

Taxation: administrative cooperation

2022/0413(CNS) - 08/12/2022 - Legislative proposal

PURPOSE: to improve the existing EU framework for exchange of information and administrative cooperation in the field of tax matters.

PROPOSED ACT: Council Regulation.

ROLE OF THE EUROPEAN PARLIAMENT: the Council adopts the act after consulting the European Parliament but without being obliged to follow its opinion.

BACKGROUND: fair taxation is one of the main foundations of the European social market economy. The COVID-19 pandemic and the consequences of Russia's war of aggression against Ukraine add to the urgency to protect public finances. In this context, it has become more important than ever to ensure tax fairness by preventing tax fraud, tax evasion and tax avoidance.

The emergence of alternative means of payment and investment, such as **crypto-assets and e-money**, threatens to undermine the progress made in tax transparency in recent years and presents significant risks of tax evasion. In recent years, many improvements have been made in the area of information exchange, through a number of amendments to the Administrative Cooperation Directive.

Nevertheless, the European Court of Auditors and the European Parliament have pointed out certain inefficiencies and the **need for improvements** in several areas of the Directive, in respect of all forms of information exchange and administrative cooperation. In particular, the lack of specific provisions covering e-money and central bank digital currencies, cross-border tax rulings for high net worth individuals and the lack of clarity in compliance measures were among the most problematic elements of the framework.

The characteristics of crypto-assets make it very difficult for tax administrations to trace and detect taxable events. The lack of reporting of income from crypto-asset investments results in a shortfall of tax revenues for Member States. It also offers crypto asset users an advantage over those who do not invest in crypto assets. If this regulatory gap is not closed, the objective of fair taxation cannot be guaranteed.

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

CONTENT: the Commission proposes to amend the existing provisions on information exchange and administrative cooperation and to **extend the scope of the automatic exchange of information** with regard to information provided by reporting **crypto-asset service providers**.

The specific provisions of the proposal are as follows:

Categories of income and capital

The proposal lays down the categories of income subject to mandatory automatic exchange of information between the Member States. Non-custodial dividend income is added to the categories of income and capital that are already subject to the exchange of information. An amendment will also oblige Member States to exchange with other Member States all information that is available on all categories of income and capital with respect to taxable periods starting on or after January 2026.

Advance cross-border rulings for high net worth individuals

The proposal extends the scope of the automatic exchange of cross-border advance rulings to high net worth individuals. The persons concerned are those holding a **minimum of EUR 1 million** of financial or investment wealth or assets under management. These exclude the person's main private residence. Member States will exchange information on advance cross-border rulings issued, modified or renewed between 1 January 2020 and 31 December 2025.

Information reported by reporting crypto asset service providers

The proposal requires all reporting crypto asset service providers, regardless of their size or location, to **report transactions of customers resident in the EU**. The proposal covers both domestic and cross-border transactions. Detailed rules concerning the obligations to be fulfilled by reporting crypto-assets service providers are laid down in Annex VI which is introduced by Annex III. As a first step, the rules provide for an obligation on the reporting crypto-asset service provider to collect and verify the information in line with due diligence procedures laid down by the proposal. As a second step, the reporting crypto-asset service providers have to report to the relevant competent authority information on the crypto-asset users, i.e. those who use the service provider to trade and exchange their crypto-assets. The third step concerns the communication of the reported information by the competent authority of the Member State that have received the information from the reporting crypto-asset service provider to the competent authority of the relevant Member State where the reportable crypto-asset user is resident.

Penalties

The proposal establishes a common minimum level of sanctions for the most serious non-compliant behaviour, such as a total failure to report despite administrative reminders. A minimum financial penalty would apply in case of non-reporting after two valid administrative reminders or when the information provided contains incomplete, incorrect or false data, representing more than 25% of the reportable information.

Use of information

Member States will be required to put in place an **effective mechanism** to ensure the use of information acquired through the reporting and the automatic exchange of information and ensure that information reported and exchanged under the Directive on administrative Cooperation can be used for purposes other than direct taxation, in situations where there is an agreement at EU level to use such information to implement sanctions in an international context.

Reporting of information on tax identification numbers

The proposal adds a provision requesting Member States to ensure that the tax identification number of reported individuals or entities issued by the Member State of residence are included in the communication of the information.

Review of the provisions of Directive 2014/107/EU

As Council Directive 2014/107/EU (DAC2) implements within the EU the OECD Common Reporting Standard, this proposal takes account of amendments to the Common Reporting Standard which have been agreed on 26 August 2022 during the Common Reporting review process. These amendments **extend the scope of the Common Reporting Standard** to cover **electronic money products and central bank digital currencies**.