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NOTE

From:	Presidency
To:	Delegations
N° prev. doc.:	WK 5197/2023
Subject:	DAC8: Suggested amendments to the compromise text

Presidency note

Suggested amendments to the compromise text set out in doc. WK 5197/2023

1. Removal of the “switch-off mechanism” for RCASPs that fall under the “MiCA nexus”

The “MiCA” nexus provision is set out in Annex VI, Section I, subparagraph A(1). If the “switch-off mechanism” for RCASPs that fall under this “MiCA nexus” is to be removed from DAC8, then the following amendments to the draft Directive will have to be made:

- **Annex VI, Section I: paragraph BA shall be deleted, as it contains the main or “full” “switch-off mechanism” for RCASPs that fall under the “MiCA nexus”;**
- **Annex VI, Section II: in paragraph D, a reference to “A(1)” (i.e., a reference to the “MiCA nexus”) shall be deleted, as this is the “partial switch-off mechanism” for RCASPs that fall under the “MiCA nexus”;**
- **Recital 19, the second sentence shall be deleted (“~~Crypto-asset service providers authorised under [...] effective qualifying competent authority agreement in place.~~”)**

2. TIN-related provisions

The Presidency proposes the following amendments to the TIN-related provisions:

- **Recital 29a shall read as follows:**

“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, at the latest by the transposition deadline set out in this Directive, of domestic legal requirements to report the TIN. Moreover, following the entry into force of the Council Directive (EU) 2022/2523 of

14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union, and in the light of the rules on safe harbours set out in that Directive, it is important to ensure proper matching, in the context of the mandatory automatic exchange of information on country-by-country reports pursuant to the Directive 2011/16/EU. 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.”

COMMENT: *The first amendment clarifies that Member States wishing to introduce such requirements in their national law before the transposition deadline are free to do so. The second amendment highlights the importance of proper matching in the mentioned context.*

- Article 2 shall read as follows (modification of DAC8 Article 2(3) and insertion of the new (3a)):

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 and with Article 1, point 15, of this Directive as regards Article 27c(4) and (5) of Directive 2011/16/EU. 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.
- 3a. By way of derogation from paragraph 1 of this Article, Member States shall adopt and publish, by 31 December 2029, the laws, regulations and administrative provisions necessary to comply with Article 1, point 15, of this Directive as regards Article 27c(3) of Directive 2011/16/EU. 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 2030. 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.

COMMENT: *These technical amendments align the transposition deadlines to the provisions of Articles 27c(3), (4) and (5), which already contain the “2028/2030” timeline.*