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'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation - Adoption

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

¹ Doc. ST 13350/20, point 36.

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

² Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.3.2011, p. 1).

³ Doc. ST 14767/21, point 59.

⁴ Doc. ST 15829/22 + ADD1 – ADD5.

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

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

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

- 5. The opinion of the European Economic and Social Committee on this legislative proposal was delivered on 22 March 2023.⁷ The opinion of the European Data Protection Supervisor was issued on 3 April 2023.⁸ The opinion of the European Parliament was adopted on 13 September 2023.⁹
- 6. The Permanent Representatives Committee is therefore invited to suggest that the Council adopt, as an "A" item on the agenda of a forthcoming meeting, the following act, as finalised by the legal/linguistic experts:
 - Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation, set out in doc. 10215/23 FISC 115 ECOFIN 566.

⁷ Doc. ST 8088/23.
⁸ Doc. ST 8283/23.
⁹ P9_TA(2023)0315.