



Council of the European Union  
General Secretariat

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**Interinstitutional files:  
2022/0413 (CNS)**

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#### **MEETING DOCUMENT**

|          |                                                    |
|----------|----------------------------------------------------|
| From:    | Presidency                                         |
| To:      | Delegations                                        |
| Subject: | DAC8: Presidency steering note and compromise text |

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<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

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<sup>3</sup>, concerning exchange of information on crypto-assets and tax rulings for wealthy individuals.<sup>4</sup>

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<sup>1</sup> Not yet published in the Official Journal.

<sup>2</sup> Not yet published in the Official Journal.

<sup>3</sup> 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).

<sup>4</sup> Document 14651/21, FISC 227, Ecofin report to the European Council on tax issues.

- (4) The European Court of Auditors published a report examining the legal framework and implementation of the Directive. That report concludes that the overall framework of Directive 2011/16/EU is solid, but that some provisions need to be strengthened in order to ensure that the full potential of the exchange of information is exploited and the effectiveness of the automatic exchange of information is measured. The report furthermore concludes that the scope of the Directive should be enlarged in order to cover additional categories of assets and income, such as crypto-assets.
- (5) The crypto-asset market has gained in importance and increased its capitalisation substantially and rapidly over the last 10 years. Crypto-assets are a digital 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<sup>5</sup> (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 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.

- (9) At international level, the Organisation for Economic Co-operation and Development (OECD) Crypto-Asset Reporting Framework<sup>6</sup> 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<sup>7</sup> 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.

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<sup>6</sup> <https://www.oecd.org/tax/exchange-of-tax-information/crypto-asset-reporting-framework-and-amendments-to-the-common-reporting-standard.pdf>.

<sup>7</sup> 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).

- (13) The automatic exchange of information between tax authorities is crucial to provide them with the necessary information to enable them to correctly assess the amounts of income taxes due. The reporting obligation should cover both cross-border and domestic transactions, in order to ensure the effectiveness of the reporting rules, the proper functioning of the internal market, a level playing field and respect of the principle of non-discrimination.
- (14) The Directive applies to crypto-assets service providers regulated by and authorised under Regulation XXX and to crypto-asset operators that are not. Both are referred to as reporting crypto-asset service providers as they are required to report under this Directive. The general understanding of what constitutes crypto-assets is very broad and includes those crypto-assets that have been issued in a decentralised manner, as well as stablecoins, 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<sup>8</sup>.

- (17) Crypto-asset service providers covered by Regulation XXX may exercise their activity in the Union through passporting once they have received their authorisation in a Member State. For these purposes, ESMA holds a register with authorised crypto-asset service providers. Additionally, ESMA also maintains a blacklist of operators exercising crypto-asset services that require an authorisation under Regulation XXX.
- (18) Crypto-asset operators that do not fall under the scope of that Regulation but are obliged to report information on the crypto-asset users resident in the EU pursuant to this Directive should be required to register 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 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. Crypto-asset service providers authorised under Regulation XXX could be exempt from reporting such information in the Member State 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

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<sup>8</sup> 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).

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 effective qualifying competent authority agreement in place between the non-Union jurisdictions and all Member States.
- (22) Although the G20 endorsed the OECD Crypto-Asset Reporting Framework and recommended its implementation, no decision has been taken yet on whether it would be considered as a minimum standard or equivalent. Pending this decision, this Directive 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, competent authorities should cooperate with other national authorities or institutions and share relevant information.

- (25) The relieving of the registration and reporting obligations 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 Directive includes among others the latest amendments to the Common Reporting Standard<sup>9</sup> of the OECD, the integration of e-money and central bank digital currency provisions and the extension of the scope of the automatic exchange of information regarding advance cross-border rulings to 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<sup>10</sup> 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

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<sup>9</sup> <https://www.oecd.org/tax/exchange-of-tax-information/crypto-asset-reporting-framework-and-amendments-to-the-common-reporting-standard.pdf>.

<sup>10</sup> 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).



existing categories of income and capital of Directive 2011/16/EU. Rules should therefore be introduced ensuring that reporting obligations apply to electronic money.

- (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 include the TIN of reported individuals and entities in the reporting and communication of information in the context of exchanges related to categories of income and capital subject to mandatory automatic exchange of information, 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.
  - (29a) In order to increase the availability of the TIN to the competent authorities of Member States, each Member State should take the necessary measures to require that the TIN of individuals and entities issued by the Member State of residence is reported with respect to income from employment, director's fees and pensions. Furthermore, and in view of increasing the obtainability of the TIN to the competent authorities of Member States, each Member State should take the necessary measures to require that the TIN of individuals and entities issued by the Member State of residence is reported with respect to advance cross-border rulings and advance pricing arrangements, country-by-country reports and reportable cross-border arrangements. Such measures may include, but are not limited to, the introduction of domestic legal requirements to report the TIN. However, it is also recognised by the Member States that there may be rare situations where it is simply not possible for the reporting entity or the reporting individual to collect and report the TIN. This may include where, despite best efforts, the reporting entity or the reporting individual has not been able to collect the TIN or where a TIN has not been issued to the taxpayer.
  - (29b) Each Member State should include, where it has been obtained by the competent authority of the Member State, the TIN of individuals and entities issued by the

Member State of residence in the exchanges related to advance cross-border rulings and advance pricing arrangements, country-by-country reports and reportable cross-border arrangements.

- (30) The absence of exchange of rulings concerning 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 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.
- (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.
- (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. Therefore, the use of identification services should not affect the due diligence procedures or the requirements to collect information. Furthermore, if what is said above diverges from the OECD's corresponding standards on automatic exchange of information in certain respects, the provisions in this Directive regarding the use of identification services should not impact the determination of whether information reported and exchanged pursuant to an agreement between the competent authorities of a Member State and a

non-Union jurisdiction is equivalent or corresponding to that specified in this Directive.

- (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 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, the Commission should be empowered to adopt an implementing act to develop a tool allowing an electronic and automated verification of the correctness of the TIN that has been provided 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 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.

**(38a) Reporting Financial Institutions, intermediaries, Reporting Platform Operators, Reporting Crypto-Asset Service Providers or competent authorities of Member States are data controllers within the meaning of Regulation (EU) 2016/679. Where two or more of these controllers jointly determine the purposes and means of processing of personal data they are considered to be joint controllers. For example, competent authorities of Member States are considered to be joint**

**controllers of the central directory, having jointly agreed on the personal data to be processed and the manner of processing.**

- (39) In order to ensure a proper enforcement of the rules under this Directive, Member States should lay down rules on penalties applicable to infringements of national provisions adopted pursuant to provisions of this Directive on mandatory automatic exchange of information reported by reporting crypto-asset service providers, and should take all necessary measures to ensure that they are implemented. While the choice of penalties remains within the discretion of Member States, the penalties provided for should be effective, proportionate and dissuasive.
- (40) [deleted]
- (41) [deleted]
- (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 evaluation processes should be aligned.
- (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, 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.<sup>11</sup>
- (44) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. In particular, this Directive ensures full respect for the right of protection of personal data enshrined in

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<sup>11</sup> 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).

Article 8 of the Charter . In this regard, it is important to recall that Regulation (EU) 2016/679 and Regulation (EU) 2018/1725 apply to the processing of personal data under Directive 2011/16/EU. Furthermore, this Directive seeks to ensure full respect for the freedom to conduct business.

(45) Since the objective of Directive 2011/16/EU, namely the efficient administrative cooperation between Member States under conditions compatible with the proper functioning of the internal market, cannot be sufficiently achieved by the Member States but can rather, by reason of the uniformity and effectiveness required, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

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

HAS ADOPTED THIS DIRECTIVE:

#### *Article 1*

Directive 2011/16/EU is amended as follows:

(1) Article 3 is amended as follows:

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

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

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

(ii) point (c) of the first 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. [deleted]

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 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) income from 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 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 five 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 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 to the Member State of issuance of the Identification Service identifier 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, 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 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 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 Controlling Person of the Entity that is a Reportable Person, as well as the role(s) by virtue of which each such 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 Reporting Crypto-Asset Service Provider 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) and (b) 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 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 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.

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).

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 a competent authority agreement in place between the competent authorities of all Member States concerned and the 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. The corresponding provisions in this Article and in Annex VI of this Directive shall no longer apply for such purposes.❗



~~13. Without prejudice to paragraphs 11 and 12 of this Article, this Directive shall not restrict Member States from agreeing on the automatic exchange of information with non-Union jurisdictions. In doing so, Member States are uninhibited to agree on the scope of the information to be exchanged.’;~~

(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 30 June 2025 .

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 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), and only for the purpose of collecting statistics in accordance with paragraph 7 of this Article. 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 shall 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 Articles 8(1), 8(3a), 8a(6), 8aa(3), 8ab(14), 8ac(2) and 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*

Member States shall lay down rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and concerning Articles 8aa to 8ad, and shall take all necessary measures to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.’

- (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 require 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.

2. [deleted]

3. For taxable periods starting on or after 1 January 2030, 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 possible, with respect to the information referred to in points (a), (b) and (d) of the first subparagraph of Article 8(1), to the extent that those are categories of income and capital on which information would have been communicated even if the TIN was not available.

**4. For taxable periods starting on or after 1 January 2028, each Member State shall take the necessary measures to require that the TIN of individuals and entities issued by the Member State of residence is reported, where possible, with respect to the information referred to in points (a) and (k) of Article 8a(6), as well as of reported individuals and entities with respect to the information referred to in point (b) of Article 8aa(3) and point (h) of Article 8ab(14).**

**45.** For taxable periods starting on or after 1 January 2028, each Member State shall include, where it has been obtained by the competent authority of the Member State, the TIN of 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), as well as of reported individuals and entities in the communication of the information referred to in point (b) of Article 8aa(3) and point (h) of Article 8ab(14).

~~5. For taxable periods starting on or after 1 January 2028, each Member State shall take the necessary measures to require that the TIN of individuals and entities issued by the Member State of residence is reported, where possible, with respect to the information referred to in points (a) and (k) of Article 8a(6), as well as of reported individuals and entities with respect to the information referred to in point (b) of Article 8aa(3) and point (h) of Article 8ab(14).'~~

- (16) Annex I is amended as set out in Annex I to this Directive;
- (17) Annex V is amended as set out in Annex II to this Directive;
- (18) Annex VI, the text of which is set out in Annex III to this Directive, is added.

## *Article 2*

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

They shall apply those provisions from 1 January 2026.

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

2. [deleted]

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 Annex, the term ‘Electronic Money’ or E-money’ means any 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;
    - (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 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

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) Section II, subparagraph B(3) is deleted.
- (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**

### **‘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 63 of Regulation XXX or allowed to provide Crypto-Asset Services following a notification to a Member State in accordance with Article 60 of Regulation XXX; or
2. not an Entity authorised by a Member State in accordance with Article 63 of Regulation XXX or allowed to provide Crypto-Asset Services following a notification to a Member State in accordance with Article 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.

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 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 by virtue of it being resident for tax purposes in such 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.

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.

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), 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), 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 or Qualified Non-Union Jurisdiction, if such requirements are completed by such Branch in any other such 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.

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 Controlling Person of the Entity that is a Reportable Person, as well as the role(s) by virtue of which each such 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 residencies 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 the Reporting Crypto-Asset Service Provider 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) 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 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.

#### 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 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. [deleted]

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 Provider shall prevent the Crypto-Asset User from performing Reportable 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.
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 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 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

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, 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.
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## **Presidency Steering Note for the Working Party on Tax Questions (High Level) on 25 April 2023**

**Draft Council Directive amending Directive 2011/16/EU on  
administrative cooperation in the field of taxation (DAC8)**

### **I. Introduction**

1. On 27 November 2020, the Council approved the Conclusions “On fair and effective taxation in times of recovery, on tax challenges linked to digitalisation and on tax good governance in the EU and beyond.” The Council recognised that the rapid development and increasing worldwide use of alternative means of payment and investment – such as crypto-assets and e-money – may undermine the progress made on tax transparency in recent years and pose substantial risks of tax fraud, tax evasion and tax avoidance; and that it is important to discuss at technical level on how to update the rules on administrative cooperation within the EU and on a global level in order to address these potential risks.<sup>1</sup>
2. On 7 December 2021, the Council indicated in the report to the European Council on tax issues that it expects the European Commission to table in 2022 a legislative proposal on further revision of the Directive 2011/16/EU on administrative cooperation in the

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<sup>1</sup> Doc. ST 13350/20, point 36.

field of taxation (DAC),<sup>2</sup> concerning exchange of information on crypto-assets and tax rulings for wealthy individuals.<sup>3</sup>

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

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<sup>2</sup> 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).

<sup>3</sup> Doc. ST 14767/21, point 59.

<sup>4</sup> Doc. ST 15829/22 + ADD1 – ADD5.

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

<sup>6</sup> G20 Bali Leaders’ Declaration of 15-16 November 2022, point 31.  
([https://www.g20.org/content/dam/gtwenty/gtwenty\\_new/about\\_g20/previous-summit-documents/2022-bali/G20%20Bali%20Leaders%27%20Declaration,%2015-16%20November%202022.pdf](https://www.g20.org/content/dam/gtwenty/gtwenty_new/about_g20/previous-summit-documents/2022-bali/G20%20Bali%20Leaders%27%20Declaration,%2015-16%20November%202022.pdf))

- b) to extend the scope of the current rules on exchange of tax-relevant information by including provisions on exchange of advance cross-border rulings concerning high-net-worth individuals, as well as provisions on automatic exchange of information on non-custodial dividends and similar revenues, in order to reduce the risks of tax evasion, tax avoidance and tax fraud, as the current provisions of DAC do not cover this type of income;
  - c) to amend a number of other existing provisions of DAC. In particular, the proposal seeks to improve the rules on reporting and communication of the Tax Identification Number (TIN), in order to facilitate the task of tax authorities of identifying the relevant taxpayers and correctly assessing the related taxes, and to amend DAC provisions on penalties that are to be applied by Member States to persons for the failure of compliance with national legislation on reporting requirements adopted pursuant to DAC.
5. The opinion of the European Economic and Social Committee on this legislative proposal was delivered on 22 March 2023.<sup>7</sup> The opinion of the European Data Protection Supervisor was issued on 3 April 2023.<sup>8</sup> The opinion of the European Parliament is pending.

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<sup>7</sup> Doc. ST 8088/23.

<sup>8</sup> Doc. ST 8283/23.

## II. State of play

6. As announced at the Working Party on Tax Questions (WPTQ) (High Level) meeting on 31 January 2023, the Swedish Presidency has prioritised work on this file with the objective of reaching an agreement by May ECOFIN. So far, eight meetings of the WPTQ have taken place (9 and 26 January, 22 and 23 February, 15 and 30 March, 3 and 19 April 2023).
7. Following the preparatory work at the meeting of the WPTQ on 19 April 2023, most of the delegations could already support the Presidency compromise text discussed at that meeting. With the objective of addressing the remaining concerns of all delegations in time for the May ECOFIN meeting, the Presidency tables an updated compromise text, set out in the Annex to this note, for discussion and endorsement at WPTQ (High Level) on 25 April 2023.
8. In this latest compromise text, the following main adjustments have been made:
  - Recital 38a has been added, in order to clarify and provide examples in which cases the entities and competent authorities concerned would be considered as data controllers (alone) and when they would be considered as joint controllers;
  - Article 8ad(13) has been deleted as being redundant, given the text of Recital 20, which contains a clear reference that agreeing on exchange of information with non-Union jurisdictions remains within the competence of Member States;
  - Annex VI, Section I, paragraph JA has been amended in order to ensure the correct functioning of this provision.

9. The latest Presidency compromise text aims at striking the right balance between a number of diverging concerns and should provide a good basis for further progress in these negotiations. This is particularly notable regarding the provisions of the compromise text that cover the issues of reporting and exchange of the TIN and the mandatory automatic exchange of information on categories of income and capital. The Presidency is of the view that this updated compromise text should address most of the concerns raised by the delegations and that any further modifications of this text may result in the reduction of the existing level of support by delegations of Member States.
10. The Presidency also holds the view that it will be necessary to continue discussions and technical work on the state of play, risks and opportunities in the area of tax information exchange with non-Union jurisdictions, in particular covering aspects relating to the personal data protection framework and its correlation with work on international administrative cooperation. This work will continue after an agreement on the Presidency compromise text on DAC8 has been reached in the Council, still during the Swedish Presidency term, and will also build on the past discussions on these matters.<sup>9</sup>
11. Against this background and in view of the upcoming meeting of the ECOFIN Council in May 2023, the Presidency also hopes to resolve the key issue set out in part III of this note.

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<sup>9</sup> See doc. ST 15506/22, points 46 to 48.

### III. Key issue

#### *Keeping or removing the “switch-off mechanisms” (Annex VI, Section I, paragraphs BA to JA)*

12. At the WPTQ meeting on 19 April 2023, whilst almost all Member States could support the Presidency compromise text, delegations of three Member States indicated that it would be appropriate to explore the possibility of removing the “switch-off mechanisms” from DAC8, as the added value of these mechanisms was questioned.
13. The “switch-off mechanisms” foresee that in some cases and under certain conditions it is possible to “switch off” the requirements applicable to Reporting Crypto-Asset Service Providers with an EU nexus (Annex VI, Section I, subparagraphs A(1) and A(2)) to complete the due diligence and reporting requirements in a Member State. In such cases, similar due diligence and reporting requirements would have to be fulfilled in a non-Union jurisdiction instead.
14. In this context, it should be noted that similar “switch-off mechanisms” are contained in Section I of the CARF, in order to prevent duplicative reporting<sup>10</sup>. As reflected in Recital 9 of DAC8, Union rules should take into account the CARF in order to reduce administrative burden. Furthermore, as mentioned in Recital 19, the aim of the “switch-off mechanisms” in DAC8 is to foster administrative cooperation in this field with non-Union jurisdictions, as well as to prevent *correspondent* information from being reported and transmitted more than once. With respect to exchange of information on crypto-assets, the “switch-off” rules in DAC8 should

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<sup>10</sup> For the rationale of these provisions, see, for instance, point 19 in the introduction to the CARF.



be seen as a part of a correct alignment with the CARF, which is an internationally agreed standard.

15. Moreover, it should be noted that, if the “switch-off mechanisms” were to be removed from DAC8, this would also eliminate the possibility of avoiding duplicative reporting where a Reporting Crypto-Asset Service Provider has a stronger (or at least an equally strong) nexus to a non-Union jurisdiction participating in the CARF cooperation than the nexus to a Member State. The duplicative reporting could, for example, happen in the following case: a Reporting Crypto-Asset Service Provider has a stronger “CARF-nexus” in a non-Union jurisdiction (for example it is a tax resident in that jurisdiction), while its “DAC8-nexus” to a Member State is weaker (for example it has a regular place of business in a Member State). In this context, it should be particularly stressed that the nexuses defined in Annex VI, Section I, subparagraph A(2) of DAC8 are appropriately aligned with those contained in Section I, paragraph A of the CARF.
16. Against this background, and on the basis of bilateral contacts, the Presidency believes that the provisions on the “switch-off mechanisms” should be retained. Among the main reasons in favor of retaining these provisions would be the objectives of aligning DAC8 to the CARF as close as possible, preventing duplicative reporting of information and alleviating the administrative burden on both Reporting Crypto-Asset Service Providers and authorities of Member States.

#### **IV. Way forward**

17. Against this background, the Presidency hopes that the text set out in the Annex to this note would be acceptable to all delegations at the meeting of the WPTQ (High Level), with a view to reaching an agreement in the spirit of compromise. The delegations are therefore invited to lift the remaining reserves, so that at the ECOFIN level all Member States are in a position to support the Presidency compromise text.
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