2022/0413 (CNS)

DRAFT

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 Articles 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[1],

Having regard to the opinion of the European Economic and Social Committee[2],

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[3], concerning exchange of information on crypto-assets and tax rulings for wealthy individuals.[4]

(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

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1 Not yet published in the Official Journal.
2 Not yet published in the Official Journal.
3 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).
4 Document 14651/21, FISC 227, Ecofin report to the European Council on tax issues.

of Directive 2011/16/EU is solid, but that some provisions need to be strengthened in order to ensure that the full potential of the exchange of information is exploited and the effectiveness of the automatic exchange of information is measured. The report furthermore concludes that the scope of the Directive should be enlarged in order to cover additional categories of assets and income, such as crypto-assets.

(5) The crypto-asset market has gained in importance and increased its capitalisation substantially and rapidly over the last 10 years. Crypto-assets are a digital 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[5] (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[6] 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 the purpose of fighting against money laundering and terrorism financing.

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

(9) At international level, the Organisation for Economic Co-operation and Development (OECD) Crypto-Asset Reporting Framework[7] 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. In implementing this Directive, Member States should use the Commentaries on the Model Competent Authority Agreement and the Crypto-Asset Reporting Framework, developed by the OECD, as sources of illustration or interpretation and in order to ensure consistency in application across Member States.

(10) Council Directive 2011/16/EU[8] lays down obligations for financial intermediaries to report financial account information to tax administrations that are then required to exchange this information with other relevant Member States. However, most crypto-assets are not obliged to be reported under that Directive because they do not constitute money held in a depository accounts nor in financial assets. In addition, crypto-asset service providers as well as crypto-asset operators are in most cases not covered by the existing definition of financial institutions under Directive 2011/16/EU.

(11) In order to address new challenges arising from the growing use of alternative means of payment and investment, which pose new risks of tax evasion and are not yet covered by Directive 2011/16/EU, the rules on reporting and exchange of information should cover crypto-assets and their users.

(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

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7 https://www.oecd.org/tax/exchange-of-tax-information/crypto-asset-reporting-framework-and-amendments-to-the-common-reporting-standard.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 (OJ L 064 11.3.2011, p. 1).

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, including e-money tokens as defined in Regulation XXX and certain non-fungible tokens (NFTs). Crypto-assets that can be 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 cannot 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 introduce 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[9].

(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

[9] 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).

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 **meet certain conditions**~~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 **qualifying competent authority agreement in place**~~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 State~~s~~ 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 this Directive. Given that the conclusion of agreements with non-Union jurisdictions on administrative cooperation in the area of direct taxation remains within the competence of Member States, the Commission's action could also be triggered by a request from a Member State. For that purpose, it is necessary that, following the request of a Member State, the determination of correspondence could also be made in advance of an envisaged conclusion of such an agreement. Where the exchange of such information is based on a multilateral competent authority agreement, the decision on correspondence should be taken in relation to the whole of the relevant framework covered by such a competent authority agreement. Nevertheless, it should still remain possible to take the decision on correspondence, where appropriate, concerning a bilateral competent authority agreement.

(21) Insofar as the international standard on the reporting and automatic exchange of information on crypto-assets, OECD's Crypto-Asset Reporting Framework, is a minimum standard or equivalent, which establishes a minimum scope and content of jurisdictions' implementation thereof, the determination of correspondence of this Directive and the OECD's Crypto-Asset Reporting Framework by the Commission, by means of an implementing act, should not be required provided that there is an ~~E~~effective ~~Q~~qualifying ~~C~~competent ~~A~~authority ~~A~~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, **this**~~the~~ **Directive**~~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 of this Directive and 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**s** 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, **this**~~the~~ Directive includes among others the latest amendments to the Common Reporting Standard[10] of the OECD, the integration of e-money and central bank digital currency provisions~~, [a clear and harmonised framework for compliance measures,]~~ and the extension of the scope **of the automatic exchange** of **information regarding advance** cross-border rulings to ~~high net worth individuals~~**certain rulings regarding natural persons**. In implementing the latest amendments to the Common Reporting Standard, as included in this Directive, and as already mentioned in the recitals to Directive 2014/107/EU with respect to the original version of the Common Reporting Standard, Member States should use the Commentaries on the Model Competent Authority Agreement and the Common Reporting Standard, now including the latest amendments to the Common Reporting Standard, developed by the OECD, as sources of illustration or interpretation and in order to ensure consistency in application across Member States.

(27) Electronic money, as defined by Directive 2009/110/EU of the European Parliament and of the Council[11] are frequently used in the Union and the volume of transactions, and their combined value increases steadily. Electronic money are however not explicitly covered by Directive 2011/16/EU. Member States adopt diverse approaches to electronic 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 electronic money.

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

11 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).

(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 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 ~~endeavour to~~ include the TIN of reported individuals **and**~~or~~ entities in the reporting and exchange of information in the context of exchanges related to **income from employment, director's fees, pensions,** financial accounts, advance cross-border rulings and advance pricing agreements, country-by-country reports, reportable cross-border arrangements, information on sellers on digital platforms and crypto-assets. **However, it is appropriate to specify cases where the competent authorities of Member States should not be obliged to include the TIN in the reporting and exchange of information when the TIN is not available.** ~~However, it should not be mandatory to endeavour to include the TIN in some specific cases where it is not possible for the reporting Entity or individual to collect the TIN.~~

(30) The absence of exchange of rulings concerning ~~high net worth individuals~~ **natural persons** means that tax administrations **of Member States concerned** may not be aware of those rulings. That situation risks creating opportunities for tax fraud, tax evasion and tax avoidance. Therefore, **as well as in order to reduce administrative burden,** automatic exchange of advance cross-border rulings ~~and advance pricing agreements~~ should extend to **such rulings where the amount of the transaction or series of transactions referred to in the advance cross-border ruling exceeds a specific threshold.** ~~situations where an advance cross-border ruling concerns tax affairs of high net worth individuals~~.

(31) **Advance cross-border rulings that determine whether a person is or is not a resident for tax purposes in the Member State issuing the ruling should also be exchanged automatically. However, in the interest of proportionality, and in order to reduce administrative burden, some common forms of advance cross-border rulings which may include an element of determination of whether a natural person is or is not resident for tax purposes in a Member State should**

not, solely on this ground, be subject to the exchange of information on advance cross-border tax rulings. Advance cross-border rulings on taxation at source with regard to non-residents' income from employment, director's fees and pensions should not be exchanged, unless the amount of the transaction or series of transactions of the advance cross-border ruling exceeds the threshold. ~~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 of 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 of customs duties and for anti-money laundering and combating the financing of terrorism.

(34) [deleted]

(35) Considering the amount and the nature of the information collected and exchanged on the basis of Directive 2011/16/EU, it can be useful in certain further areas. 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 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, authorising a further use of the data is therefore appropriate.

(35a) It is essential that the information communicated under Directive 2011/16/EU is used by the competent authority of each Member State which receives this information. Therefore, it is appropriate to require the competent authority of each Member State to put in place an effective mechanism to ensure the use of information acquired through the reporting or the exchange of information under Directive 2011/16/EU. Such use of information may include, for instance, voluntary compliance programs, notifications to generate disclosure, awareness campaigns, prefilling tax returns, risk assessments, limited audits, general audits, tax coding, tax estimation**, assimilation into domestic systems** and other **tax-related**~~similar~~ measures.

(36) In order to enhance the efficient use of resources, facilitate the exchange of information and avoid the need for each Member State to make similar changes to their systems for storing information, a central directory should be established for information to be communicated on crypto-assets, 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. Member States should only be permitted to access data in that central directory relating to their own residents. All access and restrictions of access to the central directory should be in line with requirements under Regulation (EU) 2016/679. The practical arrangements necessary for the establishment of such central directory should be adopted by the Commission.

(37) In order to ensure **uniform conditions for the implementation of this Directive,** ~~that a correct tax identification number (TIN) can be used by Member States,~~ the Commission **should**~~shall~~ **be empowered to adopt an implementing act to** 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. **Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the**

Council. The~~That~~ IT tool **to be provided to Member States** 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 **a proper enforcement of the rules under this Directive**~~compliance with the Directive 2011/16/EU~~, Member States should lay down ~~the~~ rules on penalties **applicable to infringements of national provisions adopted pursuant to provisions of this Directive on mandatory exchange of information reported by reporting crypto-asset service providers, and should take all necessary measures to ensure that they are implemented**~~and other compliance measures that should be effective, proportionate and dissuasive~~. **While the choice of penalties remains within the discretion of Member States, the penalties provided for 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 **of this Directive**, the **timing of these evalution** processes **should be**~~are~~ aligned ~~and will take place every 5 years after 1 January 2023~~.

(42a) Taking into account the judgment of the Court of Justice of the European Union in Case C-694/20, Directive 2011/16/EU should be amended in such a manner that its provisions do not have the effect of requiring a lawyer acting as an intermediary, where he or she is exempt from the reporting obligation, on account of the legal professional privilege by which he or she is bound, to notify any other intermediary who is not his or her client of that intermediary's reporting obligations. However, any intermediary who, because of the legal professional privilege by which he or she is bound, is exempt from the reporting obligation, nevertheless should remain required to notify without delay his or her client of his or her reporting obligations.

(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.[12]

(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

[12] 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).

accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(46) Directive 2011/16/EU should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2011/16/EU is amended as follows:

(1) Article 3 is amended as follows:

(a) point (9) is amended as follows:

(i) point (a) of the first subparagraph is replaced by the following:

'(a) for the purposes of Article 8(1) and Articles 8a to 8ad, the systematic communication of predefined information to another Member State, without prior request, at pre-established regular intervals. For the purposes of Article 8(1), reference to available information relates to information in the tax files of the Member State communicating the information, which is retrievable in accordance with the procedures for gathering and processing information in that Member State;';

(ii) point (c) of the first subparagraph 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 in points (a) and (b) of the first subparagraph 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, V 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 Article 8ad and Annex VI, any capitalised term shall have the meaning that it has under the corresponding definitions set out in Annex VI.';

(aa) **point (14) is amended as follows:**

point (d) of the first subparagraph is replaced by the following:

'(d) relates to a cross-border transaction, or to the question of whether or not activities carried on by a person in another jurisdiction create a permanent establishment or to the question of whether or not a natural person is resident for tax purposes in the Member State issuing the ruling; and'

(b) the following points are added:

28. [deleted]

~~['29. 'compliance measures' means any non-monetary measure that a Member State may use for addressing non-compliance with the reporting requirements;]~~

30. [deleted]

31. 'non-custodial dividend income' means dividends or other income treated as dividends in the payer's Member State, which are paid or credited to an account other than a Custodial Account as defined in subparagraph C(3) of Section VIII of Annex I;

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 Section I of Annex I, where benefits under the contracts are payable on death of a policy holder;

33. [deleted]

34. 'distributed ledger address' means distributed ledger address as defined in Regulation XXX;

35. **for the purposes of Article 8ab,** 'client' means any ~~person,~~ intermediary or relevant taxpayer, who receives services, including assistance, advice,

counsel or guidance, from an intermediary subject to legal professional privilege in relation to a reportable cross-border arrangement.'

(2) Article 8 is amended as follows:

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

'1. The competent authority of each Member State shall, by automatic exchange, communicate to the competent authority of any other Member State all information that is available 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 other than income from dividends exempt from corporate income tax pursuant to Articles 4, 5 ~~and~~**or** 6 of Council Directive 2011/96/EU.'**;**

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

'Before 1 January 2026, Member States shall inform the Commission of at least six categories listed in the first subparagraph of paragraph 1 in respect of which the competent authority of each Member State shall, by automatic exchange, communicate to the competent authority of any other Member State information 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:

'7a. 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) 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 such an advance cross-border ruling was issued, amended or renewed after 1 January 2026 and where

(a) the amount of the transaction or series of transactions of the advance cross-border ruling exceeds EUR 1 500 000 (or the equivalent amount in any other currency), if such amount is referred to in the advance cross-border ruling; or

(b) the advance cross-border ruling determines whether a person is or is not resident for tax purposes in the Member State issuing the ruling.

For the purposes of point (a) of the first subparagraph, and without prejudice to the amount referred to in the advance cross-border ruling, in a series of transactions regarding different goods, services or assets the amount of the advance cross-border ruling shall comprise the total underlying value. The amounts shall not be aggregated if the same goods, services or assets are transacted several times.

Notwithstanding point (b) of the first subparagraph, the exchange of information on advance cross-border rulings concerning natural persons shall not include such rulings on taxation at source with regard to non-residents' income from employment, director's fees or pensions.';

(b) paragraph 6 is amended as follows:

(i) point (a) is replaced by the following:

'(a) the identification of the person, other than a natural person, except where the advance-cross border ruling concerns a natural person and shall be

communicated pursuant to paragraphs 1 and 4, 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, except where the advance-cross border ruling concerns a natural person and shall be communicated pursuant to paragraphs 1 and 4, 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); and';

(3a) in Article 8ab(5), the first subparagraph is replaced by the following:

'5. Each Member State may take the necessary measures to give intermediaries the right to a waiver from filing information on a reportable cross-border arrangement where the reporting obligation would breach the legal professional privilege under the national law of that Member State. In such circumstances, each Member State shall take the necessary measures to require any intermediary **that has been granted a waiver** to notify, without delay, his or her client, **if such client is an** ~~whether~~ intermediary or, **if there is no such intermediary, if such client is the** relevant taxpayer, of their reporting obligations under paragraph 6.'

(4) in Article 8ab(14), points (a) and (c) are replaced by the following:

'(a) the identification of intermediaries, other than intermediaries exempt from the reporting obligation on account of the legal professional privilege pursuant to paragraph 5, and relevant taxpayers, including their name, date and place of birth (in the case of an individual), residence for tax purposes, TIN and, where appropriate, the persons that are associated enterprises to the relevant taxpayer;

(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) the Identification Service identifier and the Member State of issuance, 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 - 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. **Pursuant to the applicable due diligence procedures and reporting requirements contained in Sections II and III of Annex VI,** ~~T~~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 the competent authorities of **the**~~all other~~ Member States **concerned** 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 ~~User~~**Person**:

(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;

Notwithstanding the first subparagraph of this point, where the Reporting Crypto-Asset Service Provider relies on direct confirmation of the identity and residence of the Reportable Person through an Identification Service made available by a Member State or the Union to ascertain the identity and tax residence of the Reportable Person, the information to be communicated **to the Member State of issuance of the Identification Service identifier** regarding the Reportable Person shall include the name, the Identification Service identifier and the Member State of issuance, 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 User has effectuated Reportable Transactions during the relevant calendar year or other appropriate reporting period, where relevant:

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

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

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

(iv) 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;

(v) 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;

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

(vii) 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);

(viii) 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

(ix) the aggregate fair market value, as well as the number of units 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 (ii) and (iii) of this paragraph, the amount paid or received shall be communicated 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 communicated 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 points (iv) to (ix) of this paragraph, the fair market value shall be determined and communicated 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 communicated 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).

4a. The Commission shall not have access to information referred to in points (**a**~~i~~) and (**b**~~ii~~) of paragraph 3 of this Article.

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 9 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 2026.

6. [deleted]

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 **shall**~~may choose to~~ register with the competent authority of a single Member State in accordance with the rules laid down in paragraph F of Section V 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 subparagraph F(6) of Section V 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 of this Article shall not apply to Crypto-Asset Service Providers within the meaning of subparagraph B(1) of Section IV 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 Operators. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 26(2).

10. The Commission shall, by 31 December 2025, establish a Crypto-Asset Operator register where information to be notified and communicated in accordance with subparagraph F(1) of Section V of Annex VI shall be recorded. That Crypto-Asset Operator 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 paragraph B of Section II of Annex VI, within the meaning of subparagraph F(5) of Section IV 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(1~~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 a 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 subparagraph F(5) of Section IV 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 is correspondent 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) in paragraph 2, the following subparagraph is added:

'The competent authority that receives information and documents may also use the received information and documents without the permission referred to in the first subparagraph of this paragraph 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.';

(c) paragraph 3 is replaced by the following:

'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.';

(7a) in Article 18, the following paragraph is added:

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

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

‘5. The Commission 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 Articles 8a(6), 8ab(14) and 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~~,~~ **and** 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) paragraph 5 is replaced by the following :

‘5. The Commission shall by 31 December 2017 develop and provide with technical and logistical support a secure Member State central directory on administrative cooperation in the field of taxation where information is to be communicated in the framework of Article 8a(1) and (2) shall be recorded in order to satisfy the automatic exchange provided for in those paragraphs.

The Commission shall by 31 December 2019 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 8ab(13), (14) and (16) shall be recorded in order to satisfy the automatic exchange provided for in those paragraphs.

The Commission shall by 31 December 2026 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. With respect to the information to be communicated in the framework of Article 8ad(2) and (3), the competent authority of a Member State shall, however, have access only to information pertaining to Reportable Users and Reportable Persons resident in that Member State. The Commission shall also have access to the information recorded in that directory, however with the limitations set out in Articles 8a(8), 8ab(17) and 8ad(4a). 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) and (3) shall be carried out in accordance with paragraph 1 of this Article and the applicable practical arrangements.';

(b) the following paragraph 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.~~'~~

The Commission shall develop the technical parameters of the tool referred to in the first subparagraph by means of implementing acts. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 26(2).'

(10) in Article 22, the following paragraphs 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 endeavour to 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**s** 8(1), ~~Article~~ 8(3a), ~~Article~~ 8a(6), ~~Article~~ 8aa(3), ~~Article~~ 8ab(14), ~~Article~~ 8ac(2) and ~~point (c) of Article~~ 8ad(3).'

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

'3. Member States shall monitor and assess, in relation to their Member State, the effectiveness of administrative cooperation in accordance with this Directive, including in combatting tax evasion and tax avoidance, and shall communicate the results of their assessment to the Commission once a year. 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]~~. The penalties ~~[and compliance measures]~~ provided for shall be effective, proportionate and dissuasive.'

~~[2. Member States shall ensure that 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 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 intentionally contains false data, which substantially affect the integrity and reliability of the reported information, 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 3 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 the first subparagraph 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 paragraph 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 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 deleted.

(15) the following Article 27c is inserted:

'Article 27c

Reporting and communication of TIN

1. **Each Member State shall take the necessary measures to ensure that the TIN of reported individuals or entities issued by the Member State of residence is reported by the reporting entity or individual and is communicated by each Member State when explicitly required by, and pursuant to, the Articles and Annexes of this Directive and in accordance with this Article.**~~For taxable periods starting on or after 1 January 2026, each Member State shall, whenever possible, include the TIN of reported individuals or entities issued by the Member State of residence in the communication of the information referred to in Article 8(3a), second subparagraph, point (a), Article 8a(6) point (a), Article 8aa(3) point (b), Article 8ab(14) point (a), Article 8ac(2) point (a), Article 8ad(3) points (a) and (b), Annex I, Section I subparagraph A(1), Annex III, Section III table 1 and table 2 for~~

~~the identification of the Constituent Entities, Annex V, Section II, subparagraphs B(1)(c) and B(2)(c) and Annex VI, Section II, subparagraphs B(1) and B(2). Member States shall, whenever possible, provide the TIN even when it is not specifically required by those Articles.~~

2. **For taxable periods starting on or after 1 January 2028, each Member State shall include, where it is available, the TIN of residents issued by the Member State of residence in the communication of the information referred to in points (a), (b) and (d) of the first subparagraph of Article 8(1), with respect to those categories of income and capital on which information would have been communicated even if the TIN was not obtained. For the purposes of this paragraph, the TIN shall not be considered to be available where the reporting person fails to comply with an obligation to report the TIN.**~~Member States shall also, whenever possible, include the TIN of reported individuals or entities in the reporting by the reporting entity or individual even though it is not required by Annex I, Annex III, Annex V or Annex VI.~~

3. **For taxable periods starting on or after 1 January 2028, each Member State shall take the necessary measures to require that the TIN of residents issued by the Member State of residence is reported, where the TIN is available, with respect to the information referred to in points (a), (b) and (d) of the first subparagraph of Article 8(1). For the purposes of this paragraph, the TIN shall not be considered to be available where a reporting person is not the person in possession of the TIN information and has not been able to obtain such information from the person in possession of such information, due to the latter's failure to comply with an obligation to provide the TIN to the reporting person.**~~Notwithstanding paragraphs 1 and 2 of this Article, Member States shall not have to include the TIN in the communication or in the reporting by the reporting entities or individuals if the TIN is specifically not required pursuant to Article 8ac(2)(m), Article 8ad(3)(a) second subparagraph, Annex I, Section I, paragraph D, Annex V, Section II, subparagraphs B(3) and B(4) and Annex VI, Section II, paragraph B(1), second subparagraph.'~~

4. For taxable periods starting on or after 1 January 2026, each Member State shall include, where it is available, the TIN of reported individuals and entities issued by the Member State of residence in the communication of the

information referred to in points (a) and (k) of Article 8a(6), point (b) of Article 8aa(3) and point (h) of Article 8ab(14). For the purposes of this paragraph, the TIN shall not be considered to be available where the reporting person fails to comply with an obligation to report the TIN.

5. For taxable periods starting on or after 1 January 2026, each Member State shall take the necessary measures to require that the TIN of reported individuals and entities is reported by the reporting person, where the TIN is available, with respect to the information referred to in points (a) and (k) of Article 8a(6), point (b) of Article 8aa(3) and point (h) of Article 8ab(14). For the purposes of this paragraph, the TIN shall not be considered to be available where the reporting person is not the person in possession of the TIN information and has not been able to obtain such information from the person in possession of such information, due to the latter's failure to comply with an obligation to provide the TIN to reporting person.'

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

~~(16a) Annex II is amended as set out in Annex II to this Directive;~~

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

(18) Annex VI, the text of which is set out in Annex ~~IV~~ **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 31 December 2024, the laws, regulations and administrative provisions necessary to comply with Article 1, point 5, of this Directive and Annex III, amendment (1) and (2) to Annex V 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

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 F, 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:

(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) **and (if any) other jurisdiction(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. Notwithstanding subparagraph 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,) 2018/843. 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 or Central Bank Digital Currencies for the benefit of customers.

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

(c) 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, 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 paragraph A, the following subparagraphs are added:

‘9. For the purposes of this ~~Directive~~**Annex**, the term ‘Electronic Money’ or E-money’ means any ~~Crypto-Asset~~**product** that is:

(a) a digital representation of a single Fiat Currency;

(b) issued on the receipt of funds for the purpose of making payment transactions;

(c) represented by a claim on the issuer denominated in the same Fiat Currency;

(d) accepted in payment by a natural or legal person other than the issuer; and

(e) by virtue of regulatory requirements to which the issuer is subject, redeemable at any time and at par value for the same Fiat Currency upon request of the holder of the product.

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.

10. [deleted]

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 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 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) subparagraphs 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 **31 December 2025**~~1 January 2026~~;

(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 2026.'

(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 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 or the Union 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 **subparagraph** A(6a) of Section I, with respect to each Reportable Account that is maintained by a Reporting Financial Institution as of ~~1 January 2026~~**31 December 2025** 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

In Annex II, the following paragraph is added:

'7. Qualified Non-Profit Entities may be treated as Non-Reporting Financial Institutions

Member States may wish to also treat Qualified Non-Profit Entities as Non-Reporting Financial Institutions. Any Member State adopting this optional provision must have in place appropriate legal and administration mechanisms to ensure that any Entity claiming the status of a Qualified Non-Profit Entity is confirmed to fulfil the conditions of subparagraph D.8(h) of Section VIII of Annex I before such Entity is treated as a Non-Reporting Financial Institution.

The term "Qualified Non-Profit Entity" means an Entity resident in a Member State that has obtained confirmation by the tax administration of that Member State that such Entity meets all of the following conditions:

i) it is established and operated in a Member State exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in a Member State 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 a Member State;

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 Member State 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 a noncharitable 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 Member State 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 Entity that meets the conditions set out in i) to v), or escheat to the government of the Member State or any political subdivision thereof.'

ANNEX II~~I~~

Annex V is amended as follows:

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

'10. 'Identification Service' means an electronic process made available free of charge by a Member State or the Union 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:~~**deleted.**

~~'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), points (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 residence 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;'~~

(2a) in Section III, paragraph B the following subparagraph is added:

'4. Notwithstanding subparagraphs B(2)(a) and B(3)(a), the Reporting Platform Operator shall not be required to report the information items required to be collected pursuant to paragraph B of Section II, where it reports to a competent authority that uses an Identification Service and 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 all tax residencies of the Seller. In case the Reporting Platform Operator relied on an Identification Service to ascertain the identity and all tax residencies of a Reportable Seller, the name, Identification Service identifier(s) and the Member State(s) of issuance shall be reported;'

(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~~V~~

'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 subparagraph B(3) of Section IV 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 by a Member State in accordance with Article ~~55~~**63** of Regulation XXX or allowed to provide Crypto-Asset Services following a notification to a Member State in accordance with Article ~~53a~~**60** of Regulation XXX; or

2. not an Entity authorised by a Member State in accordance with Article ~~55~~**63** of Regulation XXX or allowed to provide Crypto-Asset Services following a notification to a Member State in accordance with Article ~~53a~~**60** of Regulation XXX, and it is:

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

   b) an Entity that (i) is incorporated or organised under the laws of a Member State and (ii) 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;

c) an Entity managed from a Member State; or

d) an Entity or individual that has a regular place of business in a Member State.~~; or~~

~~3. an Entity or individual that does not meet subparagraph A(1), A(2)(a), A(2)(b), A(2)(c) or A(2)(d) and has Crypto-Asset Users that are Reportable Users.~~

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 paragraph A with respect to Reportable Transactions effectuated through a Branch based in a Member State.

BA. 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 it is subject to pursuant to subparagraph A(1) if it has lodged a notification with said Member State in a format specified by the Member State confirming that such requirements are completed by such Reporting Crypto-Asset Service Provider in a Qualified Non-Union Jurisdiction.

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 subparagraph A(2)(b), A(2)(c) or A(2)(d), if such requirements are completed by such Reporting Crypto-Asset Service Provider in any other Member State or in a Qualified Non-Union Jurisdiction by virtue of it being resident for tax purposes in such Member State or Qualified Non-Union Jurisdiction.

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(2)(c) or A(2)(d), if such requirements are completed by such Reporting Crypto-Asset Service Provider in any other Member State or in a Qualified Non-Union Jurisdiction by virtue of it being an Entity that (a) is incorporated or organised under the laws of such Member State or Qualified Non-Union Jurisdiction and (b) either has legal personality in the other Member State or Qualified Non-Union Jurisdiction or has an obligation to file tax returns or tax information returns to the tax authorities in the other Member State or Qualified Non-Union Jurisdiction 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(2)(d), if such requirements are completed by such Reporting Crypto-Asset Service Provider in any other Member State or in a Qualified Non-Union Jurisdiction by virtue of it being managed from such Member State or Qualified Non-Union Jurisdiction.

~~EA. 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(2)(d), if such requirements are completed by such Reporting Crypto-Asset Service Provider in any other Member State or in a Qualified Non-Union Jurisdiction by virtue of it having a regular place of business in such Member State or Qualified Non-Union Jurisdiction.~~

~~EB. 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(3), if such requirements are completed by such Reporting Crypto-Asset Service Provider in a Qualified Non-Union Jurisdiction.~~

~~EC. 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(3), if such requirements are completed by such Reporting Crypto-Asset Service Provider in any other Member State where it is registered as a Crypto-Asset Operator pursuant to paragraph F of Section V.~~

F. [deleted]

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(2)(d), if such requirements are completed by such Reporting Crypto-Asset Service Provider in any other Member State or in a Qualified Non-Union Jurisdiction by virtue of it being resident for tax purposes in such Member State or Qualified Non-Union Jurisdiction.

~~GA. 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(2)(d), if such requirements are completed by such Reporting Crypto-Asset Service Provider in any other Member State or in a Qualified Non-Union Jurisdiction by virtue of it having a regular place of business in such Member State or Qualified Non-Union Jurisdiction.~~

~~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(3), if such requirements are completed by such Reporting Crypto-Asset Service Provider in a Qualified Non-Union jurisdiction.~~

~~HA. 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(3), if such requirements are completed by such Reporting Crypto-Asset Service Provider in any other Member State where it is registered as a Crypto-Asset Operator pursuant to paragraph F of Section V.~~

I. [deleted]

J. 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 it is subject to pursuant to subparagraph A(2)(a), A(2)(b), A(2)(c)~~,~~ **or** A(2)(d) ~~or A(3)~~, if it has lodged a notification with a Member State in a format specified by such Member State confirming that such requirements are completed by such Reporting Crypto-Asset Service Provider under the rules of any other Member State or Qualified Non-Union Jurisdiction pursuant to criteria that are substantially similar to subparagraph A(2)(a), A(2)(b), A(2)(c) **or**~~,~~ A(2)(d) ~~or A(3)~~, respectively.

JA. 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 it is subject to pursuant to paragraph B **with respect to Reportable Transactions it effectuates through a Branch in any other Member State**, if such requirements are completed by such Branch in any other Member State or Qualified Non-Union Jurisdiction.

SECTION II
REPORTING REQUIREMENTS

A. A Reporting Crypto-Asset Service Provider within the meaning of paragraph A **and paragraph B** of Section I shall report **the information set out in paragraph B of this Section** to the competent authority of the Member State where it is subject to reporting requirements in accordance with Section I ~~the information set out in paragraph B of this Section~~.

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;

   Notwithstanding the first subparagraph of this point, where the Reporting Crypto-Asset Service Provider **reports to a competent authority that uses an Identification Service and** relies on direct confirmation of the identity and residence of the Reportable Person through an Identification Service made available by a Member State or the Union to ascertain the identity and **all** tax residenc**ie**s of the Reportable Person, the information to be reported regarding the Reportable Person is the name, the Identification Service identifier**(s)** and the Member State**(s)** of issuance, 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 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 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 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 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 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.

BA. Notwithstanding subparagraph A(1), the place of birth is not required to be reported unless the Reporting Crypto-Asset Service Provider is otherwise required to obtain and report it under domestic law.

C. The information listed in paragraph B shall be reported annually in 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 paragraphs A and C of this Section, a Reporting Crypto-Asset Service Provider within the meaning of subparagraph A(1), A(2)(a), A(2)(b), A(2)(c) **or** ~~,~~ A(2)(d) ~~or A(3)~~ of Section I shall not be required to provide the information set out in paragraph B of this Section with respect to a Reportable User **or Controlling Person** for which the Reporting Crypto-Asset Service Provider completes the reporting of such information in a non-Union jurisdiction that is covered by an Effective Qualifying Competent Authority Agreement with the Member State of residence of such Reportable User **or such Controlling Person**.

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, **unless such Controlling Person has provided a self-certification pursuant to subparagraph C(1),** as well as the role(s) by virtue of which each Reportable ~~User~~ **Person** 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 subparagraph C(2), points (b) to (d), 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 Crypto-Asset Service Provider relied on an Identification Service to ascertain the identity and tax residence of a Reportable 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 sanction 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, 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. For the purposes of this ~~Directive~~**Annex**, ‘Electronic Money’ or ‘E-money’ means any Crypto-Asset that is:

   (a) a digital representation of a single Fiat Currency;

   (b) issued on the receipt of funds for the purpose of making payment transactions;

   (c) represented by a claim on the issuer denominated in the same Fiat Currency;

   (d) accepted in payment by a natural or legal person other than the issuer; and

   (e) by virtue of regulatory requirements to which the issuer is subject, redeemable at any time and at par value for the same Fiat Currency upon request of the holder of the product.

   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. [deleted]

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 effectuating Exchange Transactions for or on behalf of a Reportable User.

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 USD 50 000 (or the equivalent amount in any other currency).

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.

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, as far as Reporting Crypto-Asset Service Providers are concerned.

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 Electronic Money 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 subparagraph D(10), 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 Member State or other 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 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 determined by an implementing act in accordance with Article 8ad(11).

6. [deleted]

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 or the Union to a Reporting Crypto-Asset Service Provider 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 **Reportable**~~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 **period within which the Reporting Crypto-Asset Service Provider is required to report the information if the information is reportable pursuant to Section II**~~calendar year or other appropriate reporting 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 Crypto-Asset Service Provider

The ~~national~~ competent authority of a 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 of the relevant calendar year or other appropriate reporting period to the ~~national~~ competent authority under this Directive, if that is a different 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 subparagraph B(2) of Section IV of this Annex shall register with the competent authority of any Member State pursuant to Article 8ad(7) when it commences its activity as a Crypto-Asset Operator.~~

0. **a) A Crypto-Asset Operator that is a Reporting Crypto-Asset Service Provider as defined in subparagraph B(3) of Section IV shall register, pursuant to Article 8ad(7), with the competent authority of the Member State, determined in accordance with subparagraph A(2)(a), A(2)(b), A(2)(c) or A(2)(d) or paragraph B of Section I, before the end of the period within which such Crypto-Asset Operator must report the information set forth in paragraph B of Section II. If such Crypto-Asset Operator fulfils the conditions in subparagraph A(2)(a), A(2)(b), A(2)(c) or A(2)(d) or paragraph B, respectively, of Section I in more than one Member State, it shall register, pursuant to Article 8ad(7), with the competent authority of one of those Member States, before the end of the period within which the Crypto-Asset Operator must report the information set forth in paragraph B of Section II.**

b) Notwithstanding point (a), a Crypto-Asset Operator that is a Reporting Crypto-Asset Service Provider as defined in subparagraph B(3) of Section IV shall not register with the competent authority of a Member State, in which such Crypto-Asset Operator is not required to complete the due diligence and reporting requirements in Sections II and III pursuant to paragraph C, D, E, G, J or JA of Section I, by virtue of such requirements being completed by such Crypto-Asset Operator in any other Member State.

1. **Upon registration,** ~~T~~the Crypto-Asset Operator shall communicate to the Member State of its single registration**, determined in accordance with subparagraph F(0),** the following information:

(a) name;

(b) postal address;

(c) electronic addresses, including websites;

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

(e) Member States in which Reportable Users are residents within the meaning of paragraphs A and B of Section III~~.~~**;**

(f) any Qualified Non-Union Jurisdiction as referred to in paragraph C, D, E, G or JA of Section I.

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 Crypto-Asset Operator register in the following cases:

(a) the Crypto-Asset Operator notifies that Member State that it no longer has Reportable 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 subparagraph B(2) of Section IV;

(d) the Member State revoked the registration with its competent authority pursuant to subparagraph F(6).

5. Each Member State shall forthwith notify the Commission of any Crypto-Asset Operator within the meaning of subparagraph B(2) of Section IV that has Reportable 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(6) 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 Operator made 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
General Secretariat

Interinstitutional files:
2022/0413 (CNS)

Brussels, 28 March 2023

WK 4264/2023 INIT

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MEETING DOCUMENT

From:	Presidency
To:	Delegations
N° prev. doc.:	WK 3285/2023
Subject:	DAC8: Presidency steering note and compromise text

Delegations will find attached the Presidency steering note and the compromise text (changes made to the previous compromise text are marked in bold and underlined, deletions are struck through).

Annex to the steering note

WPTQ (Direct Taxation – DAC)
Meeting on 3 APRIL 2023

Examples for discussion block II in the steering note (Art. 8ad and Annex VI)

At the Working Party meeting on 15 March 2023, some Member States asked the Presidency to provide for some explanatory examples regarding the provisions in Annex VI, in particular concerning the nexus rules. Against this background, the Presidency has outlined some examples.

Example A: "the MiCA nexus"

Crypto Company (a Canadian company) has been authorised as a crypto-asset service provider (CASP) by Sweden in accordance with Art. 55 of MiCA (the older references to the Articles in MiCA are used here, in order not to complicate matters).

Crypto Company is a Reporting Crypto-Asset Service Provider (RCASP) as defined in subparagraph B(3) of Section IV of Annex VI (i.e., it conducts one or more Crypto-Asset Services effectuating Exchange Transactions for or on behalf of a Reportable User). As an Entity authorised by Sweden as a CASP, and being an RCASP, Crypto Company will meet the **nexus rule in Annex VI, Section I, subparagraph A(1)**. Hence, it is subject to the due diligence and reporting requirements in Sections II and III of Annex VI in Sweden, with respect to Reportable Users in the Member States (according to Annex VI, Section IV, subparagraph D[1], 'Reportable User' means a Crypto-Asset User that is a Reportable Person resident in a Member State).

However, Canada has in effect an Effective Qualifying Competent Authority Agreement (EQCAA) with the competent authorities of all Member States. Therefore, Canada is a Qualified Non-Union Jurisdiction (QNUJ) as defined in Annex VI, Section IV, subparagraph F(7). Crypto Company has lodged a notification with Sweden, confirming

that the due diligence and reporting requirements are completed by Crypto Company in Canada. For this reason, it shall not complete the due diligence and reporting requirements it is otherwise subject to in a Member State (in this case Sweden), see **Annex VI, Section I, paragraph BA**.

In **Annex VI, Section II, paragraph D**, a possibility (for this nexus ground and the other nexus grounds in Annex VI, Section I, subparagraph A[2]) is provided that an RCASP *shall not be required to report information with respect to a Reportable User or a Controlling Person for which the RCASP completes the reporting of such information in a non-Union jurisdiction that is covered by an EQCAA with the Member State of residence of such Reportable User or such Controlling Person*.

In this example, the Member State in which Crypto Company has its nexus is Sweden. Let us assume that Canada only has an EQCAA with Sweden and not with any other Member State. In the Presidency's understanding of the abovementioned provision, the reported information which is exchanged under the EQCAA would concern only Swedish residents. Crypto Company would still, however, need to complete the due diligence and reporting requirements in Sweden regarding residents in other Member States.

Example B: a stronger nexus to a non-EU jurisdiction

Crypto Person is an individual resident for tax purposes in Canada. Crypto Person has a regular place of business in Sweden.

Crypto Person is a Reporting Crypto-Asset Service Provider (RCASP) (i.e., he or she conducts one or more Crypto-Asset Services effectuating Exchange Transactions for or on behalf of a Reportable User). As an individual (and as a Crypto-Asset Operator and RCASP) having a regular place of business in Sweden, Crypto Person will meet the **nexus rule in Annex VI, Section I, subparagraph A(2)(d)**. A similar nexus rule ("the regular place of business nexus") in the CARF can be found in Section I, subparagraph A(4).

Because of the above, Crypto Person is subject to the due diligence and reporting requirements in Sections II and III of Annex VI in Sweden, with respect to Reportable Users in the Member States.

However, Canada has in effect an Effective Qualifying Competent Authority Agreement with the competent authorities of all Member States. Therefore, Canada is a Qualified Non-Union Jurisdiction, as defined in Annex VI, Section IV, subparagraph F(7). In this context, it is important to note that Crypto Person has a stronger nexus to Canada (resident for tax purposes) than to Sweden (regular place of business). For this reason, he or she shall not complete the due diligence and reporting requirements that he or she is otherwise subject to in a Member State (in this case Sweden), see **Annex VI, Section, paragraph G**. A similar mechanism in the CARF can be found in Section I, paragraph F.

Example C: an equally strong nexus in two jurisdictions

Crypto Company is an Entity that is resident for tax purposes in Canada and Sweden.

Crypto Company is a Reporting Crypto-Asset Service Provider (RCASP) (i.e., it conducts one or more Crypto-Asset Services effectuating Exchange Transactions for or on behalf of a Reportable User). As an Entity (and as a Crypto-Asset Operator and RCASP) resident for tax purposes in Sweden, Crypto Company will meet the **nexus rule in Annex VI, Section I, subparagraph A(2)(a)**. A similar nexus rule ("the resident for tax purposes nexus") in the CARF can be found in Section I, subparagraph A(1).

Because of the above, Crypto Company is subject to the due diligence and reporting requirements in Sections II and III of Annex VI in Sweden, with respect to Reportable Users in the Member States.

However, Canada has in effect an Effective Qualifying Competent Authority Agreement with the competent authorities of all Member States. Therefore, Canada is a Qualified Non-Union Jurisdiction, as defined in Annex VI, Section IV, subparagraph F(7). In this context, it is important to note that the nexus is as strong in Canada as it is in Sweden (resident for tax purposes). Crypto Company has lodged a notification with Sweden, in accordance with **Annex VI, Section I, paragraph J**, confirming that the due diligence and reporting requirements are completed by Crypto Company under the rules of Canada, pursuant to criteria that are substantially similar to Annex VI, Section I, subparagraph A(2)(a). Therefore, Crypto Company is not required to complete the due diligence and

reporting requirements it is otherwise subject to in a Member State (in this case Sweden). A similar mechanism in the CARF can be found in Section I, paragraph H.

Examples for discussion block IV in the steering note (high net worth individuals)

Example A: dividend, a single transaction in scope

Person DK is a natural person resident for tax purposes in Denmark. Person DK applies for a legally binding advance tax ruling from the Swedish Council for Advance Tax Rulings, in order to receive an answer to the question if an upcoming dividend of EUR 2 000 000 from a Swedish entity to person DK is exempt from taxation in Sweden.

This example concerns an "advance cross-border ruling", as defined in Art. 3(14), since the ruling is issued by a tax authority of a Member State to a particular person (and upon which that person is entitled to rely), concerns the interpretation or application of a legal or administrative provision concerning the administration or enforcement of national laws relating to taxes of the Member State, relates to a cross-border transaction (see further below) and is issued in advance of the transaction.

This advance cross-border ruling concerns a "cross-border transaction", as defined in Art. 3(16), since not all of the parties to the transaction are resident for tax purposes in the Member State issuing the advance cross-border ruling, in this case Sweden (see point [a] of the first subparagraph of Art. 3[16]). It should also be noted that point (d) of the first subparagraph of Art. 3(16) refers to "such transactions or series of transactions have a cross border impact".

Since the dividend of EUR 2 000 000 exceeds the threshold value of EUR 1 500 000 in point (a) of the first subparagraph of Art. 8a(4) in the Presidency's compromise, and since this amount is referred to in the advance cross-border ruling, the ruling is in scope of the proposed mandatory automatic exchange of information on advance cross-border rulings and shall be exchanged.

Example B: interest payments, a series of transactions in scope

Person SE is a natural person resident for tax purposes in Sweden. Person SE applies for a legally binding advance tax ruling from the Swedish Council for Advance Tax Rulings, in order to receive an answer to the question if Person SE will be allowed to deduct three different interest payments, of EUR 700 000 each, made to Entity DK (which is tax resident in Denmark and which is not taxed for the interest income in Sweden).

This example concerns an "advance cross-border ruling", as defined in Art. 3(14), since the ruling is issued by a tax authority of a Member State to a particular person (and upon which that person is entitled to rely), concerns the interpretation or application of a legal or administrative provision concerning the administration or enforcement of national laws relating to taxes of the Member State, relates to a cross-border transaction and is issued in advance of the transaction (or series of transactions).

The amount referred to in the advance cross-border ruling is EUR 700 000. However, the second subparagraph of Art. 8a(4) in the Presidency's compromise should apply in this context. The first sentence states that "*for the purposes of point (a) of the first subparagraph, and without prejudice to the amount referred to in the advance cross-border ruling, in a series of transactions regarding different goods, services or assets the amount of the advance cross-border ruling shall comprise the total underlying value*". The amount of EUR 2 100 000 (EUR 700 000 * 3) exceeds the threshold value of EUR 1 500 000 in point (a) of the first subparagraph of Art. 8a(4) in the Presidency's compromise. Therefore, the ruling is in scope of the proposed mandatory automatic exchange of information on advance cross-border rulings and shall be exchanged.

Example C: merger, a series of transactions out of scope

Person SE1 and Person SE2 are two natural persons resident for tax purposes in Sweden. Entity SE is resident for tax purposes in Sweden. Entity DK is resident for tax purposes in Denmark.

Person SE1 applies for a legally binding advance tax ruling from the Swedish Council for Advance Tax Rulings, in order to receive an answer to the question on how a series of cross-border transactions will be taxed in Sweden. All shares in Entity SE will be sold for EUR 1 000 000 from Person SE1 to Person SE2. All shares in Entity SE will then be sold from Person SE2 to Entity SE for the same price. And, lastly, Entity SE will be merged with Entity DK.

This example concerns an "advance cross-border ruling", as defined in Art. 3(14), since the ruling is issued by a tax authority of a Member State to a particular person (and upon which that person is entitled to rely), concerns the interpretation of application of a legal or administrative provision concerning the administration or enforcement of national laws relating to taxes of the Member State, relates to a cross-border transaction and is issued in advance of the transaction (or series of transactions).

The amount referred to in the advance cross-border ruling is EUR 1 000 000. Since the advance cross-border concerns a series of transactions, the second subparagraph of Art. 8a(4) in the Presidency's compromise should apply. The second sentence states that "*the*

amounts shall not be aggregated if the same goods, services or assets are transacted several times". In this case, the same shares are transacted several times. Therefore, the amounts shall not be aggregated. The amount of EUR 1 000 000 does not exceed the threshold value of EUR 1 500 000 in point (a) of the first subparagraph of Art. 8a(4) in the Presidency's compromise and shall therefore not be exchanged *pursuant to this particular provision*. (However, it could be noted that the advance cross-border ruling shall be exchanged pursuant to existing provisions in Art. 8a, since the advance cross-border ruling does not *exclusively* concern and involve the tax affairs of one or more natural persons. In this case, it also concerns Entity SE and Entity DK.)

Example D: goods, a series of transactions in scope

Person SE is a natural person resident for tax purposes in Sweden. Person SE buys a diamond, that has not yet been honed, from a dealer in Finland for EUR 1 400 000. Person SE then hones the diamond and sells it to Person DK for EUR 1 550 000. Person DK is resident for tax purposes in Denmark. Person SE applies for a legally binding advance tax ruling from the Swedish Council for Advance Tax Rulings, in order to receive an answer to the question of how this series of cross-border transactions will be taxed in Sweden.

This example concerns an "advance cross-border ruling", as defined in Art. 3(14), since the ruling is issued by a tax authority of a Member State to a particular person (and upon which that person is entitled to rely), concerns the interpretation or application of a legal or administrative provision concerning the administration or enforcement of national laws relating to taxes of the Member State, relates to a cross-border transaction and is issued in advance of the transaction (or series of transactions).

When determining if the amount of the series if transactions exceeds EUR 1 500 000, the purchase price of the diamond (EUR 1 400 000) shall not be aggregated with the sale price (EUR 1 550 000), since it is the same product. The amount of the series of transactions is instead the highest value of the two transactions, i.e., EUR 1 550 000. The ruling is therefore in scope (it exceeds the threshold) of the proposed mandatory automatic exchange of information on advance cross-border ruling and shall be exchanged.

Examples for discussion block V in the steering note (non-custodial dividend income, provided by the Commission)

Non-custodial dividend income would constitute a new category of income and capital to be automatically exchanged under Art. 8. The benefits to investors derived from unlisted securities may include steady flows of income that may consist of dividends. Listed securities are always defined as "custodial" and are therefore reported under DAC2, if there

is a financial account in the source Member State. In the case of unlisted securities, they are only reported under DAC2 if they are also held by a custodian.

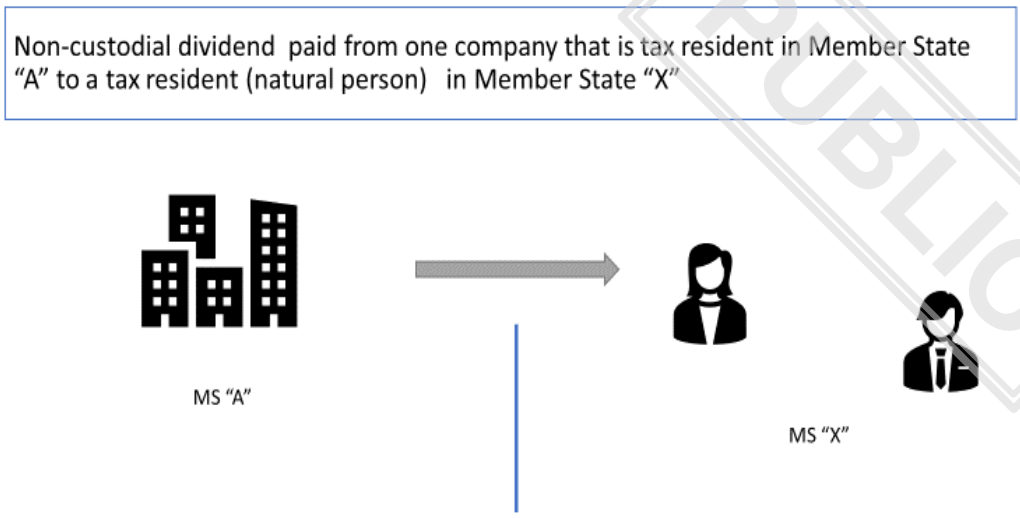
Dividends represent the distribution of corporate profits to shareholders, bases upon the number of shares held in the company. Normally, when a company distributed dividends, it must report to the competent authorities information on the recipients of dividends, distributed dividends and possibly withholding tax on dividends. When there is a withholding tax in force, generally this information is directly reported to the Tax Authority by the company paying the dividend. When the dividends are paid in the form of additional securities or other items different than cash, this information would also be reported under DAC2 if there is an intervention of a custodian.

The "non-custodial dividend income" category would normally apply to dividends paid through a current bank account, by a company resident in one Member State to its shareholder, resident in another Member State. Under the DAC8 proposal, information on this category of income shall be shared by the Tax Authority where the company which is paying the dividend is tax resident with the Member State of residence of the dividend recipient.

Unlisted companies may share profits in the form of payment of dividends to its **shareholders directly to a current account which is held by the shareholder.** There is no intermediary in between the payer of the dividend and the account holder. There are also other types of dividends that **are paid in additional securities or other assets** (instead of cash), which should also be covered by the obligation to exchange.

Example A: dividends paid to a natural person

When a domestic **unlisted company pays its dividends to a shareholder that is tax resident in another Member State**, this income would be reported under this new category of information under DAC1. In that regard, the reported information concerning the receipt of the dividends must allow to identify the shareholder and the Member State where they are residents. Most Member States have some form of withholding taxes which they levy on securities, in particular equity securities, meaning that the information collected in that context could, for example, be used to provide the necessary information. In order to make this information useful, and avoid burdensome procedures, it should not be aggregated in a way that impedes the tax recipient identification.



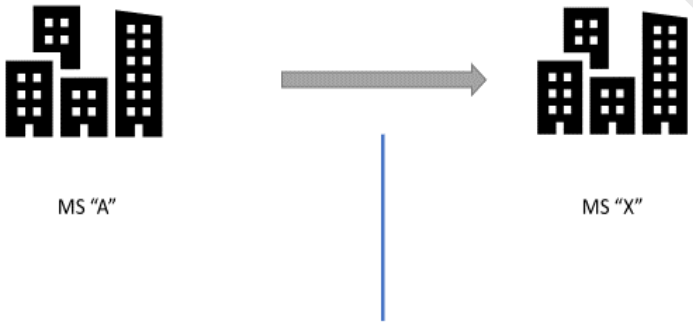
Example B: dividends paid in a parent-subsidiary relationship

Dividends paid by a company to another company that is tax resident in another Member State. The Parent-Subsidiary Directive (Council Directive 2011/96/EU) allows an exemption from withholding tax at source on dividends distributed between EU companies, meaning distributions of profits received by companies of one Member State which come from their subsidiaries in other Member States and also provides for mechanisms to avoid the potential double taxation that may occur. When, by virtue of this Directive, the dividends paid by one company which is tax resident in one Member State are exempt of withholding tax at source, then the information on these dividends would not be exchanged between tax authorities, as per the compromise text on DAC. However, it is worth noting that, while this Directive only foresees this exemption for specific cases where companies are related by a parent-subsidiary relationship as defined in the Directive, there could be a high interest from the dividend recipient's Member State Tax Authority to receive the information concerning these dividends. The dividends would be exempt at the source Member State but that does not mean that it should not be taxed by the dividend recipient's Member State of residency.

Example C: dividends paid by a company to another company

In case the dividend is paid by a company to another company, and they are not in a parent-subsidiary relationship as defined by the Directive, the dividends would not benefit directly from the exemption foreseen in the Presidency compromise text, and hence they would be reported.

Non-custodial dividend paid from one company that is tax resident in Member State “A” to another company that is tax resident in Member State “X” and they are not in a parent subsidiary relationship as describe in Directive 2011/16/EU.



Presidency steering note

WPTQ (Direct Taxation – DAC)
Meeting on 3 APRIL 2023

Exchange of views on the third Presidency compromise text and on certain elements of the original Commission proposal

Time schedule: Morning session 10 a.m. – 1 p.m. Lunch 1 p.m. – 2.30 p.m. Afternoon session 2.30 p.m. – 6.30 p.m.

I. Introduction

This steering note contains several discussion blocks on which delegations are encouraged to share their views. The discussion blocks contain comments from the Presidency on the most substantial changes in the compromise text. Some discussion blocks also include other points of discussion which have been raised by the Member States.

The Presidency would like to underline that **the key objective of this meeting is to take further steps in the process towards a final compromise. Therefore, delegations are invited to raise, where applicable, only the concerns that would block from them accepting the overall compromise text proposed by the Presidency.**

II. Scope and conditions of mandatory automatic exchange of information reported by Reporting Crypto-Asset Service Providers (Art. 8ad, Annex VI and other related provisions)

1. Comments from the Presidency on the changes in the compromise text:

- **General comment:** Please see the Annex to this steering note, where the Presidency has made an attempt to illustrate the functioning of the nexus rules in Annex VI.

- **Art. 8ad(2):** The wording "all other Member States" has been changed to "the Member States concerned". Please note the reference to Art. 21, where it is stated, in the fourth subparagraph of paragraph 5, that "the competent authority of a Member State shall, however, have access only to information pertaining to Reportable Users and Reportable Persons resident in that Member State".

- **Art. 8ad(2) and (3) and Annex VI, Section II, paragraph BA:** The new paragraph BA contains an exception with respect to place of birth information (similar to the exception provided for in the CARF). Such information is not required to be reported, unless the Reporting Crypto-Asset Service Provider is otherwise required to obtain and report it under domestic law (and it is available in the electronically searchable data maintained by the Reporting Crypto-Asset Service Provider). Related to this, a change has been made in Art. 8ad(2), in order for it to be clear that the exchange of information by the competent authority of a Member State should take place following the application of the due diligence and reporting requirements in Sections II and III of Annex VI. Thus, where such rules do not require the reporting of place of birth information, there is no obligation to exchange such information.

- **Art. 8ad(3):** The defined terms in relation to "Reportable User" are set forth in Annex VI, Section IV, paragraph D. The term "Reportable User", as defined in subparagraph D(1), means a Crypto-Asset User that is a Reportable Person resident in a Member State. Subparagraph D(7) defines the term "Reportable Person" as a Member State Person other than an Excluded Person. The different subparagraphs are interlinked in such a way that all Reportable Users are Reportable Persons but not all Reportable Persons are Reportable Users. In other words, the definition of "Reportable Person" is wider and should therefore be used, in the Presidency's understanding, in the context of reporting and communication. It should be noted that "Reportable Person" encompasses "Controlling Persons".

- **Annex VI, Section I, subparagraphs A(1) and A(2):** The references to the Articles in MiCA have been updated. No change in substance is intended.

- **Annex VI, Section I, subparagraph A(3) and recital 19:** This "remote nexus" has been removed. The main reasons are the following. 1) It has been questioned what the added value of this remote nexus is in practice, since most "non-EU" Reporting Crypto-Asset Service Providers will fall under the "MiCA nexus" in subparagraph A(1). 2) It is the Presidency's understanding that this removal will increase the chances of success of the exchange of information under the CARF. 3) The enforceability related to this remote nexus has been questioned. 4) The removal will, in the Presidency's view, significantly simplify the provisions in this Section (Section I). The deletion of this "remote nexus" entails that, as a consequence, paragraphs EB, EC, H and HA are removed. Other references to subparagraph A(3) in other provisions are also removed, as a consequence.

- **Annex VI, Section I, paragraphs EA and GA:** Following input from Member States and further reflection, these paragraphs have been deleted. The main reasons for these deletions are the following. As regards the nexuses in subparagraph A(2),

it is important to note that paragraphs C to G establish the hierarchy when two *different* nexuses are applicable. However, when the *same* nexus is applicable in two jurisdictions, it is paragraph J that applies (with the requirement to lodge a notification). Consequently, paragraphs EA and GA are removed, because the events that they capture are covered by paragraph J. These deletions have the additional advantage of simplifying the provisions in this Section.

- **Annex VI, Section I, paragraphs EB, EC, H and HA:** See the rationale for deleting the "remote nexus" in Annex VI, Section I, subparagraph A(3) above.

- **Annex VI, Section I, paragraph JA:** The words "with respect to Reportable Transactions if effectuates through a Branch in any other Member State" have been reinstated, for reasons of clarity.

- **Annex VI, Section III, subparagraph C(2), point (e):** The wording "unless such Controlling Person has provided a self-certification pursuant to subparagraph C(1)" has been inserted, in order to align this provision with the CARF. Without such a wording, a self-certification would have to be requested, even if this information would have already been reported by the Controlling Person in his or her self-certification.

- **Annex VI, Section V, subparagraph B(1):** To point out the starting date of the retention period more clearly, and in order to further align with the CARF (Section III, subparagraph D[3]), the wording is changed to "period within which the Reporting Crypto-Asset Service Provider is required to report the information if the information is reportable pursuant to Section II". It is important to note that the Reporting Crypto-Asset Service Provider should be required to keep records even when the due diligence procedure does not lead to a reporting obligation.

- **Annex VI, Section V, subparagraphs F(0) and F(1):** The main intentions with these amendments are the following: 1) A Crypto-Asset Operator should not be able to freely choose where to register, as this would, *inter alia*, give rise to a risk of "registration shopping". 2) The overarching idea is that a Crypto-Asset Operator should register in the Member State where it has its strongest EU nexus and where it completes its due diligence and reporting requirements. 3) If the Crypto-Asset Operator completes its due diligence and reporting requirements in a Qualified Non-Union Jurisdiction, it should still register in the Member State where it has its strongest EU nexus. It could be valuable for such a Member State to be aware of the circumstance that such a Crypto-Asset Operator completes its due diligence and reporting requirements in a Qualified Non-Union Jurisdiction (and which Qualified Non-Union Jurisdiction that is).

In point (a) of subparagraph F(0), a reference to "Reporting Crypto-Asset Service Provider" has been added, since it seems questionable to oblige Crypto-Asset Operators that are not Reporting Crypto-Asset Service Providers to register with a competent authority of a Member State (and to spend resources on this). Moreover, it is proposed that a Crypto-Asset Operator shall register with the competent authority of the Member State in which it has its strongest nexus. The wording "determined in accordance with subparagraph A(2)(a), A(2)(b), A(2)(c) or A(2)(d) or paragraph B of Section I" aims to capture this, by mentioning these nexus grounds in this order and with the word "or".

In a situation where a Crypto-Asset Operator has an equally strong link to several Member States, the Crypto-Asset Operator shall register with the competent authority of one of those Member States. The wording "If such Crypto-Asset Operator fulfils the conditions in subparagraph A(2)(a), A(2)(b), A(2)(c) or A(2)(d) or paragraph B, *respectively*, of Section I in more than one Member State" aims to capture this, by mentioning these nexus grounds in this order and with the word "respectively".

The wording "before the end of the period within which the Crypto-Asset Operator must report the information set forth in paragraph B of Section II" has been added, since the former wording "when it commences its activity as a Crypto-Asset Operator" did not seem to take into account Crypto-Asset Operators which have already commenced their activities, and since a Crypto-Asset Operator might not know, until the end of the reporting period, if it has duties under the Directive.

Point (b) of subparagraph F(0) entails that a Crypto-Asset Operator shall not register with the competent authority of a Member State, in which such Crypto-Asset Operator is not completing the due diligence and reporting requirements, *by virtue of such requirements being completed by such Crypto-Asset Operator in any other Member State*. The omission of a reference to a Qualified Non-Union Jurisdiction at the end is intentional. As mentioned above, the idea is that a Crypto-Asset Operator shall always register with the competent authority of the Member State where it has its strongest EU nexus, even if the due diligence and reporting requirements are completed by such Crypto-Asset Operator in a Qualified Non-Union Jurisdiction.

Furthermore, it seems to be necessary to clearly indicate *when* the Crypto-Asset Operator shall *communicate* the information set forth in subparagraph F(1). For this reason, the words "upon registration" have been added. In addition, in the new point (f) of subparagraph F(1), it is specified that the information shall include any Qualified Non-Union Jurisdiction in which the Crypto-Asset Operator completes

its due diligence and reporting requirements (see, for comparison, the requirement to lodge a notification with a Member State in paragraphs BA and J of Section I).

Question: Do you have any objections to the changes made in these parts of the compromise text?

2. Other points raised by the Member States

- **Art. 20(5), first subparagraph, point (c):** The following has been stated as regards this provision: As the first reporting period is 2026 (and the first exchange of information is to take place in 2027), the adoption of implementing acts laying down standard computerised forms before 1 January 2026 is too late. This deadline does not give Member States much time to prepare a national form, nor does it give Reporting Crypto-Asset Service Providers enough time to prepare for the new form of reporting. With this in mind, it is proposed that this date should be changed to 1 January 2025, at the latest.

- **Art. 21(5):** Some Member States have reiterated that they have doubts regarding the use of a central directory. The Presidency has duly noted this. However, in the Presidency's understanding, most Member States are in favour of a central directory solution (or at least they do not object to such a solution), and the number of such Member States is increasing. In this particular part of the proposal, it is hard to come up with a "middle ground" compromise, because either a central directory is used or it is not. Against this background, the Presidency has not made any changes in this particular part of the compromise text.

- **Annex VI, Section II, paragraph D:** See the end of Example A in the annex to this steering note and the part on the possibility to apply this particular mechanism. Please also note the question posed below.

- **Annex VI, Section IV, subparagraph B(3):** It has been proposed to replace the current reference to "Exchange Transactions" with a reference to "Reportable Transactions" in this provision. The Presidency has chosen not to make this change, for the following principal reasons: 1) This would give rise to a deviation from the defined term "Reporting Crypto-Asset Service Provider" in Section IV, subparagraph B(1) of the CARF, where this a reference to the "same" term "Exchange Transactions". 2) The Presidency's understanding is that this reference in the CARF to the "narrower" term "Exchange Transactions" (and not the broader term "Relevant Transactions") was deliberately chosen in order to avoid an overly broad range of persons *in scope* of the definition of a Reporting Crypto-Asset Service Provider, such as persons that facilitate payments in crypto-assets (i.e., transfers) for small purchases of goods. However, it is important to note that, in the Presidency's understanding, *once an entity or individual is in scope of the Reporting*

Crypto-Asset Service Provider definition in DAC8 (and in the CARF), *they would need to also report on transfers they effectuate* (see Annex VI, Section II, subparagraph B[3]).

- **Annex VI, Section IV, subparagraph C(4):** The threshold value now refers to USD and not EUR. The question has been posed which reference date or reference value (e.g., annual mean value) should be used for the conversion. According to the Presidency's understanding, the same conversion principles should be applied in this instance as for the reporting requirement for other conversion rules in DAC8 for crypto-asset to Fiat Currency transaction ("converted at the time of each Reportable Transaction in a manner that is consistently applied by the Reporting Crypto-Asset Service Provider").

- **Annex IV, Section V, subparagraph A(2):** The provision states that a Reporting Crypto-Asset Service Provider shall prevent the Crypto-Asset User from performing Reportable Transactions. However, it has been questioned whether it is possible that Reporting Crypto-Asset Service Providers are not involved in such transactions (they are not a "party" to it). This could, for example, take place with Decentralised Autonomous Organisations. Against this background, the following question has been posed: Should this requirement be considered as a so-called "best/reasonable efforts" obligation?

Question: In your view, should the mechanism provided for in Annex VI, Section II, paragraph D be retained (see the end of Example A in the "crypto part" of the Annex to this steering note)? If yes, should this mechanism be applicable to every nexus ground in subparagraphs A(1) and (2) of Section I of Annex VI?

Question: What are your views on the other points raised above?

III. TIN (Art. 27c and related provisions)

Comments from the Presidency on the changes in the compromise text:

- **Recital 29:** Please note the changes made in Art. 27c, which are described below and reflected in this recital.

- **Art. 21(8) and recital 37:** Some Member States have stated that it is unclear how this "TIN tool" will be designed and that the degree of participation from the Member States in the development of the tool remains to some extent uncertain. To this end, it has been clarified that the Commission shall develop the tool by means of implementing acts.

- **Art. 27c (general remarks):** Many Member States, if not all, recognise the high importance of TIN for matching purposes. Some Member States are of the view that it is of particular importance to include the TIN in the communication of the information referred to in the first subparagraph of Art. 8(1) (DAC1). However, some Member States consider that including the TIN in the communication of DAC1 information would be practically difficult and costly. Furthermore, a number of Member States have also pointed out that wordings like "whenever possible" are not clear enough, and that it is not necessary or appropriate to outline Articles and other provisions where there are already explicit TIN requirements. Against this background, the Presidency has endeavoured to find a solution that is acceptable to all Member States (see elaborations below) and has, as appropriate, reached out to Member States bilaterally.

- **Art. 27c(1):** This provision entails that each Member State shall take the necessary measure to ensure that the TIN is reported and communicated when explicitly required by, and pursuant to, the Articles and Annexes of the DAC and in accordance with Art. 27c. Please note that "and pursuant to" aims to recognise situations where the TIN could not be reported (for instance, in situations relating to Pre-existing Accounts or a temporary lack of self-certification in DAC2).

- **Art. 27c(2):** A requirement to include the TIN, where it is available, in the communication of the information referred to in points (a), (b) and (d) of the first subparagraph of Art. 8(1) (DAC1) has been inserted. These points refer to income from employment, director's fees and pensions and have been added since they can be considered to be especially relevant in this context. The other categories of income and capital are not included, in order to reduce administrative burdens and costs. Please also note the extended "deadline" for this provision (1 January 2028). Moreover, the intention of the wording "with respect to those categories of income and capital on which information would have been communicated even if the TIN was not obtained" is that the TIN has to be exchanged *only with respect to the abovementioned categories of income and capital on which the Member State has <u>other information than the TIN</u> available* and therefore shall exchange it (i.e., Member States do not have to exchange information on such a category where the TIN is the only available information). Furthermore, an elaboration of "available" is inserted in the last sentence.

- **Art. 27c(3):** It is proposed that each Member State shall take the necessary measures to require that the TIN of residents is reported, where the TIN is available, with respect to income from employment, director's fees and pensions (DAC1). Please note the extended deadline. Furthermore, an elaboration of "available" is inserted in the last sentence.

- **Art. 27c(4):** This provision includes a requirement to include the TIN, where it is available, in the communication of the information referred to in points (a) and (k) of Art. 8a(6) (DAC3), point (b) of Art. 8aa(3) (DAC4) and point (h) of Art. 8ab(14) (DAC6). These are provisions which do not contain an explicit TIN requirement. An elaboration of "available" is inserted in the last sentence.

- **Art. 27c(5):** It is proposed that each Member State shall take the necessary measures to require that the TIN of reported individuals and entities is reported, where the TIN is available, with respect to the information referred to in points (a) and (k) or Art. 8a(6) (DAC3), point (b) of Art. 8aa(3) (DAC4) and point (h) of Art. 8ab(14) (DAC6). An elaboration of "available" is inserted in the last sentence.

- **Art. 27c (closing remarks and examples):** In addition to the elaborations of "available" in the abovementioned provisions and in the text above, the Presidency will in this part provide some examples of situations where the TIN shall not be, in the Presidency's view, considered to be available. Please note that the following examples are not meant to be exhaustive. DAC1: The taxpayer refuses, even under the threat of whichever consequences stipulated in the Member State, to disclose the foreign TIN. DAC2: The Account Holder of a Pre-existing Account is impossible to get in contact with. The person may have deceased without the account being noted by the estate, or he or she may be ignoring all contact attempts by the financial institution. Another situation is where there is a change in circumstances with respect to a New Account. DAC7: After two administrative reminders, the Seller does not inform the Platform Operator of his or her TIN. Therefore, the Platform Operator closes the account. However, this does not mean that the considerations paid during the year (before the closing of the account) do not have to be reported. In such a case, however, the TIN cannot be reported.

Question: In the spirit of compromise, would you be able to accept the proposed new wording of Art. 27c?

Question: Do you have any objections to the other changes mentioned above?

IV. Mandatory automatic exchange of information regarding advance cross-border rulings relating to high net worth individuals (Art. 8a)

Comments from the Presidency:

- **General comment:** Please see the Annex to this steering note and the examples contained therein. Please also note the changes made in recitals 30 and 31.

- **Art. 3(14), first subparagraph, point (d):** In order to include tax rulings determining the tax residency of natural persons in the scope of the definition of an advance cross-border ruling, this provision has now been amended. This change is related to Art. 8a(4), first subparagraph, point (b) in the compromise text.

- **Art. 3(14) and (16) (elaborations on the term "transaction", in relation to Art. 8a[4], first subparagraph, point [a] in the compromise text)**: In the Presidency's view, it is important to recall that, according to the definition of an "advance cross-border ruling" in Art. 3(14), such a ruling must meet the condition (in point [d] of the first subparagraph) that it relates to a cross-border transaction, if it does not relate to the question of whether or not activities carried on by a person in another jurisdiction create a permanent establishment or to the question of whether or not a natural person is resident for tax purposes in the Member State issuing the ruling (the latter condition is proposed in this third compromise text, as described in the point above).

  It is also important to note that the second subparagraph of Art. 3(14) states that the cross-border transaction "*may involve, but is not restricted to,* the making of investments, the provision of goods, services, finance or the use of tangible or intangible assets and does not have to directly involve the person receiving the advance cross-border ruling". Furthermore, the first subparagraph of Art. 3(16) includes a definition of "cross-border transaction" for the purposes of Art. 3(14). If a transaction or a series of transactions meets any of the conditions in this definition, then it is a "cross-border transaction". In this context, it should be noted that point (a) refers to situations where not all of the parties to the transaction or series of transactions are resident for tax purposes in the Member State issuing, amending or renewing the advance cross-border ruling, and that point (b) refers to situations where any of the parties to the transaction or series of transactions is simultaneously resident for tax purposes in more than one jurisdiction and that point (d) refers to transactions or series of transactions that have a cross-border impact.

  In the Presidency's view, all transfers of value should, as a rule of thumb, be considered to be "transactions" in this context. A transaction can be, for instance, a payment of money in return for goods and a transfer of assets as a donation to a charity organisation. In this context, the question has been raised whether or not the transfer of an inheritance is a transaction. In the Presidency's view, the assets which are transferred from the deceased to the estate is a transaction. The following transfer of the assets from the estate to the heir is also a transaction.

- **Art. 8a(4), first subparagraph, point (b):** Some Member States have suggested that point (b) of the first subparagraph should only encompass advance cross-

border rulings where the *main purpose* of the ruling is to determine whether a person is resident for tax purposes. However, in the Presidency's view, this would entail a reinsertion of a subjective element in this provision. Instead, in the interest of proportionality, and in view of reducing the administrative burden, a carve-out from the exchange of information has been added in the third subparagraph of Art. 8a(4) (see below), for rulings on taxation at source with regard to non-residents' income from employment, director's fees or pensions (even if such a ruling includes an element of determining residence).

- **Art. 8a(4), third subparagraph:** A new provision has been added in order to carve out rulings on taxation at source with regard to non-residents' income from employment, director's fees or pensions. Such rulings can include an element of determination of tax residency and can be issued in advance. In the Presidency's view, without such a carve-out, tax-at-source cards for non-residents would otherwise be in scope of the obligation to exchange information on advance cross-border rulings. Such cards can be issued to non-residents who come to work in a Member State temporarily. The number of such cards, especially for seasonal work, could possibly be very high, as the Presidency understands it. Furthermore, the actual payments of such income from employment, director's fees and pensions would typically fall within the automatic exchange of information under Art. 8(1).

Question: Do you have any objections to the changes made in this part of the compromise text?

V. Mandatory automatic exchange of information on categories of income and capital and the addition of non-custodial dividend income (Art. 8[1])

Comments from the Presidency:

- **General comment:** Please see the Annex to this steering note and the examples contained therein (provided by the Commission) on non-custodial dividend income.

- **Specific comment on "all information that is available":** The Presidency has been asked to comment on the question whether the wording "all information that is available" in Art. 8(1) is to be understood as referring to information within each category of income and capital. The Presidency's view is that the question should be answered with a two-step approach. First, a Member State has to have access to information on, in accordance with the latest compromise text, *six categories of income and capital*. Second, the information that should be exchanged *within each category* is also "all information that is available", regarding that particular category of income and capital and the reportable person. Pursuant to point (a) of Art. 3(9), "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 in that Member State and within each category of income and capital.

- **Art. 8(1), first subparagraph, point (g):** The word "and" has been changed to "or", following comments from Member States.

Question: Do you have any objections to the change made in this part of the compromise text?

2. Other points raised by Member States

- **Art. 8(2), second subparagraph:** A number of Member States have stated that they would prefer that this provision would refer to *five* categories of income and capital, instead of the current *six* categories.

Question: Would you object to a change from six to five categories?

VI. Identification Service

Comments from the Presidency on the changes in the compromise text:

- **Art. 2(2) (transposition deadline):** According to the latest input given to the Presidency, it seems that this earlier transposition deadline is no longer needed. The Presidency has also duly noted that some Member States have stated that they wish for this earlier transposition deadline to be removed.

- **Impact of the use of an Identification Service (point [m] of Art. 8ac[2]; point [a] of 8ad[3]; Annex V, Section II, subparagraph B[3]; Annex V, Section III, subparagraph B[4]; Annex VI, Section II, subparagraph B[1]; Annex VI, Section III, subparagraph C[3]):** Some Member States have questions and remarks regarding the use of an Identification Service. After having conferred with the Danish delegation regarding such use and what impact this should have with respect to the application of DAC7 and DAC8, the Presidency's view is that the use of an Identification Service should not affect the due diligence and information collection required by the reporting person. These will have to be carried out in any case, in order to establish the residency (or residencies) of the reportable person, pursuant to the rules of the Directive. Therefore, Annex VI, Section III, subparagraph C(3) has been deleted. Please note that the Identification Service identifier received when using an Identification Service is to be regarded as a TIN

(see paragraph 80 of the Commentary on Section III of the CARF). Consequently, the Presidency proposes that also Annex V, Section II, subparagraph B(3) (DAC7) is deleted. The Presidency is aware that this particular removal will create a certain discrepancy between DAC7 and OECD's DPI Model Rules. However, to the knowledge of the Presidency, at this point in time, there is only one Member State making such an Identification Service available and that is Denmark. More importantly, since it concerns an exemption from the otherwise applicable rules on due diligence and information collection, in the Presidency's view, it would not be in conflict with the DPI Model Rules not to implement the corresponding provisions in the DPI Model Rules (subparagraph B[2] of Section II) in national legislation either.

If the reporting person is reporting to a competent authority using an Identification Service and that service can be used to ascertain the identity and tax residence or tax residences of the reportable person, there is, however, no need to report more information than the name, Identification Service identifier, and the Member State of issuance to the competent authority. This would be the case when, for instance, a Danish reporting person is reporting a reportable person who is resident only in Denmark to the Danish Tax Agency. In the future, there may also be cases where other Member States use Identification Services and it could then be enough to report only the name, Identification Service identifier, and the Member State of issuance also regarding reportable persons resident in those other Member States to the Danish Tax Agency. The Danish Tax Agency would then communicate that information to the competent authority of the other Member State. In order to enable this, the Presidency now proposes the addition of a subparagraph B(4) in Section III of Annex V and a few clarifying changes in the proposal for subparagraph B(1) in Section II of Annex VI.

As previously pointed out the Identification Service identifier falls under the definition of TIN and should as such be communicated between competent authorities. When communicating information to a competent authority that uses an Identification Service and that service has been used to ascertain the identity and tax residence of the reportable person, it is not necessary to communicate all identification information for the reportable person to that competent authority. It is sufficient to communicate the name, the Identification Service identifier and the Member State of issuance. The proposals for point (m) of Art. 8ac(2) and point (a) of Art. 8ad(3) have been changed to clarify that it is in relation to the Member State of issuance of the Identification Service identifier that this information is sufficient. To another Member State all identification information must be communicated.

VII. Other questions and provisions

1. Comments from the Presidency on the changes in the compromise text:

- **Recital 35a:** It has been put forward to the Presidency that absorbing the data into national systems should also be considered "using" the data for the purposes of the DAC. Such a measure could, in practice, involve attempted matching of the data. For this reason, the wording "assimilation into domestic systems" has been inserted. The word "similar" has been changed to "tax-related", since it has been raised that, from a purpose limitation point of view, the former word is very vague.

- **Art. 3(35):** The wording "for the purposes of Article 8ab" has been introduced, since the word "client" is also used in another context in Annex I of the DAC. The word "person" has been deleted, following comments from Member States. Please also note the comments in relation to Art. 8ab(5) below.

- **Art. 8ab(5), first subparagraph (and recital 42a):** The Presidency would like to reiterate that the only objective of the amendments to this provision (and the definition of a client in the new Art. 3[35]) is to rectify the invalidity declared by the Court. It has been proposed to replace the word "right" in the first sentence with the word "possibility". The Presidency has not made this particular change, since this part of the provision was not challenged in the judgment (C-694/20). In this context, the Presidency would also like to underline that no change at all has been made in the first sentence of this subparagraph (compared to the existing version), and that the changes are aimed at the *notification* mechanism (which was challenged by the Court) and not the *reporting* mechanism. The Presidency would also like to underline that the notification system only applies to intermediaries who benefit from the right to a waiver due to legal professional privilege. In order to make this clearer, the words "that has been granted a waiver" have been inserted. Lastly, and in relation to the introduction of the definition of a client, the Presidency would like to highlight the following from the judgment (see point 50): "… it should be borne in mind that *any intermediary who, because of the legal professional privilege by which he or she is bound by national law, is exempt from the reporting obligation* laid down in paragraph 1 of Article 8ab of amended Directive 2011/16/EU *is nevertheless still required to notify without delay his or her client of his or her reporting obligations* under paragraph 6 of that provision."

  In addition to the above, in the second sentence of the first subparagraph of Art. 8ab(5), the notification "steps" are reintroduced, in line with the current "steps" of this provision: "… to notify, without delay, his or her client, if such client is an intermediary or*, if there is no such intermediary*, if such client is the relevant taxpayer…".

- **Art. 25a and related provisions (and recital 39):** A vast majority of Member States have expressed their support for the approach regarding penalties which was described in the previous Presidency steering note (WK 3285/2023). Therefore, these changes have now been made in the provisions. In this context, the Presidency's understanding is that most Member States would like to keep the current wording of Art. 25a, added with a reference to Art. 8ad. This is why the reference to Art. 8(3a) is proposed to be deleted. It is also worth highlighting that Annex I, Section IX(5) already includes the wording "effective enforcement provisions to address non-compliance". Furthermore, the Presidency has noted that some Member States would like to stress the importance of penalties in the recitals. In this regard, please see recital 39.

- **Annex I, Section I, subparagraph A(1)(b):** It has been pointed out that the words "and (if any) other jurisdiction(s)" (of residence) have been omitted in the Commission's original proposal, and that this leads to the question of what should be done if an Entity is not itself EU resident but the Controlling Persons are. The Presidency agrees with this remark and has inserted this wording. In the Presidency's understanding, the mentioned omission is not related to the CRS amendments.

- **Annex I, Section VIII, subparagraph A(9):** The word "Crypto-Asset" has been changed to "product", in order to align this definition with the corresponding definition in the amended CRS. Since the term "Electronic Money" is defined in a slightly different manner in Annex VI (with a reference to "Crypto-Asset"), it is also clarified that this definition (in this particular provision) only applies for the purposes of "this Annex".

- **Annex II (Qualified Non-Profit Entities):** Following the explanations given by the Commission at the Working Party meeting on 15 March 2023, the Presidency's perception is that Member States find that the CRS Commentaries gives sufficient comfort that a Member State can choose to include Qualified Non-Profit Entities as Non-Reporting Financial Institutions, without that having to be included in the text of the DAC or in an Annex. Therefore, the amendment in Annex II has been removed.

Question: Do you have any objections to the changes in these parts of the compromise text?

2. Other points raised by Member States

- **Art. 25(3):** It has been proposed that the wording of this provision should state that the Member States are controllers, acting alone *and not jointly*. The stated reason

for this is that joint controllership among Member States is impractical in the context of the DAC. As a result, the paragraph should make clear that Member States are section by section individual controllers for the processing of DAC data. According to this, Member States would bear sole responsibility for the processing of data reported to them, received from other Member States or sent to other Member States.

Question: What are your views on the point raised above?