









Procedure file

Basic information		
CNS - Consultation procedure Directive	2022/0413(CNS)	Procedure completed
Taxation: administrative cooperation		
Amending Directive 2011/16 2009/0004(CNS)		
Subject		
2.70 Taxation		
2.80 Cooperation between administrations		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 Economic and Monetary Affairs	 ANDRESEN Rasmus	01/03/2023
		Shadow rapporteur	
		 PEREIRA Lidia	
		 MARQUES Pedro	
		 HLAVÁČEK Martin	
		 MOZDŽANOWSKA Andželika Anna	
		 GUSMÃO José	
	Committee for opinion	Rapporteur for opinion	Appointed
	 Legal Affairs	The committee decided not to give an opinion.	
Council of the European Union European Commission	Commission DG Taxation and Customs Union	Commissioner GENTILONI Paolo	

Key events			
08/12/2022	Legislative proposal published	COM(2022)0707	Summary
13/02/2023	Committee referral announced in Parliament		
28/06/2023	Vote in committee		

07/07/2023	Committee report tabled for plenary, 1st reading/single reading	A9-0236/2023	Summary
13/09/2023	Results of vote in Parliament		
13/09/2023	Decision by Parliament	T9-0315/2023	Summary
17/10/2023	Act adopted by Council after consultation of Parliament		
24/10/2023	Final act published in Official Journal		

Technical information

Procedure reference	2022/0413(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
	Amending Directive 2011/16 2009/0004(CNS)
Legal basis	Treaty on the Functioning of the EU TFEU 115; Treaty on the Functioning of the EU TFEU 113
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	ECON/9/10884

Documentation gateway

Legislative proposal	COM(2022)0707	08/12/2022	EC	Summary
Document attached to the procedure	SEC(2022)0438	08/12/2022	EC	
Document attached to the procedure	SWD(2022)0400	08/12/2022	EC	
Document attached to the procedure	SWD(2022)0401	08/12/2022	EC	
Document attached to the procedure	SWD(2022)0402	08/12/2022	EC	
Economic and Social Committee: opinion, report	CES6314/2022	22/03/2023	ESC	
Committee draft report	PE745.391	29/03/2023	EP	
Document attached to the procedure	N9-0031/2023 OJ C 199 07.06.2023, p. 0005	03/04/2023	EDPS	
Amendments tabled in committee	PE746.875	28/04/2023	EP	
Committee report tabled for plenary, 1st reading/single reading	A9-0236/2023	07/07/2023	EP	Summary
Text adopted by Parliament, 1st reading/single reading	T9-0315/2023	13/09/2023	EP	Summary
Commission response to text adopted in plenary	SP(2023)525	19/12/2023	EC	

Final act

[Directive 2023/2226](#)
[OJ L 000 24.10.2023, p. 0000](#)

Taxation: administrative cooperation

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

Taxation: administrative cooperation

The Committee on Economic and Monetary Affairs adopted, in the framework of a special legislative procedure (Parliaments consultation), the report by Rasmus ANDRESEN (Greens/EFA, DE) on the proposal for a Council directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation.

The committee called on the European Parliament to approve the Commission proposal as amended below.

Scope and conditions of mandatory automatic exchange of information

A new paragraph is included specifying that automatic exchange of information should be deemed to be complied with, where competent authorities of any other Member States can access such information either through the national registries or data retrieval systems or interconnected registries as provided for in a proposal for a directive of the European Parliament and of the Council on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

Members proposed that the competent authority should not negotiate and agree new cross-border bilateral or multilateral advance pricing arrangements with third countries that do not permit their disclosure to competent authorities of other Member States as from 1 January 2026.

The competent authority of the Member State where the country-by-country report was received should also communicate that report to the competent services of the Commission, which is responsible for the centralised register of country-by-country reports. The Commission should publish anonymised and aggregated country-by-country report statistics on an annual basis for all Member States.

Crypto-assets

Due to their opaque and volatile nature, crypto-assets could be used for illicit purposes. Therefore, additional categories of assets and income, such as crypto-assets, should now be covered according to the report.

Evaluation

Member States should communicate to the Commission any relevant information necessary for the evaluation of the effectiveness of administrative cooperation in accordance with this Directive in combating tax evasion and tax avoidance and they should examine and evaluate the compliance costs that can result from a possible over-reporting situation. They should communicate on an annual basis the results of their evaluation to the European Parliament and the Commission.

Member States should communicate to the Commission a yearly assessment of the effectiveness of the exchange of information on request and of the automatic exchange of information, the degree of cooperation with third countries, as well as the practical results achieved, including the incremental tax revenues associated and illicit practices identified with administrative cooperation. The information communicated should be disaggregated by the Commission, as a minimum to a country-by-country level.

Penalties

Where a Member State provides for penalties exceeding EUR 150 000, it should establish a temporary penalty reduction regime for 3 years for SMEs. The penalties established should not exceed 1 % of the global turnover of the person required to report.

Reporting

Member States should monitor and assess in relation to their jurisdiction, the effectiveness of administrative cooperation in accordance with this Directive in combatting tax evasion and tax avoidance and should communicate the results of their assessment to the European Parliament and to the Commission once a year.

The Commission should take into account such results of the assessment from Member States for the purpose of advancing with further legislative reviews to address persisting loopholes and weaknesses of this Directive. It should also adopt a common framework for measuring the impact and the costs and benefits of this Directive.

By January 2026, the Commission should assess whether it is desirable to introduce a European taxpayer identification number (TIN) which would allow any authority to quickly, easily and correctly identify and record TINs in cross-border relations and serve as a basis for effective automatic exchange of information between Member States tax administrations. The Commission may submit, where appropriate, a legislative proposal to the European Parliament and the Council.

Review

The amended text stated that by January 2026, the Commission should assess whether further strengthening of the efficiency and functioning of the automatic exchange of information and raising the standard thereof is needed.

Lastly, Member States should adopt and publish, by 31 December 2026 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive.

Taxation: administrative cooperation

The European Parliament adopted by 537 votes to 57, with 60 abstentions, in the framework of a special legislative procedure (Parliaments consultation), a legislative resolution on the proposal for a Council directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation.

Parliaments position adopted at first reading following the ordinary legislative procedure amended the Commission proposal as follows:

Time limits

Where upon the receipt of the requested information, the requesting authority submits a follow-up request, the requested authority shall provide that further required information as soon as possible, and no later than three months after the date of receipt of the follow-up request.

Scope and conditions of mandatory automatic exchange of information

A new paragraph is included specifying that automatic exchange of information should be deemed to be complied with, where competent authorities of any other Member States can access such information either through the national registries or data retrieval systems or interconnected registries as provided for in a proposal for a directive of the European Parliament and of the Council on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

Members proposed that the competent authority should not negotiate and agree new cross-border bilateral or multilateral advance pricing arrangements with third countries that do not permit their disclosure to competent authorities of other Member States as from 1 January 2026.

The competent authority of the Member State where the country-by-country report was received should also communicate that report to the competent services of the Commission, which is responsible for the centralised register of country-by-country reports. The Commission should publish anonymised and aggregated country-by-country report statistics on an annual basis for all Member States.

Crypto-assets

According to Members, tracking the transfers of crypto-assets is of high importance. Due to their opaque and volatile nature, crypto-assets could be used for illicit purposes. Therefore, additional categories of assets and income, such as crypto-assets, should now be covered.

Evaluation

Member States should communicate to the Commission any relevant information necessary for the evaluation of the effectiveness of administrative cooperation in accordance with this Directive in combating tax evasion and tax avoidance and they should examine and evaluate the compliance costs that can result from a possible over-reporting situation. They should communicate on an annual basis the results of their evaluation to the European Parliament and the Commission.

Member States should communicate to the Commission a yearly assessment of the effectiveness of the exchange of information on request and of the automatic exchange of information, the degree of cooperation with third countries, as well as the practical results achieved, including the incremental tax revenues associated and illicit practices identified with administrative cooperation. The information communicated should be disaggregated by the Commission, as a minimum to a country-by-country level.

Confidentiality

Information communicated to the Commission pursuant to this Directive should be kept confidential, insofar, as its non-disclosure does not harm public interest, the information can be attributed to a single taxpayer and its disclosure would infringe taxpayers rights.

Penalties

Where a Member State provides for penalties exceeding EUR 150 000, it should establish a temporary penalty reduction regime for 3 years for SMEs. The penalties established should not exceed 1 % of the global turnover of the person required to report.

Reporting

Member States should monitor and assess in relation to their jurisdiction, the effectiveness of administrative cooperation in accordance with this Directive in combatting tax evasion and tax avoidance and should communicate the results of their assessment to the European Parliament and to the Commission once a year.

The Commission should take into account such results of the assessment from Member States for the purpose of advancing with further legislative reviews to address persisting loopholes and weaknesses of this Directive. It should also adopt a common framework for measuring the impact and the costs and benefits of this Directive.

By January 2026, the Commission should assess whether it is desirable to introduce a European taxpayer identification number (TIN) which would allow any authority to quickly, easily and correctly identify and record TINs in cross-border relations and serve as a basis for effective automatic exchange of information between Member States tax administrations. The Commission may submit, where appropriate, a legislative proposal to the European Parliament and the Council.

Review

The amended text stated that by January 2026, the Commission should assess whether further strengthening of the efficiency and functioning of the automatic exchange of information and raising the standard thereof is needed.

The Commission should assess the need and the most appropriate way, and to present concrete proposals, to include the following ownership information, items of income and (non)-financial assets in the automatic exchange of information: (i) the beneficial owners of immovable property and companies; (ii) financial assets; (iii) non-financial assets such as cash, art, gold or other valuables held at free ports, customs warehouses or safe deposit boxes; (iv) ownership of yachts and private jets; (v) and accounts at larger peer-to-peer lending, crowdfunding and similar platforms.

Lastly, the directive should be transposed by 31 December 2026 at the latest.