs and their reporting costs can be found in Annex 4.

prerequisite for other initiatives in the EU as well as in the individual Member States. Similarly, some existing IT infrastructure also exists under the decentralized approach, but the estimated costs are quite high compared to other IT solutions and unlikely to be offset by any possible benefits.

Finally, when it comes to the policy options, the three IT implementation choices are feasible no matter which policy option is chosen. The feasibility of the IT solution depends neither on the size of the CASPs, nor on the types for crypto-assets in scope nor the reporting method. The question here is more about the efficiency of the different IT solutions in achieving the initiative's objectives.

3. Overall assessment

Each of the proposed IT solutions have advantages and disadvantages. The first two options described above have the advantage of having already been tested and developed, which revealed their strengths as well as their weaknesses while developing or using them for the different DAC exchanges.

For the moment, the first two IT solutions coexist and are used for different DAC exchanges. The new IT solution would become a third alternative for DAC information exchanges.

As already explained, the main advantage of the Single Access Point is the absence of an intermediary tax administration, which means that the information is available in one single platform without additional IT infrastructures at the level of the intermediary. The cost and resources for the intermediary are therefore reduced in terms of implementation and development. Furthermore, there would only be one single IT solution instead of 27 that the reporting entity will have to adapt to. These IT tools would also potentially reduce development costs for compliance, risk assessment, statistics and other tools, which are required to show the respective use of information received through the DAC framework.

Despite the listed advantages of the Single Access Point solution, the traditional Central Directory is considered a better solution because it is already known by Member States and used for DAC3 and DAC6 purposes. Precise calculations of costs are not possible to make as this would be a new and untested solution, but Member States would need to adapt their national systems to new channels for receiving data. Another advantage compared to the Single Access Point is that it can be delivered and deployed with a shorter deadline. It is urgent to start the reporting and exchange of crypto-asset information as other initiatives, whether at EU level or at national level, rely on such information in order to operate and considering the current serious lack of necessary information. Compared to the decentralised solution, the Central Directory solution provides for more flexibility in the future in case the IT solutions will need to be harmonised for the DAC as a whole. The introduction of a Single Access Point would be more appropriate to consider for the DAC including all amendments in order to calculate and reduce costs with a high degree of certainty.

ANNEX 6: STRENGTHENING OF ADMINISTRATIVE COOPERATION BETWEEN TAX AUTHORITIES

In the broader context of the DAC, this impact assessment also presents a further strengthening of administrative cooperation between tax authorities, including a review of the current compliance framework, a clarification of the rules applicable to e-money and the expansion of the exchange of cross-border tax rulings to rulings granted to natural persons.

The European Court of Auditors (ECA) report[64] and the European Parliament resolution[65] pointed at the inefficiencies and the need of improvement in several areas of the Directive including the compliance measures, e-money provisions and rulings.[66]

The problems

There are inefficiencies in the current framework on administrative cooperation and enforcement of the DAC provisions, which stem from a lack of clarity concerning some provisions of the legal text underpinning this framework, in particular when it comes to the application of penalties or other compliance measures, or the exchange of information on e-money. Furthermore, the current framework for exchanging cross-border rulings could be made more coherent.

To illustrate the need for clarification of some concepts: DAC established a reporting obligation on a number of actors (such as financial institutions under DAC2, MNEs under DAC4, intermediaries under DAC6, digital platform operators under DAC7). Under the current wording of Article 25a of the DAC, Member States have the obligation to introduce "effective, proportionate and dissuasive" penalties, in case of non-compliance with the reporting obligations. Non-compliance can consist for example in the absence of reporting, late reporting, incomplete or false reporting, etc. However, as shown in Annex 7, there are significant differences between the Member States' penalties frameworks set out for non-compliance under the DAC, which may have a negative effect on compliance with the aforementioned principles. Member States having implemented low-level penalties as compared to other Member States do not provide for a dissuasive penalty framework and thus undermine the proper functioning of DAC. Considering the current vague wording on compliance measures in the DAC, the legal basis for infringement procedures in situations where the national measures are not regarded as dissuasive enough is fragile.

Another area which suffers from a lack of a clear and unequivocal drafting are the rules pertaining to the reporting and exchange of information on e-money products. E-money is broadly defined as an electronic store of monetary value on a technical device that may be used

[64] Special Report N°03/2021: Exchanging tax information in the EU: solid foundation, cracks in the implementation.

[65] See footnote 4. 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

[66] 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

for making payments to entities other than the e-money issuer. It acts as a prepaid bearer instrument, which does not necessarily involve bank accounts in transactions. Most Member States interpret the existing provisions on the reporting and exchange of financial information (DAC2) as including e-money within its scope, whereas others do not. This creates the risk of an uneven playing field within the financial sector and across Member States. Although e-money products are mainly used for payment and quick transactions and not for investment, they could also be used to store money and, in the current situation, avoid reporting.

Finally, the existing rules provide for tax transparency on cross-border rulings and advanced pricing agreements (APAs), under DAC 3. Tax rulings and APAs are most commonly associated with legal persons. However, natural persons may also benefit from cross-border rulings on complex tax arrangements. The latter category of cross-border rulings might be of interest to the competent tax administrations of other Member States.

Strengthening the compliance framework and completing the existing framework for automatic exchange of information on e-money and rulings

The ECA report and the resolution of the European Parliament mentioned above both conclude that the lack of a consistent compliance framework, the lack of clear provisions on e-money and the non-inclusion of some types of rulings significantly reduce the efficiency of the DAC. Building upon the findings of those reports, the initiative would include clarifications and fixes to the current administrative cooperation framework to ensure it becomes more effective. These changes mainly concern the following:

a) *Compliance framework*

As mentioned above, there is a need to clarify the compliance framework provided for in DAC to ensure a more consistent implementation across the EU Member States. It would consist of setting a common minimum level of penalties for the most serious non-compliant behaviours, such as complete absence of reporting despite administrative reminders. It would also provide guidance in the DAC itself as to what effectiveness, dissuasiveness and proportionality should imply for each Member State's compliance framework. This would establish the basis for guaranteeing a compliance framework that complies with the principles of effectiveness, proportionality, and dissuasiveness. In relation to the principle of effectiveness, the DAC might indicate what broad types of conducts and behaviours might be penalised leaving the Member States with the option to go further, depending on their domestic circumstances. The DAC might also put forward some types of penalties and other compliance measures that serve as guidance for the Member States in the development of their own legal compliance framework. Penalties could be set in proportion to the economic size of the taxpayer/reporting entity and/or to the relevant amount of tax owed.

b) 5.3.2.2 E-money

The scope of reporting under DAC2 would be clarified in order to explicitly include tax relevant data on e-money. It would ensure that a single standard for reporting and exchange of e-money data will apply. At the international level, the OECD is also working on amending the CRS to explicitly include e-money.

c) 5.3.2.3 Exchanges of cross-border rulings

Rulings provided by Member States' tax authorities for the benefit of natural persons are currently not subject to reporting and automatic exchange between Member States under DAC. However, covering all taxpayers would be in line with the general logic of the DAC.

Currently, there is only limited information exchange between national authorities on tax rulings for natural persons, if at all. Member States whose tax base is adversely affected by the tax rulings of others cannot react, given that they will not even know of the existence of the respective tax ruling that might cover arrangements leading to base erosion in their jurisdiction. In line with the joint effort to combat tax avoidance, there is clearly a need for greater transparency and information sharing on cross-border tax rulings.[67]

The inclusion of natural persons would limit the possibility for circumvention of the information exchange by adapting the respective setup of the tax structure. Therefore, this initiative would make compulsory the reporting of tax rulings for natural persons with a cross-border element. The obligation to exchange information about tax rulings would in no way restrict or limit the possibility for natural persons to request rulings from the national administration.

[67] European Commission SWD. (2015): Technical analysis of focus and scope of the legal proposal Accompanying the document Proposal for a Council Directive amending Directive 2011/16/EU as regards exchange of information in the field of taxation.

ANNEX 7: OVERVIEW OF DIFFERING PENALTIES APPLIED BY MEMBER STATES

Based on the information gathered through the consultation of Member States, all Member States have legislation in place, which provides for the application of penalties for infringements pursuant to the provisions of the DAC. Additionally, the vast majority of Member States have developed administrative procedures for verifying compliance with the DAC. The measures through which the Member States monitor the fulfilment of the obligations derived from the DAC are, amongst others, desk-based checks and on-site inspections, as well as statistical analysis..

Of the circumstances and factors that some Member States take into account to determine the level of the penalty, the degree of the intentionality of the offending subject is the most frequently applied. Some Member States also consider whether there has been repetitive non-compliance, as well as the size of the subject or the benefit obtained from the offending conduct.

The majority of Member States distinguish between late reporting of information, reporting with minor errors, reporting with false statements or documents, and not reporting at all when designing penalties and compliance measures for infringements of reporting obligations under the DAC.

Although the domestic context must be considered when analysing the differences in the penalties designed for the different DAC's, it is also necessary to emphasize that to guarantee a level playing field throughout the European internal market, the competent authorities must perform this analysis with a European perspective.

From the table below, we can clearly distinguish significant differences in the amounts of penalties set by different Member States. Particularly striking are the large differences in the amount of minimum penalties that may affect, to a greater or lesser extent, the effectiveness and efficiency of compliance with the rules of the DAC. Although there are significant differences in the maximum amount of sanctions applied, it is considered that this aspect would fall within the discretion of the Member States to make their compliance system stricter in the event of any non-compliance.

To correctly analyse the biggest differences between Member States' compliance measures in DAC2, it is important to bear in mind that some Member States fix these amounts in relation to the number of accounts or even concerning the data of these accounts. Differences of the penalties' calculation must be considered when assessing the differences between the minimum and maximum penalties established by Member States.

Under DAC4, large multinational enterprises with a total consolidated group revenue of more than EUR 750.000.000 are obliged to submit annual Country-by-Country (CbC) reports. The failure to comply with the domestic law transposing DAC4 can lead to minimum penalties as low as or even below EUR 1.000. This very low minimum amount of penalties does not provide

a great dissuasive effect on obliged subjects. In most cases, the cost of complying with this rule will exceed the amount of the minimum penalties.

The same arguments can be used to analyse the penalties provided for breaches of DAC6, where the highest minimum penalty does not exceed EUR 6.000. At the same time, a minimum amount of penalties below EUR 1.000 is widespread among Member States.

Table 10 – Overview of penalties in Member States.

MEMBER STATE	INFRINGEMENT OF REPORTING OBLIGATIONS UNDER RELEVANT DACS	PERSONAL SCOPE / SCOPE RATIONE MATERIAE OF INFRINGEMENTS COVERED BY PENALTIES	MINIMUM AMOUNT OF PENALTIES (IN EUR OR NATIONAL CURRENCY FOR NON-EA MEMBER STATE)	MAXIMUM AMOUNT OF PENALTIES (IN EUR OR NATIONAL CURRENCY FOR NON-EA MEMBER STATE)
		*The **scope rationae materiae** (i.e. the following 4 categories are covered in national law: 1) no reporting, 2) late reporting, 3) on purpose wrong reporting, 4) partial reporting and the respective fines for each category if differentiation is done in the fines for the different categories in national law. The different fines are then mentioned in column 4 and 5).* ***The personal scope**: if a differentiation in minimum and maximum penalties is made for individuals/natural persons and legal persons the penalties are mentioned also separately per type of person at the end of column 3 with the relevant penalties in column 4 and 5.* ***Indication, if relevant, whether the fines are foreseen per individual infringement** (e.g. the penalty applies every time when a single bank account was not reported) **or only cumulative for a number of detected infringements**. Rationale: to get an idea of the intensity of sanctioning/penalties. This is the info Benjamin is after. Pay careful attention to it whether you can detect this on the basis of national law or not.* -	*Minimum amount in EUR or for non-EA MS their national currency with EUR amount in brackets.*	*Maximum amount in EUR or for non-EA MS their national currency with EUR amount in brackets*
		-		
		-		
AT	DAC 2	- **Scope ratione materiae** Scenario 2: No differentiation in fines for different reporting categories - Infringement of reporting obligations under DAC 2 - **Personal scope** No differentiation between legal entities or natural persons for application of penalties is made - **Individual / Cumulative application:** Not explicit but it appears that penalties are applied per person and per infringement.	Not determined	Different fine amounts apply depending on whether the infringement is intentional or results from gross negligence Intentional: 200 000 EUR Gross negligence: 100 000 EUR
	DAC 4	• **Scope ratione materiae** Scenario 2: No differentiation in fines for different reporting categories - Infringement of reporting obligations under DAC 4 • **Personal scope:** Penalties apply to legal	Not determined	Different fine amounts apply depending on whether the infringement is intentional or results from gross-negligence Intentional failure to file, late filing or file inaccurate

		persons • **Individual / Cumulative application:** Not explicit but it seems that penalties are applied per person and per infringement.		information: 50 000 EUR Gross negligence failure to file, late filing or file inaccurate information: 25 000 EUR
	DAC 6	• **Scope ratione materiae** Scenario 2: No differentiation in fines for different reporting categories. • **Personal scope** No differentiation between legal entities or natural persons for application of penalties is made • **Individual / Cumulative application** Penalties are applied per person and per infringement. According to the Austrian Financial Criminal Act (FinStrG) and the Corporate Criminal Act (VbVG), more than one person could be fined for the same non/false/late-reporting case	Not determined	Different amounts apply depending on whether the infringement is intentional or results from gross-negligence Intentional non-reporting, false reporting or late reporting: up to 50 000 EUR Gross negligence non-reporting, false reporting or late reporting: up to 25 000 EUR
BE	DAC 2	**Scope ratione materiae** Non-communication of information Any other infringement If infringement with intention to commit fraud or harm If use of falsifications **Personal scope** No differentiation between legal entities or natural persons for application of penalties **Individual / Cumulative application** Penalties per individual infringement and person	 250 EUR 250 EUR	 1000 EUR per reportable account 2500 EUR 500 000 EUR or imprisonment up to 5 years 500 000 EUR or imprisonment up to 5 years
	DAC 4	**Scope ratione materiae** If non-communication, late communication or incomplete communication not committed in bad faith or committed without intention to commit fraud If the above committed in bad faith or with intention to commit fraud **Personal scope** Legal entities **Individual / Cumulative application** Penalties per individual infringement and person. The penalties increase gradually per repeated infringement according to a table	 1250 EUR 12 500 EUR	 25 000 EUR 25 000 EUR
	DAC 6	**Scope ratione materiae** Incomplete information, if given without intention to commit fraud Incomplete information, if given with intention to commit fraud Non-provision or late provision of information without intention to commit fraud Non-provision or late provision of information with intention to commit fraud **Personal scope** No differentiation between legal entities or natural persons for application of penalties **Individual / Cumulative application** Penalties per individual infringement and person.	 1250 EUR 2500 EUR 5000 EUR 12 500 EUR	 12 500 EUR 25 000 EUR 50 000 EUR 500 000 EUR
BG	DAC 2	**Scope ratione materiae** 1) Non-reporting of information or incorrect information 2) Opening a new account without adhering to	 Not determined Not determined	 EUR 130 per reportable account EUR 260 per reportable account for repeat violation

		the customer due diligence procedures 3) Not keeping the customer due diligence documentation 4) Not closing accounts after refusal by the account holder to provide self-certification or other information. Manipulating the IT system in order to hamper the aggregation of financial accounts of account holders 5) Account Holder providing misleading self-certification or other misleading information **Personal scope** The fine for providing misleading self-certification or other information (point 5 above) applies to account holders (mostly natural persons) All other fines (points 1-4 above) apply to Reporting Financial Institutions (legal persons) **Individual / Cumulative application** Penalties 1) and 2), i.e. for non-provision of information or incorrect information and for opening a new account without adhering to the customer due diligence procedures are per individual infringement and per each reportable account Penalties 3) and 4) i.e. for not keeping the customer due diligence documentation and for not closing accounts after refusal by the account holder to provide self-certification or other information or manipulating the IT system in order to hamper the aggregation of financial accounts of account holders are cumulatively applicable for the financial institution as a whole Penalty 5) for providing misleading self-certification or other misleading information is per individual infringement and per each reportable account of the same account holder	Not determined Not determined Not determined	EUR 500 per reportable account EUR 1000 EUR 1000 EUR 500 per reportable account (outside of criminal sanctions, if applicable)
	DAC 4	**Scope ratione materiae** 1) Non-reporting of information under CbCR 2) Incomplete or incorrect reporting under CbCR (applies also in case the ultimate parent company does not provide the necessary information) 3) Failure of the resident constituent entity to notify the tax administration that the ultimate parent entity refused to provide the information 3) Failure of the resident constituent entity to notify the tax administration whether it is an ultimate parent entity, a surrogate parent entity or a constituent entity **Personal scope** The fines apply to constituent entities, which	EUR 50 000 EUR 100 000 in repeat violations EUR 25 000 EUR 50 000 in repeat violations Fixed EUR 5000 Fixed EUR 7500 in repeat violations EUR 25 000 EUR 50 000 in repeat violations	EUR 100 000 EUR 150 000 in repeat violations EUR 75 000 EUR 125 000 in repeat violations Fixed EUR 5000 Fixed EUR 7500 in repeat violations EUR 75 000 EUR 100 000 in repeat violations

		are legal entities. **Individual / Cumulative application** Penalties are cumulatively applicable		
	DAC 6	**Scope ratione materiae** 1) Non-reporting on an arrangement by intermediary or by relevant taxpayer 2) Incomplete or incorrect reporting on an arrangement by intermediary or by relevant taxpayer 3) Intermediary using the legal professional privilege waiver and failing to notify other intermediaries or the relevant taxpayer 4) Intermediary using the legal professional privilege waiver and failing to notify the tax administration of the details of the other intermediaries or of the taxpayer 5) Intermediary failing to notify the unique ID of the arrangement to other intermediaries or the relevant taxpayer **Personal scope** The fines apply to both intermediaries and relevant taxpayers, both of which can be either a natural person or a legal entity **Individual / Cumulative application** All Penalties 1)-5) are applicable per (individual) infringement of the respective obligations.	EUR 1000 (for individuals) EUR 2000 (for individuals in repeat violations) EUR 2500 (for legal entities and sole traders) EUR 5000 (for legal entities and sole traders in repeat violations) EUR 500 (for individuals) EUR 1000 (for individuals in repeat violations) EUR 1000 (for legal entities and sole traders) EUR 2000 (for legal entities and sole traders in repeat violations) EUR 1000 (for individuals) EUR 2000 (for individuals in repeat violations) EUR 2500 (for legal entities and sole traders) EUR 5000 (for legal entities and sole traders in repeat violations) EUR 100 (for individuals) EUR 200 (for individuals in repeat violations) EUR 250 (for legal entities and sole traders) EUR 500 (for legal entities and sole traders in repeat violations)	EUR 2500 (for individuals) EUR 5000 (for individuals in repeat violations) EUR 5000 (for legal entities and sole traders) EUR 10000 (for legal entities and sole traders in repeat violations) EUR 1500 (for individuals) EUR 3000 (for individuals in repeat violations) EUR 4000 (for legal entities and sole traders) EUR 8000 (for legal entities and sole traders in repeat violations) EUR 2500 (for individuals) EUR 5000 (for individuals in repeat violations) EUR 5000 (for legal entities and sole traders) EUR 10000 (for legal entities and sole traders in repeat violations) EUR 400 (for individuals) EUR 800 (for individuals in repeat violations) EUR 750 (for legal entities and sole traders) EUR 1500 (for legal entities and sole traders in repeat violations) EUR 400 (for individuals) EUR 800 (for individuals in repeat violations) EUR 750 (for legal entities and sole traders) EUR 1500 (for legal entities and sole traders in repeat violations)

			EUR 100 (for individuals) EUR 200 (for individuals in repeat violations) EUR 250 (for legal entities and sole traders) EUR 500 (for legal entities and sole traders in repeat violations)	
CY	DAC 2	**Scope ratione materiae** 1) Circumvention of any reporting, due diligence or self-certification obligation. 2) Not keeping the records and underlying documents for the customer due diligence procedure 3) Failure to provide access to any records and underlying documents for the customer due diligence procedure **Personal scope** The fines apply to Reporting Financial Institutions (legal persons). When the fine under 1) above applies for circumvention of self-certification, it will apply to Account Holders (mostly natural persons) **Individual / Cumulative application** The legislative text is inconclusive. On balance, it is rather that penalties are cumulatively applicable.	Not determined Not determined Not determined	EUR 2000 EUR 20 000 in case of refusal to pay EUR 1500 EUR 20 000 in case of refusal to pay EUR 500
	DAC 4	**Scope ratione materiae** 1) Failure or refusal by the Reporting Entity to submit the CbCR 2) Failure by the Constituent Entity to notify the tax administration that the Ultimate Parent Entity has not provided the necessary information 3) Failure to keep the underlying documents for the CbC Report 4) Failure to provide further information for the purposes of checking its correctness and completeness in the context of CbCR obligations **Personal scope** Constituent entities and reporting entities can only be legal persons **Individual / Cumulative application** Penalties are cumulatively applicable.	Not determined Not determined Not determined Not determined	EUR 10 000 EUR 20 000 in case of refusal to pay EUR 5000 EUR 20 000 in case of refusal to pay EUR 1500 EUR 20 000 in case of refusal to pay EUR 500 EUR 20 000 in case of refusal to pay

	DAC 6	**Scope ratione materiae** 1) Failure by the intermediary or the relevant taxpayer to report a cross-border arrangement 2) Late reporting (<90 days overdue) 3) Late reporting (>90 days overdue) 4) In case of using the legal professional privilege waiver, failure to notify other intermediaries or the relevant taxpayer 5) Late notification of other intermediaries or the relevant taxpayer (<90 days overdue) 6) Late notification of other intermediaries or the relevant taxpayer (>90 days overdue) **Personal scope** Any natural person or any legal entity that has an obligation to report or notify **Individual / Cumulative application** Penalties are applicable per (individual) infringement or late fulfilment of the abovementioned obligations	EUR 10 000 EUR 1000 EUR 5000 EUR 10 000 EUR 1000 EUR 5000	EUR 20 000 EUR 5000 EUR 20 000 EUR 20 000 EUR 5000 EUR 20 000
CZ	DAC 2			
	DAC 4	1. Not providing notification (= no reporting): penalty up to CZK 500,000 = general penalties 2. Not filing or incorrect filing (= wrong reporting): penalty up to CZK 1.5 million = 57.000 EUR By any reporting entity	No minimum amount	1. penalty up to CZK 500,000 (EUR 20,000) = general penalties (no specific penalties for DAC4) 2. penalty up to CZK 1.5 million (EUR 60.000) = general penalties (no specific penalties for DAC4)
	DAC 6	All infractions (absence of reporting, late reporting, wrong reporting) By any intermediary (natural/legal)	No minimum amount	Up to CZK 500,000 (EUR 20,000] = general penalties (no specific penalties for DAC6)
DE	DAC 2	• **Scope ratione materiae** Scenario 2: No differentiation in fines for different reporting categories. • **Personal scope:** Natural persons / legal persons • **Individual / Cumulative application:** Penalties are applied per person and per infringement.	Not determined	Up to 50 000 EUR
	DAC 4	• **Scope ratione materiae**	Not determined	Up to 10 000 EUR

		Scenario 2: No differentiation in fines for different reporting categories. • **Personal scope** Fines for infringement to DAC4 only refers to legal persons • **Individual/Cumulative application:** Penalties are applied per person and per infringement		
	DAC 6	• **Scope ratione materiae** Scenario 2: No differentiation in fines for different reporting categories. Incomplete, late or non-filing of a cross-border arrangement • **Personal scope** natural persons / legal persons "379 Abs. 2 Nr. 1e bis 1g AO « An administrative offence shall be deemed to be committed *by any person* who intentionally or recklessly (…)" • **Individual/Cumulative application** Penalties are applicable per individual infringement of obligations under DAC6	Not determined	Up to 25 000 EUR Sanctions may be reduced or avoided if the responsible intermediary or user can provide evidence that she/he has implemented procedures to comply with DAC 6 reporting obligations. During the retrospective period (25 June 2018 to 1 July 2020) no penalties apply
DK	DAC 2	No reporting, late reporting, on purpose wrong reporting and partial reporting are all explicitly mentioned as punishable. No difference is made between legal and natural persons for the purpose of application of penalties. The law does not say whether the penalties are per individual infringement or for cumulative infringements.	No minimum	No maximum
	DAC 4	No reporting, late reporting, on purpose wrong reporting and partial reporting are all explicitly mentioned as punishable. No difference is made between legal and natural persons for the purpose of application of penalties. The law does not say whether the penalties are per individual infringement or for cumulative infringements.	No minimum	No maximum
	DAC 6	No reporting, late reporting, on purpose wrong reporting and partial reporting are all explicitly mentioned as punishable. The fines are based on the financial circumstances of the perpetrator, in case he is a natural person. In the case of companies the fines are based on the net turnover of the company. The law does not say whether the penalties are per individual infringement or for cumulative infringements.	No minimum	No maximum
EE	DAC 2	**Scope ratione materiae** Any violation of reporting, self-certification or notification obligation **Personal scope** Any natural person or any legal entity that has reporting, self-certification or notification obligation **Individual / Cumulative application** Penalties are cumulatively applicable	Not determined	EUR 1300 (first violation) EUR 2000 (second violation) EUR 3300 (3+ violations)
	DAC 4	**Scope ratione materiae** Any violation of reporting or notification obligation	Not determined	EUR 1300 (first violation) EUR 2000 (second

		Personal scope Any legal entity that has reporting or notification obligation **Individual / Cumulative application** Penalties are cumulatively applicable		violation) EUR 3300 (3+ violations)
	DAC 6	**Scope ratione materiae** Any violation of reporting or notification obligation **Personal scope** Any natural person or any legal entity that has reporting or notification obligation **Individual / Cumulative application** Penalties are cumulatively applicable	Not determined	EUR 1300 (first violation) EUR 2000 (second violation) EUR 3300 (3+ violations)
EL	DAC 2	Art. 54c of the Greek Code of Tax Procedures - sanctions on the financial institutions (no personal distinctions) for: a) Late reporting of information on each reportable account. b) A failure to report information on each reportable account. c) A filing of inaccurate or incomplete information on each reportable account. d) A failure to respond to a request from the Tax Administration either to provide information or data or to complete or correct information or data relating to each reportable account within the time limit. e) Each failure to cooperate during the audit to comply with the rules on reporting and due diligence. f) Each failure to comply with the obligations to submit information on each reportable account in accordance with the reporting and due diligence rules within the time limit following a tax audit.	a) EUR 100 per reportable account b) EUR 300 per reportable account c) EUR 300 per reportable account d) EUR 1,000 per reportable account e) EUR 2,500 f) EUR 5,000. If the Reporting Greek Financial Institutions voluntarily and within a period of 3 months, starting from the expiration of the deadline for submitting such information to the competent Tax Administration Service, correctly amend or complete the information on each reportable account covering the cases provided under a), b), c), they shall be treated as not having committed a violation and no fine shall be imposed. If the Reporting Greek Financial	a) as minimum (fixed) b) as minimum (fixed) c) as minimum (fixed) d) as minimum (fixed) e) as minimum (fixed) f) as minimum (fixed) If the Greek Reporting Financial Institutions commit the same infringement within five years from the discovery of the first infringement, the aforesaid penalties (provided under a)-f)) shall be doubled. In case the same infringement is repeated, for each subsequent infringement the said penalties shall be quadrupled.

			Institutions - following an audit or upon notification of the competent foreign authority- correctly amend or complete the information for each reportable account concerning the cases provided under a), b), c), within the deadline, the corresponding fines shall be halved, but only if the infringement is related to the years 2017 and 2018.	
	DAC 4	Art. 56A of L. 4174/2013 (Greek Code of Tax Procedures) - sanctions for CbC reporting (no personal distinctions): A) A filing of an inaccurate report or a belated filing of the report. B) A failure to submit a country report.	A) EUR 10,000 B) EUR 20,000	A) as the minimum (fixed) B) as the minimum (fixed)
	DAC 6	Art. 56A of L. 4174/2013 (Greek Code of Tax Procedures) - sanctions for MDR violation (no personal distinctions): A) A failure to report information regarding a reportable cross-border arrangement. B) A filing of inaccurate or incomplete information in respect of a reportable cross-border arrangement. C) Late reporting regarding a reportable cross-border arrangement. Specific sanction on intermediaries: - If the intermediary fails to notify another intermediary or the taxpayer for the duty of filing information	A) EUR 10,000 B) EUR 5,000 C) EUR 500 per month of delay up to three months. Once the three month-period expires, a penalty is EUR 5,000 per reportable cross-border arrangement. EUR 10,000	A) The sum of penalties shall not exceed the amount of EUR 100,000 per tax audit for each reportable cross-border arrangement. B) The sum of penalties shall not exceed the amount of EUR 50,000 per tax audit for each reportable cross-border arrangement. C) The sum of penalties shall not exceed the amount of EUR 10,000 per year for each reportable cross-border arrangement. EUR 100,000 per tax audit for each reportable cross-border arrangement
ES	DAC 2	Infractions by the financial institutions	Sanctions are per single infringement	

	1. No reporting (LGT 198.1) 2. Late reporting (LGT 198.2) 3. Wrong reporting (LGT 199.4 y 5) 4. No identification of the residence of the account holder (LGT AD 22.3) Infractions by account holders 1. Wrong reporting to the financial institution (LGT AD 22.3)	and calculated per missing/erroneous/fake data in the same infringement Infraction by financial institutions 1. 20€ per data per person, minimum 300€ 2. 10€ per data per person, minimum 150€ 3. Non-monetary magnitude: 200€ per data per person; monetary magnitude: 0,5% magnitude, minimum €500 4. 200€ per person Infractions by account holder 1. 300€	Infractions by the financial institutions 1. 20 000€ 2. 10 000€ 3. Non-monetary magnitude: 200€ per data per person; monetary magnitude: 2% magnitude 4. 200€ per person Infractions by account holder 1. 300€
DAC 4	Infractions by reporting entity 1. No reporting (LGT 198.1) 2. Late reporting (LGT 198.2) 3. Wrong reporting (LGT 199.4 y 5)	Sanctions are per single infringement and calculated per missing/erroneous/fake data in the same infringement Infraction by reporting entity 1. 20€ per data per person, minimum 300€ 2. 10€ per data per person, minimum 150€ 3. Non-monetary magnitude	Infraction by reporting entity 1. 20 000€ 2. 10 000€ 3. Non-monetary magnitude: 200€ per data per person; monetary magnitude: 2% magnitude

			: 200€ per data per person; monetary magnitude : 0,5% magnitude , minimum €500	
	DAC 6	Infractions by intermediary or relevant taxpayer 1. No reporting (LGT AD 23.4 a) 2. Late reporting (LGT AD 23.4 a) 3. Wrong reporting (LGT AD 23.4 B) 4. Non-reporting by electronic means (LGT AD 23.4 c) 5. Non-communication to other intermediaries or taxpayers of the submission of the declaration (LGT AD 24.3 b) Infractions by intermediaries 1. Non-communication of professional waiver (LGT AD 24.3 a)	Sanctions are per single infringement and calculated per missing/erroneous/ fake data in the same infringement Infractions by intermediary or relevant taxpayer 1. 2 000€ per data, minimum 4 000€ 2. 1 000€ per data, minimum 2 000€ 3. 2 000€ per data, minimum 4 000€ 4. 250€ per data, minimum 750€ 5. 600€ (If as result there is no declaration, see above 1) Infractions by intermediaries 1. 600€	Infractions by intermediary or relevant taxpayer 1. The highest of professional fee or 4 000€ 2. Half of the highest of professional fee or 4 000€ 3. The highest of professional fee or 4 000€ 4. 1 500€ 5. 600€ (If as result there is no declaration, see above 1) Infractions by intermediaries 1. 600€
FI	DAC 2	<u>Non-compliance/negligence penalty</u>: Material scope: failure to report, late reporting, false/inaccurate reporting, failure to correct errors despite explicit request, report/information provided in a manner other than prescribed by law or Tax Administration. Personal scope: Financial institutions (liable to report under Directive 2011/16/EU as amended by DAC2 [Directive (EU) 2015/2376]). The legislation does not explicitly indicate if the penalty applies per individual / cumulative infringements (however, there is no reason to expect that it could not be enforced breach-by-breach).	EUR 2.000 (not a deductible expense for tax purposes + interest and charges in case of late payment)	EUR 15.000 (not a deductible expense for tax purposes + interest and charges in case of late payment)

	DAC 4	Non-compliance/negligence penalty: Material scope: failure to report, late reporting, false/inaccurate reporting, failure to correct errors despite explicit request, report/information provided in a manner other than prescribed by law or Tax Administration. Personal scope: Reporting entities (as defined in Directive 2011/16/EU as amended by DAC4 [Directive (EU) 2016/881]) The legislation does not explicitly indicate if the penalty applies per individual / cumulative infringements (this however suggest that there is no reason to expect that it could not be enforced breach-by-breach). Tax increase (in addition to the above penalty): Material scope: the issuer of the declaration or the country-by-country report has failed to fulfil its obligation within the prescribed time limit or has fulfilled it as materially incomplete or incorrect. Tax increase shall not be imposed if the non-compliance is minor or where there is a valid reason for it or if, the matter is open to interpretation or ambiguous and imposition of the tax increase would therefore be disproportionate. Personal scope: Reporting entities (as defined in Directive 2011/16/EU as amended by DAC4 [Directive (EU) 2016/881]) The legislation does not explicitly indicate if the tax increase applies per individual / cumulative infringements. This however suggest that there is no reason to expect that it could not be enforced breach-by-breach, notably because repeat offenses are taken into account in determining minimum amount of tax increase.	EUR 2.000 (not a deductible expense for tax purposes + interest and charges in case of late payment) (0.5% - 3%) commonly 2% of the increased income depending on gravity of offense/negligence, whether it is repeated and on whose initiative correction is made.	EUR 15.000 (not a deductible expense for tax purposes + interest and charges in case of late payment) 10% of the increased income, capped at EUR 25.000.
	DAC 6	Non-compliance/negligence penalty: Material scope: failure to report, late reporting, false/inaccurate reporting, failure to correct errors despite explicit request, report/information provided in a manner other than prescribed by law or Tax Administration. Personal scope: Intermediaries (advisers); relevant taxpayers (users of the reportable arrangements) The legislation does not explicitly indicate if the penalty applies per individual / cumulative infringements (this however suggest that there is no reason to expect that it could not be enforced breach-by-breach). Tax increase (in addition to the above penalty): Material scope: failure to report, late reporting, false/inaccurate reporting, failure to correct errors despite explicit request, report/information provided in a manner other than prescribed by law or Tax Administration. Tax increase shall not be imposed if the non-compliance is minor or where there is a valid reason for it or if, the matter is open to interpretation or ambiguous and imposition of the tax increase would therefore be disproportionate. Personal scope: Relevant taxpayers (end users of the reportable arrangements) The legislation does not explicitly indicate if the tax increase applies per individual / cumulative infringements. This however suggest that there is no reason to expect that it could not be enforced breach-by-breach, notably because repeat offenses are taken into account in determining minimum amount of tax increase.	EUR 2.000 (not a deductible expense for tax purposes + interest and charges in case of late payment) (0.5% - 3%) commonly 2% of the increased income depending on gravity of offense/negligence, whether it is repeated and on whose initiative correction is made.	EUR 15.000 (not a deductible expense for tax purposes + interest and charges in case of late payment) 10% of the increased income, capped at EUR 25.000.

FR	DAC 2	• Scope ratione materiae (article 1649 AC of Code général des impôts) Failure to report / Late Reporting / Omitted or Erroneous information - Failure to report / Late report - Omitted information / Erroneous information • Personal scope: Financial institutions Penalties are not applicable to financial institutions if they can prove that the infringement results from the client's refusal to provide the requested information. Financial institutions should inform the tax administration about such refusal. • Individual / Cumulative Sanctions are cumulative and applicable per reportable account		- EUR 150 - EUR 200
	DAC 4	• Scope ratione materiae 1. Not filing CbC report (no reporting) 2. Wrong or late reporting • Personal scope: By any reporting entity falling into the scope • Individual / Cumulative: National legislation only mentions that penalties are applicable per each declaration/per each fiscal year.	No minimum amount	1. penalty Up to EUR 100,000 2. no penalty
	DAC 6	• Scope ratione materiae All infractions (absence of reporting, late reporting, wrong reporting) • Personal scope By any intermediary (natural/legal) • Individual / Cumulative For the same intermediary /taxpayer, penalties are cumulatively applicable within the limit of EUR 100,000 per calendar year.	No minimum amount	Up to EUR 10,000 by infraction. The amount of the fine cannot exceed EUR 5,000 for the first offense in the current calendar year and in the three preceding years.
HR	DAC 2	• Rationae personae: a legal person Rationae materiae: Penalties are applied to a legal person if it fails to comply with the obligations as transposed into Croatian law from DAC2 (does not collect the info that is subject to the reporting requirements, does not provide for in depth analysis, does not provide info to the competent authority with regard to reportable accounts, does not provide info in a timely manner,...). • Rationae personae: penalty is provided also for the responsible person (individual) in the financial institution, which is in breach of the above Nothing is stated in the Croation legislation as to the application of penalties per individual infringement or cumulative for a number of infringements. When reading the legislation I would tend to think it is a cumulative penalty (and then depending on the severity, number of inf. adjusted accordingly).	From HRK 2000 (EUR 266) HRK 2000 (EUR 266)	TO HRK 200.000 (EUR26.638) To HRK 20.000
	DAC 4	Rationae personae: • Penalty for a legal person Rationae materiae: Penalties are applied to a legal person if it fails to comply with the obligations as transposed from DAC4 into the Croatian law. Nothing is stated in the Croatian legislation as to	From HRK 2000 (EUR 266)	To HRK 200.000 (EUR26.638)

		individual or cumulative application of penalties. When reading the legislation I would tend to think it is a cumulative penalty (and then depending on the severity, number of inf. adjusted accordingly).		
	DAC 6	Material scope: Penalties are applied when failure to comply with the obligations as transposed from DAC6 Personal scope: • Penalty for a legal person • Penalty for a responsible person (individual) in the legal entity • Penalty for a natural person Nothing is stated in the Croatian legislation as to individual or cumulative application of penalties. When reading the legislation I would tend to think it is a cumulative penalty (and then depending on the severity, number of inf. adjusted accordingly). But this I understand to be enforced within a certain time frame, and then can be of course repeated.	From HRK 2000 (EUR 266) 2000 (EUR 266) HRK 1000 (EUR 133)	To HRK 200.000 (EUR26.638) To HRK 20.000 HRK 100.000 (EUR 13.300)
HU	DAC 2	**Scope ratione materiae** Failure of the Financial Institution to notify its status as a financial institution to the tax authority; failure of the financial institution to report **Personal scope** Only Reporting Financial Institutions, which are legal persons is their vast majority. No fines are present in the notified legislation for failure by the account holder or the Passive Non-Financial Entity to provide valid self-certifications. **Individual / Cumulative application** Penalties are cumulatively applicable	Not determined	EUR 5450
	DAC 4	**Scope ratione materiae** Failure to submit the CbC Report; failure to notify the tax administration of the designation of the reporting entity of the MNE Group **Personal scope** Constituent entities and reporting entities can only be legal persons **Individual / Cumulative application** Penalties are cumulatively applicable	Not determined	EUR 54.500
	DAC 6	**Scope ratione materiae** Failure to report; failure to notify other intermediaries or the relevant taxpayer; late, incorrect, false or incomplete reporting. **Personal scope** Any natural person or any legal entity that has an obligation to report or notify **Individual / Cumulative application** Penalties are cumulatively applicable	Not determined	EUR 1360 + invitation to comply EUR 13600 in case of no compliance after the invitation to comply
IE	DAC 2	No reporting, wrong reporting and partial reporting are explicitly mentioned as punishable. What is punishable also is the "failure to comply with any of the obligations" concerning the provision of	Fixed penalty for failure to fulfil an obligation under DAC2 is EUR 19,045,	Fixed penalty for failure to fulfil an obligation under DAC2 is EUR 19,045, plus EUR 2,535 for each day

		information. This would appear to cover also late reporting and on purpose wrong reporting. No difference is made between legal and natural persons for the purpose of application of penalties. The law does not say whether the penalties are per individual infringement or for cumulative infringements.	plus EUR 2,535 for each day the failure continues.	the failure continues.
	DAC 4	No reporting, late reporting, wrong reporting and partial reporting are covered. No distinction is made between on purpose wrong reporting and wrong reporting. No difference is made between legal and natural persons for the purpose of application of penalties. The law does not say whether the penalties are per individual infringement or for cumulative infringements.	Fixed penalty for failure to file a CbC Report / Equivalent CbC Report is EUR 19,045, plus EUR 2,535 for each day the failure continues. The penalty for filing an incomplete or incorrect CbC Report / Equivalent CbC Report is EUR 19,045.	Fixed penalty for failure to file a CbC Report / Equivalent CbC Report is EUR 19,045, plus EUR 2,535 for each day the failure continues. The penalty for filing an incomplete or incorrect CbC Report / Equivalent CbC Report is EUR 19,045.
	DAC 6	No reporting, late reporting, on purpose wrong reporting and partial reporting are not explicitly mentioned as punishable. What is punishable is the "failure to comply with any of the obligations" concerning the provision of information. This would appear to cover no reporting, late reporting, on purpose wrong reporting and partial reporting. No difference is made between legal and natural persons for the purpose of application of penalties. The law does not say whether the penalties are per individual infringement or for cumulative infringements.	No minimum for the initial breach of obligations.	The penalties are EUR 4.000/5.000 for the initial breach of obligations and EUR 100/500 per day as long as the breach continues after the initial penalty (PS: it would seem a good idea that DAC8 would introduce per diem penalties as well).
IT	DAC Art. 9 as implemented by Article 9 of Law n.95/2015 (FATCA)	Material: Violations (omission, incomplete, false) of reporting obligations. Personal: financial intermediaries (Article 10,1 of Legislative Decree n. 471/1997) Individual/cumulative application: the Italian legislation does not provide details on whether penalties apply per individual infringement or cumulative for a number of breaches together.	From 2,000 EUR	21,000 EUR
	DAC 4 as implemented by Article 145 of Law 208/2015	Material: Violations (omission, incomplete and false) reporting obligations Personal: the controlling company of the MNE in Italy Individual/cumulative application: the Italian legislation does not provide details on whether penalties apply per individual infringement or cumulative for a number of breaches together.	From 10,000 EUR	50,000 EUR
	DAC 6 as implemented by Article 12 of Legislative Decree. n. 100/2020	Material scope: 1. Failure to report 2. Incomplete reporting (with a reduction to 50% if the reporting of the cross-border arrangement is filed within 15 days of the deadline) 3. Multiple violations (Article 12 of Legislative Decree no. 472/1997) the sanction to be imposed for the most serious infringement is increased by between 4. In case of Voluntary amendment, a reduction is provided for. Personal scope: by intermediary or taxpayer. Where the intermediary is a company or entity with legal personality, the penalties are imposed on the legal entity, itself. If the infringement is made by an entity without legal personality, the penalties are imposed on the individual who is required to report. That	1. From 3,000 EUR 2. From 1,000 EUR 3. Heavier sanction increased of a quarter 4. Not defined	1. 31,5000 EUR 2. 10,500 EUR 3. Heavier sanction increased of double 4. Not defined

		person is the individual in charge of the professional engagement relating to the reportable cross-border arrangement. Individual/cumulative application: the Italian legislation does not provide details on whether penalties apply per individual infringement or cumulative for a number of breaches together.		
LT	DAC 2	**Scope ratione materiae** Failure to provide information or provision of incorrect information to the financial institutions Late submission of information to the tax authorities by the financial institution Failure to provide information to the tax authorities by the financial institution **Personal scope** No differentiation between legal entities or natural persons for application of penalties, except the above penalties for financial institutions (legal entities) **Individual / Cumulative application** Penalties per individual infringement and person	500 EUR 390 EUR 780 EUR	2400 EUR 730 EUR 1950 EUR
	DAC 4	**Scope ratione materiae** Failure to provide information, provision of late or incorrect information If the above violations committed with intention to avoid taxes **Personal scope** The wording of the article is general, without differentiation between legal entities or natural persons for application of these penalties, but in practice it applies only to legal persons **Individual / Cumulative application** Penalties per individual infringement and person.	Warning or 200 EUR 200 EUR	300 EUR 6000 EUR
	DAC 6	**Scope ratione materiae** Failure to provide information, provision of late or incorrect information If the above violations committed repeatedly **Personal scope** No differentiation between legal entities or natural persons for application of penalties **Individual / Cumulative application** Penalties per individual infringement and person.	1820 EUR 3770 EUR	5590 EUR 6000 EUR
LU	DAC 2	• **Scope ratione materiae** From 01/01/2016 to 31/12/2020 - article 3 here - Omitting to file the required report or if it files a late, incomplete or inaccurate report - Omitting to comply with due diligence rules or to introduce procedures in view of reporting After 01/01/2021 - here - Failure to submit a file within the legal deadline - Omitting to file the required report or if it files a late, incomplete or inaccurate report • **Personal scope:** Financial institutions • **Individual / Cumulative:** Not explicit - it appears applicable per infringement / per person	From 01/01/2016 to 31/12/2020 EUR 1 500 From 01/01/2021 No minimum amount	From 01/01/2016 to 31/12/2020 Up to 0,5 % of the amount that should have been reported Up to EUR 250,000. From 01/01/2021 10 000 EUR Up to 250 000 EUR + 0,5 % of the amount that should have been reported

	DAC 4	• **Scope ratione materiae** All infractions (absence of reporting, late reporting, wrong reporting) • **Personal scope:** By any reporting entity • **Individual / Cumulative:** Not explicit in the national legislation, it appears applicable per infringement / per person	No minimum amount	Maximum of EUR 250,000 by infraction. No cumulative maximum in case of multiple infractions
	DAC 6	• **Scope ratione materiae** All infractions (absence of reporting, late reporting, wrong reporting) • **Personal scope:** By any intermediary (natural/legal) • **Individual / Cumulative:** Not explicit in the national legislation – it appears applicable per infringement / per person	No minimum amount	Maximum of EUR 250,000 by infraction. Legislative work states that the level of the penalty imposed will depend on the facts and circumstances of the case (i.e. Intentional breach, page 26 here).
LV	DAC 2	**Scope ratione materiae** Violation of reporting obligations by reporting entity **Personal scope** Financial establishments **Individual / Cumulative application** Unclear, but seems that the penalty is applied per individual infringement and person		Fine of up to 1% of annual turnover, but not exceeding 14 000 EUR
	DAC 4	**Scope ratione materiae** Violation of reporting obligations by reporting entity **Personal scope** Legal entities **Individual / Cumulative application** Penalties per individual infringement and person		Fine up to 3200 EUR
	DAC 6	**Scope ratione materiae** Violation of reporting obligations by reporting person or entity **Personal scope** No differentiation between legal entities or natural persons for application of penalties **Individual / Cumulative application** Penalties per individual infringement and person		Fine up to 3200 EUR
MT	DAC 2	Personal scope: Financial Institution (FI) only Material scope: 1) non-submission, inaccurate submission: 2) a) a failure to report in a complete and accurate manner: if minor error 2) b) If continual and repeated administrative or minor errors then they will be considered as non-compliance 3) significant non-compliance (e.g. repeated failure to file a return or repeated late filing, ongoing or repeated failure to register, supply accurate information or established appropriate governance or due diligence processes, the	1) EUR 2500 and EUR 100 for every day during which the default existed, provided that this penalty shall not exceed in total EUR 20000 2)a) EUR 200 and EUR 50 for every day during which the default existed, provided that this penalty shall not exceed in total EUR 5000	Max EUR 20.000 Max EUR 5.000 Max 50.000

	intentional provision of substantially incorrect information, the deliberate or negligent omission of required information The way legislation is drafted I would conclude it is a cumulative penalty (e.g. having a special provision for significant non-compliance- repeated failure to file a return).	2)b) as under 1) 3) EUR 50.000	
DAC 4	Personal scope: <u>Maltese constituent entity only</u> Material scope: Failure to comply with any of the obligations under DAC4: A) failure to retain documentation and information collected when meeting its reporting obligations B) failure to report within deadline C) incomplete or inaccurate reporting: • If minor errors • If significant non-compliance D) when not complying with a request for information by the Maltese tax administration Recent amendments (Legal Notice 213/2021), which were not part of the NIM added additional penalties for failure to submit a notification letter in accordance with Maltese rules implementing CbC Reporting: • failure to notify the identity and tax residence of the reporting entity obliged to file CbC report • Failure to notify if it is the Ultimate Parent Entity of the Surrogate Parent Entity or the Constituent Entity The way legislation is drafted I would conclude it is a cumulative penalty (e.g. having a special provision for significant non-compliance).	EUR 2.500 EUR 200 and EUR 100 for every day during which the default existed, up to a max. of EUR 20.000 EUR 200 and EUR 50 per day during which the default existed, but up to max EUR 5000 EUR 50.000 EUR 1000 and EUR 100 for every day during which default existed but up to EUR 30.000 EUR 200 and EUR 50 for every day during which the default existed, up to a maximum of EUR 5.000	EUR 20.000 EUR 5000 EUR 50.000 EUR 30.000 Max EUR 5000
DAC 6	Personal scope: <u>an intermediary or a relevant taxpayer</u> (this can be either natural or legal person) Material scope: failure to comply with their obligations under the mandatory automatic exchange of information regime in relation to cross-border arrangements: Different levels of penalties are applicable with respect to the below failures: • failure to collect and retain documentation for a period of five years; • failure to report information on a timely basis	• penalty of EUR 2,500 • a penalty of EUR 200; and EUR 100 for every day during which the default existed: provided that this penalty	Max EUR 20 000

		• failure to report information in a complete and accurate manner; • failure to comply with a request made by the Maltese tax authorities Not stated whether individual or cumulative nature of penalty.	shall not exceed in total EUR 20,000. • EUR 200 and EUR 100 for every day during which the default existed: provided that this penalty shall not exceed in total EUR 20,000. • EUR 1,000 and EUR 100 for every day during which the default existed, provided that this penalty shall not exceed in total EUR 30,000.	Ib Max EUR 30.000
NL	DAC 2	No reporting, late reporting, on purpose wrong reporting and partial reporting are all explicitly mentioned as punishable. No difference is made between legal and natural persons for the purpose of application of penalties The fine must be proportionate to the seriousness of the offence. The law does not say whether the penalties are per individual infringement or for cumulative infringements.	No minimum	Maximum EUR 21.750
	DAC 4	No reporting, late reporting, on purpose wrong reporting and partial reporting are all explicitly mentioned as punishable. No difference is made between legal and natural persons for the purpose of application of penalties The fine must be proportionate to the seriousness of the offence. The law does not say whether the penalties are per individual infringement or for cumulative infringements.	No minimum	Maximum EUR 870.000
	DAC 6	No reporting, late reporting, on purpose wrong reporting and partial reporting are all explicitly mentioned as punishable. No difference is made between legal and natural persons for the purpose of application of penalties The fine must be proportionate to the seriousness of the offence. The law does not say whether the penalties are per individual infringement or for cumulative infringements.	No minimum	Maximum EUR 870.000
PL	DAC 2	Incorrectness of reporting by the obliged financial institution: • no strict differentiation between various types of incorrectness, but • the gravity of incorrectness should be considered in determination of the penalty	No minimum amount	Administrative penalty up to PLN 1,000,000 (EUR 217,850)
	DAC 4	Incorrectness of reporting by the obliged taxpayer: • no strict differentiation between various types of incorrectness, but	No minimum amount	Administrative penalty up to PLN 1,000,000 (EUR 217,850)

		• the gravity of incorrectness should be considered in determination of the penalty		
	DAC 6	Two types of incorrectness: 1) "Qualified form" for promotors (advisers) of the schemes who have more than PLN 8,000,000 revenue from tax advisory services (EUR 1,740,000) - who are obliged to establish internal procedure ensuring correct implementation of MDR and failed to do so, 2) Any other incorrectness in reporting (no personal distinctions)	No minimum amount No minimum penalty (but see calculation of daily rates)	1) Administrative penalty up to PLN 2,000,000 (EUR 435,000) The maximum amount may be increased to PLN 10,000,000 (EUR 2,175,000) if the employee was sentenced in a tax criminal case for promoting tax fraud (evasion) 2) Criminal penalty - fine up to 720 daily rates (1 rate shall be in the brackets: from 1/30 average wages to 400x average brackets) - The average salary in 2021 is PLN 5800 (EUR 1,300).
PT	DAC 2	Infractions by the financial institutions 1. No reporting 2. Late reporting 3. Wrong reporting 4. Non-compliance with due diligence procedures	Sanctions are per single infringement Infractions by the financial institutions 1. 1 000€ 2. 1 000€ 3. 500€ 4. 500€	Infractions by the financial institutions 1. 45 000€ 2. 45 000€ 3. 22 500€ 4. 22 500€
	DAC 4	Infractions by the reporting entity 1. No reporting 2. Late reporting	Sanctions are per single infringement Infractions by reporting entity 1. 500€ 2. 500€	Infractions by reporting entity 1. 500€+additional 5% for each day of delay 2. 500€+additional 5% for each day of delay
	DAC 6	Infractions by intermediary or relevant taxpayer 1. No reporting 2. Late reporting 3. Wrong reporting 4. No reply to request of additional information	Sanctions are per single infringement Infractions by intermediary or relevant taxpayer 1. 6 000€ 2. 6 000€ 3. 2 000€ 4. 3 000€	Infractions by intermediary or relevant taxpayer 1. 80 000€ 2. 80 000€ 3. 60 000€

		5. Late reply to request of additional information	5. 3 000€	4. 80 000€ 5. 80 000€
RO	DAC 2	The non-transmission, by the Financial Institutions, at the deadline provided by law, of the information related to the non-resident taxpayers or the transmission of incorrect or incomplete information	RON 500 for legal entities classified in the category of medium and large taxpayers RON 1 000	RON 1 000 for legal entities classified in the category of medium and large taxpayers RON 5 000
	DAC 4	1) The late submission by the reporting entities of the report for each country or the transmission of incorrect or incomplete information 2) The failure of the reporting entities to submit the report for each country	1) RON 30 000 2) RON 70 000	1) RON 50 000 2) RON 100 000
	DAC 6	1) Non-reporting or late reporting by the relevant intermediaries or taxpayers, as the case may be, of the cross-border arrangements subject to reporting 2) Failure of the intermediary to comply with the obligation to notify another intermediary or the relevant taxpayer	1) RON 20 000 2) RON 5 000	1) RON 100 000 3) RON 30 000
SE	DAC 2	<u>Documentation fee/penalty</u> Material scope: failure to collect and keep documents, data and other documentation relating to a financial account (in the manner specified in the law 2015:911 on the identification of reportable accounts in the event of automatic exchange of financial account information) Personal scope: Financial institutions (liable to report under DAC2) The legislation explicitly indicates that the fee/penalty applies per each account in respect of which a breach is committed. <u>Penal code sanctions</u> Material scope: false / inaccurate reporting. NB! Under ordinance (2015:921) a certification for identification of reportable accounts shall be made on honour. Provision of false information (on honour and when it undermines evidence) is sanctioned in the penal code 1962:700 by a fine or imprisonment (unlikely to be applied in this context save in very exceptional situations). Personal scope: Financial institutions (liable to report under DAC2) and their representatives in charge (individuals). Legislation does not explicitly indicate if these penalties apply per individual / cumulative infringements.	SEK 7.500 (EUR 731) SEK 5.000 (EUR 487) legal persons Fines for individuals depend on income level (unspecified).	SEK 7.500 (EUR 731) SEK 10.000.000 (EUR 975.000) legal persons Fines for individuals depend on income level (unspecified). Individuals also risk (in theory) imprisonment up to 2 years.
	DAC 4	<u>Injunction with fixed/periodic penalty</u> Material scope: Failure to report. Injunctions and, fixed or periodic penalties attached to them, shall apply if a country-by-country report is not submitted. Personal scope: Reporting entities (as defined in Directive 2011/16/EU as amended by DAC4 [Directive (EU) 2016/881]). The legislation does not explicitly indicate if the fixed penalty applies per individual / cumulative infringements. However, there is no reason to expect that it could not be enforced breach-by-breach. Moreover, repeat offenses can be taken into account in determining the amount of the penalty or to	Unspecified. The fixed/periodic penalty shall be set at an amount which, in view of addressee's economic situation and other circumstances, is likely to induce compliance with the injunction.	Unspecified. The fixed/periodic penalty shall be set at an amount which, in view of addressee's economic situation and other circumstances, is likely to induce compliance with the injunction.

		impose a periodic penalty attached to the injunction. Tax increase (in addition to the above penalty): Material scope: materially incomplete or incorrect country-by-country report. Personal scope: Reporting entities (as defined in Directive 2011/16/EU as amended by DAC4 [Directive (EU) 2016/881])	Unspecified. Tax administration may reduce the amount of tax increase (i.e. fully or partially exempt from the 40% main rule) in case it would be unreasonable to impose it in full.	40% of the amount of tax that would have been left non-imposed in case assessment had been based on the inaccurate information.
	DAC 6	Penalty fee 1 Material scope: Failure to report, incomplete or incorrect reporting. Personal scope: Intermediaries (advisers); relevant taxpayers (users of the reportable arrangements) The legislation explicitly provides that the penalty fee (1) applies per each individual reportable arrangement and each quarterly report required. Penalty fee 2 Material scope: Late (over 60 days) reporting. Personal scope: Intermediaries (advisers); relevant taxpayers (users of the reportable arrangements) The legislation does not explicitly indicate if the penalty fee (2) applies per individual / cumulative infringements. However, there is no reason to expect that it could not be enforced breach-by-breach. NB! The penalty (2) is fixed at SEK 20.000 (advisers) and SEK 10.000 (users) but if the infringement is committed in the course of the economic activity of the adviser/user liable to report, the amount of the penalty depends on the turnover in the previous financial year: Turnover at least SEK 15.000.000 (EUR 1.462.415) but under SEK 75.000.000 (EUR 7.312.079): SEK 30.000 (EUR 2.925) advisers SEK 15.000 (EUR 1.462) users Turnover at least SEK 75.000.000 (EUR 7.312.079) but under SEK 500.000.000 (EUR 48.747.197): SEK 60.000 (EUR 5.850) advisers SEK 30.000 (EUR 2.925) users Turnover at least SEK 500.000.000 (EUR 48.747.197): SEK 150.000 (EUR 14.624) advisers SEK 75.000 (EUR 7.312) users Should the length of the previous financial year differ from 12 months the amounts of the penalties are adjusted pro-rata accordingly. Legislation does not explicitly indicate if these penalties apply per individual / cumulative infringements. Tax increase (in addition to the above penalties): Material scope: materially incomplete or incorrect reporting/submission of required information Personal scope: Relevant taxpayers (users of the reportable arrangements)	SEK 15.000 (EUR 1.462) for advisers and SEK 7.500 (EUR 731) for users SEK 20.000 (EUR 1.950) advisers SEK 10.000 (EUR 975) users Turnover at least SEK 15.000.000 (EUR 1.462.415): SEK 30.000 (EUR 2.925) advisers SEK 15.000 (EUR 1.462) users Unspecified. Tax administration may reduce the amount of tax increase (i.e. fully or partially exempt from the 40% main rule) in case it would be unreasonable to impose it in full.	SEK 15.000 (EUR 1.462) for advisers and SEK 7.500 (EUR 731) for users SEK 20.000 (EUR 1.950) advisers SEK 10.000 (EUR 975) users Turnover at least SEK 500.000.000 (EUR 48.747.197): SEK 150.000 (EUR 14.624) advisers SEK 75.000 (EUR 7.312) users 40% of the amount of tax that would have been left non-imposed in case assessment had been based on the inaccurate information.
SI	DAC 2	The scope *r*ationae personae: *reporting financial institutions (FI)* The scope *rationae materiae*: 1)FI does not implement due diligence procedures and collect the info that is subject to the reporting	From EUR 1600	To EUR 25 000

		requirements, 2) does not keep documentation showing the procedures used to collect information,3) does not provide info to the competent authority with regard to reportable accounts or does not provide info in a timely manner or 4) fails to state relevant currencies in its report or 5) does not provide info showing that it has not identified the reportable accounts in the respective calendar year. • A penalty for <u>a responsible person</u> (individual) of the Reporting FI for the above stated offences: • A penalty for a responsible management company or a manager of an investment or pension fund without a legal entity for the above stated offences: • A penalty for a responsible person of the management company or manager of the investment or pension fund without a legal entity for the above offences: Legislation does not explicitly indicate if these penalties apply per single or cumulative infringement, but from the way it is drafted I would tend to think it can apply to an individual infringement, but also globally to all infringements within a certain time period (the act uses continues tense and plural verbal forms: e.g. the FI is not collecting information as required, is not reporting,..) The number of inf. will then, in my view, determine the level of penalty (between EUR 1060 and 25.000). This is purely my personal view.	From EUR 400 From EUR 1600 From EUR 400	To EUR 4000 To EUR 25.000 To EUR 4000
	DAC 4	<u>Personal scope:</u> Reporting entities (as defined under DAC4 , I.e. legal entities Higher penalties for medium sized and big companies, which will be the case for the entities at stake here: • A penalty for <u>a responsible person</u> (individual) of the Reporting entity, which will be considered as ''middle sized or big company'': If the nature of the infringement is particularly serious (on purpose wrong reporting, intention to secure financial advantage, or because of serious damage caused to the fisc- considered as more than EUR 25.000) for medium and big entities the penalty is: • A penalty for <u>a responsible person</u> (individual) of the Reporting entity, which will be considered as ''middle sized or big company'' in case of the above mentioned particularly serious infringement: <u>Material scope</u>: failure to report, reporting not in line with the required formalities or not within the deadline. The provision speaks about penalty when an entity commits an infringement by not reporting,, missing deadlines...difficult to say whether individual or cumulative, but I would tend more towards the	From EUR 3.200 EUR 800 From 10.500 EUR 1400	EUR 30. 000 To EUR 4.000 To EUR 150.000 To EUR 20.000

		cumulative nature, of course considering a certain time frame (e.g. within a tax year).		
	DAC 6	Article 394 of the Tax Procedure Act (TPA) for individuals and Article 397 TPA for entrepreneurs and companies The scope rationae personae: individuals; The scope rationae materiae: 1) no reporting (''fails to submit data on the cross-border arrangement to be reported''), 2) late reporting (''fails to submit them within the prescribed time limit), 3) partial reporting (''fails to submit them for each year in which the arrangement applies). The scope rationae personae: entrepreneurs and legal persons ; the scope rationae materiae:1) no reporting (''fails to submit data on the cross-border arrangement to be reported''), 2) late reporting (''fails to submit them within the prescribed time limit), no regular reporting, 3) partial reporting (''fails to submit them for each year in which the arrangement applies), 5) fails to inform the intermediary or a taxpayer about the use of the professional secrecy waiver. Legislation does not explicitly indicate if these penalties apply per individual or cumulative infringements.	From EUR 250 From EUR 800	to EUR 400 to EUR 10.000
SK	DAC 2 as implemented by Section 23 of Law 359/2015	Material scope: failure of reviewing financial accounts, obtaining information on financial accounts, notification obligation and FACTA obligations Personal scope: financial institutions Individual/cumulative application: The law does not say whether the penalties are per individual infringement or for cumulative infringements, however it specifies that sanctions could be repeatedly applied.	n.a.	10,000 EUR, also repeatedly.
	DAC 4 as implemented by Act No. 442/2012 Coll.	Material scope: not reporting on CbCR basis or not providing notification Personal scope: a) the ultimate parent entity, the surrogate parent body or the constituent entity, if it fails to report on a CbC basis (pursuant to Sections 22b to 22d and 22 f); b) a constituent entity referred to in Section 22c (1) if it fails to notify (under Section 22c (2) and (3), i.e. inform the competent authority that the ultimate parent entity has refused to make the necessary information available); c) the constituent entity, if it does not submit a notification (notify the competent authority of the name, registered office, identification number of the reporting entity pursuant to Section 22e). Individual/cumulative application: The law does not say whether the penalties are per individual infringement or for cumulative infringements, however it specifies that sanctions could be repeatedly applied	n.a	a) a fine of up to 10,000 EUR, including repeatedly; (b) and (c) a fine of up to EUR 3,000, even repeatedly.
	DAC 6	Material scope: failure to meet reporting obligations, including confirmation that	n.a	30,000 EUR

		reporting has been made by another intermediary or taxpayer or failure to meet the relevant deadlines. Fine can be applied for each Slovak MDR reporting obligation Personal scope: intermediaries and taxpayer Individual/cumulative application: The law does not say whether the penalties are per individual infringement or for cumulative infringements.		

DAC7 was adopted in March 2021 and shall be implemented by 1 January 2023. As a consequence, there is not yet any information available on the compliance measures applicable in Member States based on the obligations on DAC7.

ANNEX 8: BIBLIOGRAPHY

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Council of the European Union

Brussels, 8 December 2022
(OR. en)

Interinstitutional File: 2022/0413(COD)

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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	8 December 2022
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	SEC(2022) 438 final
Subject:	Regulatory scrutiny board opinion Impact assessment / Strengthening existing rules and expanding exchange of information framework in the field of taxation (DAC8)

Delegations will find attached document SEC(2022) 438 final.

Encl.: SEC(2022) 438 final

EUROPEAN COMMISSION

Brussels, 12.11.2021
SEC(2022) 438 final

REGULATORY SCRUTINY BOARD OPINION

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

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

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

EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

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

Overall opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

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

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

(B) Summary of findings

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

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

(1) The report is not sufficiently clear on the scope of the initiative. It does not sufficiently describe the legislative gap it aims to address. It does not present clearly enough the close substantive link to the ongoing OECD discussions on tax transparency for e-money and virtual assets.

(2) The report does not bring out clearly enough all available and feasible policy choices, and the precise content of some options.

(3) The report does not provide sufficient context on the structure of the market and the role of SME crypto-asset service providers. It does not clearly analyse how

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

Commission européenne, B-1049 Bruxelles - Belgium. Office: BERL 08/010. E-mail: regulatory-scrutiny-board@ec.europa.eu

the different options affect their competitiveness.

(C) What to improve

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

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

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

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

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

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

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

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explain the role that the envisaged implementing measures will play in this regard. (8) The report should better engage with the different stakeholder views in the main analysis. It should more clearly outline the different views from the main stakeholder groups such as Member States, CASPs (including SMEs) and tax administrations. The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables. *Some more technical comments have been sent directly to the author DG.*

(D) Conclusion **The DG must revise the report in accordance with the Board's findings before launching the interservice consultation.** **If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.**	
Full title	Proposal for a Council Directive amending Directive 2011/16/EU as regards measures to strengthen existing rules and expand the exchange of information framework in the field of taxation to include crypto-assets and e-money.
Reference number	PLAN/2020/8658
Submitted to RSB on	13 October 2021
Date of RSB meeting	10 November 2021

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ANNEX: Quantification tables extracted from the draft impact assessment report

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

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

Overview of benefits

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

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field		requirements throughout the EU, rather than having multiple standards across each Member States. This would make it easier to comply with existing tax rules and would improve tax compliance.

Overview reporting costs for CASPs (in EUR millions)

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

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

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

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

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Brussels, 8 December 2022
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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	8 December 2022
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2022) 400 final
Subject:	COMMISSION STAFF WORKING DOCUMENT Subsidiary Grid Accompanying the document Proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation

Delegations will find attached document SWD(2022) 400 final.

Encl.: SWD(2022) 400 final

EUROPEAN
COMMISSION

Brussels, 8.12.2022
SWD(2022) 400 final

COMMISSION STAFF WORKING DOCUMENT

Subsidiary Grid

Accompanying the document

Proposal for a Council Directive

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

{COM(2022) 707 final} - {SEC(2022) 438 final} - {SWD(2022) 401 final} -
{SWD(2022) 402 final}

1. Can the Union act? What is the legal basis and competence of the Unions' intended action?
1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?
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. Furthermore, given that the information exchanged under the Directive 2011/16/EU (hereinafter DAC) can be also used in the field of VAT and other indirect taxes, Article 113 of the TFEU is also included as a legal base.
1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?
In the case of direct taxation as far as the proposal relates to the establishment or functioning of the internal market, the Union's competence is shared.
2. Subsidiarity Principle: Why should the EU act?
2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2[1]: - Has there been a wide consultation before proposing the act? - Is there a detailed statement with qualitative and, where possible, quantitative indicators allowing an appraisal of whether the action can best be achieved at Union level?

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN

There has been an extensive consultation process while preparing the current proposal. As the proposed legislation amends existing provisions of the DAC, the "evaluate principle" was applied.

- Evaluations of existing legislation

In 2019, the Commission evaluated the effectiveness, efficiency, relevance, coherence and additional value of the Directive on administrative cooperation in the field of direct taxation. The evaluation concluded that cooperation brings about important benefits, yet there is still scope for improvement. It demonstrated that differences persist in the way Member States exploit the available tools of administrative cooperation. The information exchanged could be used more efficiently and the benefits of cooperation could be analysed in a more comprehensive manner.

In 2021, the European Court of Auditors (ECA) published its Special Report 03/2021 on the exchange of tax information in the EU. The ECA examined, firstly, how the Commission is monitoring the implementation and performance of the tax information exchange system; secondly, how Member States are using the information exchanged and how they are measuring the effectiveness of the system. The ECA found that the exchange of tax information between Member States was not yet sufficient to ensure fair and effective taxation throughout the internal market.

Building upon these findings, this legislative proposal presents a limited set of specific interventions to improve the functioning of administrative cooperation.

Furthermore, the Commission prepared an impact assessment to support this proposal. In this context the following consultation activities were carried out:

- Stakeholder consultations

On 10 March 2021 the European Commission launched a public consultation to gather feedback on the way forward for EU action on strengthening rules on administrative cooperation and expanding the exchange of information to crypto in the field of taxation. Stakeholders were asked to provide their feedback on the basis of a number of questions. In total, 33 respondents provided their feedback. In addition, the European Commission carried out targeted consultations with national administrations and private stakeholders. There was a consensus on the benefits of having a standardised EU legal framework for gathering and exchanging information regarding crypto-assets, as compared to several disparate national reporting rules.

- Consultation of Member States

The European Commission carried out a targeted consultations in November 2020 and March 2021 by organising Working Party IV meetings where Member States had the opportunity to debate a possible proposal for an amendment to the DAC. The meetings focused on the reporting and exchange of information on income earned through crypto-assets. It also looked at how to improve the compliance framework in DAC.

Overall, broad support was received for a possible EU initiative for the reporting and exchange of information on proceeds obtained by crypto-assets users.

- Outcome of consultations

Both public and targeted consultations seem to converge on the challenges that the new rules on reporting and exchange of information regarding crypto-assets should aim to tackle: underreporting in the crypto-assets EU market and inefficiencies in the current EU administrative cooperation framework, such as in the field of compliance measures.

The explanatory memorandum and the impact assessment include a section on the principle of subsidiarity, for details see question 2.2 below.

2.2 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the conformity with the principle of subsidiarity?

The proposal fully observes the principle of subsidiarity as set out in Article 5 TFEU. It addresses administrative cooperation in the field of taxation. The proposal involves extending the scope of automatic exchange of information to crypto-asset service providers, hereinafter CASPs, placing an obligation on them to report on the transactions performed by users resident for tax purposes in the EU through their platforms. It also includes certain modifications in the rules to improve the functioning of the existing provisions that deal with cross-border cooperation between tax administrations from different Member States.

The increased use of crypto-assets as a source of important capital gains makes it necessary to set an EU framework to allow tax authorities to exchange the essential information to cross-check the correctness of taxpayers' declarations. While some Member States have imposed a reporting obligation in their national law and/or through administrative guidance, experience shows that national provisions against tax evasion cannot be fully effective, especially when the targeted activities are mainly carried out cross-border. The application of existing provisions of the DAC concerning compliance has shown significant discrepancies among Member States. For example, while some Member States have set high penalties for non-compliance others have no minimum amounts of penalties. Further, certain provisions have proved insufficient for addressing the needs of tax administrations in cooperating with other Member State(s) over time.

Legal certainty and clarity can only be ensured by addressing these inefficiencies through a single set of rules that apply to all Member States. The internal market needs a robust mechanism to address these loopholes in a uniform fashion and rectify existing distortions by ensuring that tax authorities receive appropriate information on a timely basis.

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, it will ensure a consistent application of the rules across the EU. Second, all CASPs in scope will be subject to the same reporting requirements. Third, the reporting will be accompanied with exchange of information and, as such, enable the tax administrations to obtain a comprehensive set of information regarding the capital gains obtained through crypto-asset transactions.

2.3 Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?

(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?

One of the main problems which needs to be addressed with this initiative is under-reporting (or lack of reporting overall) of the proceeds obtained by crypto-asset users. At present, a sizeable amount of capital gains obtained via the services CASPs offer remains unknown to tax administrations and thus untaxed. The initiative is meant to improve the ability of Member States to detect and counter cross-border tax avoidance and tax evasion.

The distribution of capital gains across the Member States is uneven. Member States have different approaches when it comes to taxing realised capital gains, with some Member States not taxing them at all. Our estimates applying a 25% uniform tax rate on total capital gains from all crypto-assets in EU would reach around 1.7 Billion EUR. In 2020, the total realised capital gains by EU citizens from Bitcoin amounted to EUR 3.6 billion according to a study performed by A. Thiemann (2021).[2,3] The employed data had been tracked by Chainalysis (a blockchain data platform) that is considered a trusted source of information.[4] We have calculated all capital gains concerning all types of crypto-assets within Europe by assuming parts from the study mentioned above.

(b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty[5] or significantly damage the interests of other Member States?

National actions could potentially damage the interest of other Member States. National actions would not be sufficient to address the problem in its entirety as the legislative proposal introduces not only a reporting requirement for CASPs with respect to the transactions performed by its users, but also the mandatory exchange of this information in cross-border scenarios.

(c) To what extent do Member States have the ability or possibility to enact appropriate measures?

[2] Thiemann (2021). Cryptocurrencies: An empirical view from a tax perspective, JRC Working Papers on Taxation and Structural Reforms, No 12.

[3] The analysis includes capital losses, but the aggregate outcome is positive (i.e. capital gains).

[4] Chainalysis has been commissioned by various governments, research agencies, financial institutions and insurance and cybersecurity companies worldwide, but even them experience limitations in collecting data (e.g. the use of VPN networks that hide the true location of transacting parties).

[5] https://europa.eu/european-union/about-eu/eu-in-brief_en

Member States can individually impose domestic reporting measures. However, in most Member States, there is no legislation for self-initiated third party reporting whatsoever. In addition, there are uncertainties as to whether reporting obligations based on domestic legislation can be enforced to CASPs that are neither registered nor have a permanent establishment in the regulating jurisdiction.
The Member States cannot unilaterally impose the appropriate measures for exchange of information and administrative cooperation. Therefore, the nature of the measure is not compatible with unilateral action at national level, which would not as such lead to

achievement of its objectives.

(d) How does the problem and its causes (e.g. negative externalities, spill-over effects) vary across the national, regional and local levels of the EU?

In case tax administrations decided to act on their own to try to tackle this problem by introducing national reporting requirements for CASPs regarding crypto-assets transactions, there would be fragmentation that may result in unnecessary burden on CASPs. The business environment becomes more complicated, with various national reporting models, which entails higher compliance and administrative costs, without sufficiently tackling the issue.

(e) Is the problem widespread across the EU or limited to a few Member States?

The problem related to the lack of reporting is widespread across the EU as the users are located and active in all Member States. Given the flexible and cross-border nature of the subject matter, this problem affects all other Member States, which cannot efficiently cooperate or exchange information amongst themselves.

(f) Are Member States overstretched in achieving the objectives of the planned measure?

As the proposed legislation seeks to improve the existing provisions on administrative cooperation and exchange of information, it is expected that the Member State will implement the proposed measures by building upon existing tools and systems.
The proposed legislation adds a reporting requirement for information on crypto-asset transactions performed through CASPs. Building upon existing tools and making those more efficient while, at the same time, standardising reporting obligations on crypto-asset transactions performed through CASPs, does not overburden the Member States.

(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?

All Member States agreed that the setting of a new reporting framework for crypto-assets transactions should be addressed via an amendment of Directive 2011/16/EU. A broad support was also provided for a possible EU initiative for enhancing some parts of the DAC including the clarification of the compliance framework of the Directive, but also clarifying rules regarding e-money.

2.4 Based on the answer to the questions below, can the objectives of the proposed action be better achieved at Union level by reason of scale or effects of that action (EU added value)?

(a) Are there clear benefits from EU level action?

An action at the level of the EU will bring an added value, as compared to individual Member State initiatives in the field. First, it will ensure a consistent application of the rules across the EU. Second, all CASPs in scope will be subject to the same reporting requirements. Third, the reporting will be accompanied with exchange of information and, as such, enable the tax administrations to obtain a comprehensive set of information regarding the capital gains obtained through cross-border transactions of crypto-assets.

(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the internal market be improved?

The initiative aims at ensuring a fair and consistent functioning of the internal market, where everyone pays its fair share of tax. Lack of a level playing field and different reporting requirements imposed by Member States at national level may distort the market allocation of services provided by CASPs. By imposing a reporting requirement on all CASPs, the transactional information of EU users will be reported to tax administrations creating a level playing field for all CASPs and traditional financial institutions.

(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?

It is crucial to define the administrative cooperation standard and rules in a homogenous way. This will ensure consistent application across the EU and enable an efficient administrative cooperation and exchange of information framework.

Having a harmonized reporting requirement will create a simplified reporting system for the CASPs, thus reducing their administrative burden, and at the same time, ensure reporting of information on transaction of crypto-assets. The exchange of this information amongst Member States will help them to reduce tax evasion, tax avoidance and tax fraud, leading to better safeguarding their revenues.

(d) Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, regional and local levels)?

Proceeds obtained through the transactions of crypto-assets are currently under-reported. This issue is even more acute when there is a cross-border element within the transaction. Better reporting and exchange of information should therefore have a positive impact on the revenues collected by tax administrations. The estimated benefits in terms of the collection of tax revenue and improved administrative cooperation resulting from an EU-level action outweigh the loss of competence of the Member States and the local and regional authorities.

(e) Will there be improved legal clarity for those having to implement the legislation?

The purpose of improving the existing provisions of the DAC is to provide legal clarity both for tax administrations and taxpayers. The standardised reporting of crypto-asset transactions will provide legal clarity because CASPs will have to comply with the same standard across the EU, as defined in the DAC. Besides, the proposal includes clarification of rules regarding e-money that will also improve legal clarity.

3. Proportionality: How the EU should act

3.1 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of proportionality?

The proposal consists of improving existing provisions of the Directive and extends the scope of automatic exchanges to certain specific information reported by CASPs. The envisaged action does 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 expand beyond the borders of a single Member State, EU common rules represent the minimum necessary for tackling the problems in an effective manner.

An EU approach to tax transparency on crypto-assets appears to be the best solution in order to avoid a patchwork of reporting requirements unilaterally implemented by some or all Member States. The information needs to reach the Member State where the income and revenues are due to be taxed. Nevertheless, the information is often likely to be held by intermediaries located in another Member State or even in third countries. The envisaged action does not go beyond what is necessary to achieve the objective of reporting and exchange of information and more broadly, administrative cooperation. Considering that the identified distortions in the functioning of the internal market usually expand beyond the borders of a single Member State, the proposed EU common rules represent the minimum necessary for tackling the problems in an effective manner.

Thus, the proposed rules contribute to a clearer, consistent and effective application of the DAC leading to better ways for achieving its objectives. The envisaged obligation of CASPs to report on the crypto-asset transactions of EU users offers a workable solution against tax evasion through the use of mechanisms for the exchange of information. In this vein, one can claim that the proposed initiative represents a proportionate answer to the identified inconsistencies in the DAC and also aims to tackle the problem of tax evasion.

3.2 Based on the answers to the questions below and information available from any impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?

(a) Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?

The initiative is limited to add an EU-wide reporting obligation combined with mandatory automatic exchange of information among Member States concerning crypto-assets. National measures, when in force, have proved insufficient for addressing the identified problem. The initiative also clarifies and improves some provisions of the DAC, such as the compliance framework. The initiative does not cover aspects on how Member States should tax capital gains earned through crypto-asset transactions.
(b) Is the form of Union action (choice of instrument) justified, as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-legislation, etc.)?
The policy intervention in the form of a directive ensures consistency and clarity in the most effective and simple way possible. It is also proportional to achieve the pursued objectives. The evidence collected shows that the regulatory option is the most appropriate way for meeting the objectives of EU action. The status quo or baseline scenario is the least effective, efficient or coherent option. Differently from the baseline scenario, an EU mandatory common standard would ensure that all EU tax administrations have the same tools for administrative cooperation and access to the same type of data. In other words, an EU regulatory action would put all tax authorities on an equal footing. This also allows for the automatic exchange of information at the EU level on the basis of common standards and specifications.
(c) Does the Union action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit the European action to minimum standards or use a less stringent policy instrument or approach?)
The proposal is limited to imposing minimum standards and the rules necessary to achieve the set objectives. The selected instrument is a directive, the adoption of which requires unanimity in the Council.
(d) Does the initiative create financial or administrative cost for the Union, national governments, regional or local authorities, economic operators or citizens? Are these costs commensurate with the objective to be achieved?
The initiative will create administrative costs that will be fully compensated with benefits tax authorities will obtain when running the new reporting and exchange of information framework. There will be costs for the Union as well as for national authorities to adapt current IT systems. There will also be costs for CASPs that will need to comply with due diligence rules, although mostly they already had to implement due to AML provisions. The costs incurred on CASPs are based on a range of assumptions and have been estimated based on those already borne by traditional financial institutions that are already subject to the obligations of the DAC.
(e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account?
Not applicable.

Regeringskansliet

Remiss

2022-12-15
Fi2022/03329

Finansdepartementet
Skatte- och tullavdelningen, Enheten för skatteadministration, skatteavtal och tullfrågor
Omar Bembli
Marcus Sjögren
Anders Lenfors

Remiss av kommissionens förslag till direktiv om ändring av direktiv 2011/16/EU om administrativt samarbete i fråga om beskattning (DAC 8)

Remissinstanser

1 Arcane Crypto AB
2 Bokföringsnämnden
3 Bolagsverket
4 Domstolsverket
5 Ekobrottsmyndigheten
6 Euroclear Sweden AB
7 FAR
8 Finansbolagens förening
9 Finansinspektionen
10 Fondbolagens förening
11 Föreningen Svensk Värdepappersmarknad
12 Föreningen Svenskt Näringsliv
13 Företagarna
14 Förvaltningsrätten i Malmö
15 Goobit Group AB
16 Integritetsskyddsmyndigheten
17 IT&Telekomföretagen
18 Justitiekanslern

19 Kammarrätten i Stockholm
20 Kommerskollegium
21 Konkurrensverket
22 Nasdaq Stockholm AB
23 Näringslivets Regelnämnd
24 Näringslivets Skattedelegation
25 Quickbit eu AB
26 Regelrådet
27 Revisorsinspektionen
28 Riksdagens ombudsmän (JO)
29 Riksgäldskontoret
30 Safello Group AB
31 Skatterättsnämnden
32 Skatteverket
33 Sparbankernas Riksförbund
34 Stockholms universitet (Juridiska fakultetsnämnden)
35 Svensk Digital Handel
36 Svensk Försäkring
37 Svenska Bankföreningen
38 Sveriges advokatsamfund
39 Sveriges Aktiesparares Riksförbund
40 Sveriges Riksbank
41 Swedish Blockchain Association
42 Swedish FinTech Association
43 Swedish Private Equity & Venture Capital Association (SVCA)
44 Åklagarmyndigheten

Remissvaren ska ha kommit in till Finansdepartementet **senast den 20 februari 2023**. Svaren bör lämnas per e-post till fi.remissvar@regeringskansliet.se och med kopia till

omar.bembli@regeringskansliet.se, marcus.sjogren@regeringskansliet.se och anders.lenfors@regeringskansliet.se. Ange diarienummer Fi2022/03329 och remissinstansens namn i ämnesraden på e-postmeddelandet.

Svaret bör lämnas i två versioner: den ena i ett bearbetningsbart format (t.ex. Word), den andra i ett format (t.ex. pdf) som följer tillgänglighetskraven enligt lagen (2018:1937) om tillgänglighet till digital offentlig service. Remissinstansens namn ska anges i namnet på respektive dokument.

I remissen ligger att regeringen vill ha synpunkter på kommissionens förslag.

För remissinstansernas information planeras kommissionens förslag att förhandlas under våren 2023. Det första rådsarbetsgruppsmötet är planerat till januari 2023.

Myndigheter under regeringen är skyldiga att svara på remissen. En myndighet avgör dock på eget ansvar om den har några synpunkter att redovisa i ett svar. Om myndigheten inte har några synpunkter, räcker det att svaret ger besked om detta. För **andra remissinstanser** innebär remissen en inbjudan att lämna synpunkter.

Råd om hur remissyttranden utformas finns i Statsrådsberedningens promemoria Svara på remiss (SB PM 2021:1). Den kan laddas ned från Regeringskansliets webbplats www.regeringen.se.

Linda Bolund Thornell
Kansliråd

Kopia till
Skatteutskottet