



Blockchain Bundesverband e.V.

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OECD

International Co-operation and Tax Administration Division

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## Public Consultation on „CRYPTO-ASSET REPORTING FRAMEWORK AND AMENDMENTS TO THE COMMON REPORTING STANDARD”

### Comments and Remarks from Blockchain Bundesverband e.V. (Bundesblock), Berlin, Germany

Dear Sir or Madam,

Bundesblock is an association promoting blockchain technology in Germany. The association represents the interests of more than 100 corporate members, which are advancing new business models and social development based on blockchain technology. Furthermore, it cooperates closely with a large number of other stakeholders, such as organisations, politicians and advisers.

It is with great pleasure to submit our comments and recommendations on the proposed CARF-Rules. In addition to a few general remarks we are providing answers to most of the questions raised in the proposal document.

### General Remarks

- We appreciate that the OECD is proposing a framework for Global Tax Transparency for crypto-assets. We acknowledge recent actions by the OECD to provide an overview on the taxation of crypto-assets on a global/G20 level aiming at **closing the policy gap** and approaches towards the taxation of crypto-assets and **reducing risks posed by crypto-assets**. At the same time, we are convinced that direct taxation matters are a national competence, but **strong cooperation on a global level** is essential to oppose tax evasion. Nonetheless crypto-assets are in their nature and design borderless and therefore especially exposed to tax risks. We value all efforts that engage in an alignment of all interests.

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- When compared to Traditional Financial Instruments and Balances in Fiat Currencies, Crypto Assets are fundamentally different as all **transactions and balances are fully transparent and immutably traceable on the blockchain**. Whereas all records taken and files created by traditional financial institutions can be altered, manipulated or irreversibly deleted, each and every transaction on a blockchain can easily be retraced and reconciled by everybody. This difference makes Tax avoidance with crypto assets much harder and more risky than with fiat or traditional financial instruments. This intrinsic difference between decentralized assets and traditional investments provides a strong argument why reporting rules for crypto assets does not need to be as rigid as for fiat and particularly for cash settlements.
- With the support of Distributed Ledger Technology or Blockchain, the next chapter of digitalization means that **centralized and redundant data storage** with the imminent threat of violation of privacy and abuse of data can be abandoned and replaced by a **new concept of decentralized data storage**. In this context the concept of CARF that requires that all parties related to a transaction in crypto assets will need to collect and store relevant information of the respective counterparties is entirely anachronistic. We would strongly suggest to widen the concept in order to make it **technology agnostic** and permit that the reporting requirements can be retired or made obsolete when other methods of identification are in place that would permit that information on wallets and the respective beneficiaries of these wallets can be obtained through other sources, for example **self-sovereign identities**.
- Amongst the most promising applications of Crypto Assets are mechanisms capable to automatically initiate transaction via pre defined algorithms (Smart Contracts). It is absolutely crucial for the competitive position of OECD countries vis a vis other jurisdictions that the use of smart contracts is not hindered by additional formal requirements. We would strongly suggest to establish mechanisms that would permit that automated transactions can be executed with whitelisted counterparties to offset reporting requirements for each individual transaction.
- We would strongly argue in favor of de minimis rules as the CARF is a burdensome reporting regime that requires banking-grade infrastructure to polster all requirements set forth herein. We are concerned that especially innovative and young entrepreneurs are limited with the burden of the CARF. For that reason we favor safe-harbors regulations, smaller firms exceptions and outsourcing provisions for small and medium sized entities to rely on larger reporting crypto-asset service provider as an reporting entity.



- We acknowledge efforts from the OECD to use existing frameworks to reach well established policy goals as ensuring tax revenue in the area of crypto taxation as well. Nonetheless the CARF as outlined in the consultation document goes far beyond the CRS in terms of the scope of assets and obliged entities. We believe that a gold standard for crypto-assets is not necessary and the principles of the established CRS should be used in order to achieve a **level playing field** between all asset classes covered under CRS and CARF as well as for all intermediaries and crypto-asset service providers. We therefore oppose new reporting requirements that are not in line with existing CRS standards.
- We recognize that CARF is partly using standard terms that are or will be simultaneously used in other national and supranational legislative acts and in certain cases it creates or defines new terms in order to differentiate between categories or types of crypto-assets or service providers. We realise that terms and definitions in the respective legislative documents are not used uniformly and we fear that this will lead to situations where certain crypto-assets or service providers might fall into different categories or might be treated differently depending on which act or framework is applied. We strongly plead to strive for a harmonisation of these terms and definitions amongst different legislative acts.

### **Particular remarks on the explicit questions raised by OECD:**

#### **Crypto-Assets in scope of the planned regulation**

1. Does the CARF cover the appropriate scope of Crypto-Assets? Do you see a need to either widen or restrict the scope of Crypto-Assets and, if so, why?

*The scope should not be determined on the basis of the underlying technology but on the particular function of crypto-assets. Accordingly, the CARF should only apply to crypto-assets that (primarily) serve as financial assets, i.e. either as a means of payment or investment. This would also align with the approach taken by FATF and avoid potential discrepancies in the subject scope, given that NFT marketplaces do not necessarily qualify as obliged entities under FATF.*

*Including the digital equivalent (representing rights to) of any (real world) tangible or intangible asset would potentially extend the reporting requirements to all kinds of future commercial transactions and it seems to be not in line with the rationale of the new reporting duties.*



*We therefore suggest that the OECD should aim for a limit in the definition of Crypto-Assets to readily tradable Crypto-Assets and Crypto-Assets that are convertible to fiat currency. This would explicitly exclude crypto assets that can only be used within*

2. Does the definition of Closed-Loop Crypto-Assets contain the correct criteria for identifying Crypto Assets that operate in a closed-loop environment?

*No, the definition should be broader, as it does not provide enough of a characterization as to how exactly such tokens should be functioning. It is our understanding that closed-loop tokens should be designed to function in a comparable fashion to redeemable gift cards or vouchers that retailers and online merchants typically sell to their customers in the course of their business. Closed-loop tokens, therefore, should be considered to be units of measure for the overall (variable) amount of a redeemable claim against a merchant within the merchants ecosystem. Under the presumption that our understanding of closed-loop tokens is correct, we believe such tokens need to be regulated in the same fashion that gift cards work, including how they can be single-purpose or multi-purpose gift cards, which can have different tax implications in some European Union member state's jurisdictions. The current definition should make sure that governance tokens of DAOs and other smart contract projects are part of the closed loop definition.*

*Therefore Closed-Loop Crypto-Assets should also include such that are accepted by the issuer as a means of payment (voucher).*

*α) [...] issued as a means of payment with Participating Merchants or the issuer for the purchase of goods or services;*

*On top of that general remark, we believe that a provision should be added that transactions between Closed-Loop Crypto-Assets within the same loop and between different loops should be included as well as a special gaming environment provision for Crypto-Assets that cannot be exchanged outside the game for goods and services or fiat currency.*

3. Are you aware of existing types of Crypto-Assets, other than Closed-Loop Crypto Assets or Central Bank Digital Currencies that present a low risk from a tax compliance perspective and should therefore be excluded from the scope?

*Yes, for example infrastructure projects. Moreover, it is our understanding that crypto asset transactions that fall under the regulations outlined in the CARF public consultation document are supposed to be reported in order to increase*



*global tax transparency with respect to the underlying crypto asset. Since the majority of all money laundering is done with fiat cash, we do not see any reason why central bank digital currencies (CBDC's), which will likely replace some - if not all - current fiat currencies within the course of the next ten years, should not be subjected to the CARF regulations. This especially holds true when asset-backed stable coins remain subject to the CARF regulations, since they serve the same purpose. Furthermore, we suggest that algorithmic stable coins should be analysed with regard to how they are designed, as it might be that some of the current algorithmic stable coins can function very differently from e.g. fiat currency backed stable coins. We suggest that CBDCs and (asset backed) stable coins should be treated as equal in terms of this regulation.*

*We believe that stablecoins pegged to fiat currency present a low tax risk since transactions with such crypto-assets provide minimal gains or losses compared to fiat values.*

4. An NFT is in scope of the FATF Recommendations as a virtual asset if it is to be used for payment or investment purposes in practice. Under the Crypto-Asset Reporting Framework, an NFT would need to represent value and be tradable or transferable to be a Crypto-Asset. On that basis it is expected that relevant NFTs would generally be covered under both the CARF (as a Crypto-Asset) and the FATF Recommendations (either as a virtual asset or a financial asset). Are you aware of any circumstances where this would not be the case, in particular, any NFTs that would be covered under the definition of Crypto-Assets and that would not be considered virtual assets or financial assets under the FATF Recommendations or vice versa?

*We understand the suggested definition under CARF as a definition that would also include "collectibles". Which are generally not covered under the FATF Recommendations. The FATF recommendation particularly aims at NFTs whose primary purpose is payment or investment purposes. With the provided definition NFTs and tokens would be covered that have a value nonetheless independent from payment or investment purposes (e.g. collection items).*

### **Intermediaries in scope**

1. Do you see a need to either widen or restrict the scope of the intermediaries (i.e. Reporting CryptoAsset Service Providers)?

*In general we believe that the scope should be limited to the outline of the FATF. FATF rules apply where an intermediary, as a business, performs one of the following services: exchange between virtual assets and fiat currencies,*



*exchange between one or more forms of virtual assets, transfer of virtual assets, safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets, or participation in and provision of financial services related to an issuer's offer and/or sale of a virtual asset.*

*Apart from the general remark, the scope seems to cover the most relevant services, although the specificities as to how certain services are set up, conducted and regulated must be taken into account.*

*For example. Crypto-Asset ATMs may not be in a position to fulfill reporting requirements, as they effectuate occasional transactions and are therefore subject to CDD thresholds under the FATF Recommendations.*

*Furthermore. it seems unclear whether an entity providing both "Exchange Transactions" as well as (occasional) "Reportable Retail Payment Transactions" as separate services, will need to report the latter in its capacity as reporting CASP under CARF, while an entity only offering "Reportable Retail Payment Transactions" would not be in scope, as it would not qualify as a CASP under CARF because it does not "effectuate Exchange Transactions".*

2. Are there any circumstances in which multiple (affiliated or unaffiliated) Reporting Crypto-Asset Service Providers could be considered to effectuate the same Relevant Transaction with respect to the same customer? If so, which types of intermediaries (e.g. the one with the closest relationship with the client) would be best placed to ensure reporting?

*We expect that there will be numerous duplicate reporting. To give a few examples:*

*Brokers (e.g. portfolio managers) when transmitting orders on behalf of customers e.g. to trading platforms, if the underlying customer at the same time is a customer of the trading platform or registered as beneficial owner of the transaction.*

*Persons who control DeFi platforms are required to report transaction on that DeFi platform. At the same time CASPs are required to report such transactions when effectuating a transaction from the CASP to the DeFi platform.*

*These particular situations should be addressed to avoid duplicative reporting requirements relating to the same customer/person. CASPs with the closest*





*relationship should be responsible for reporting. CASPs established in the same jurisdiction as the customers tax residency should be prioritized.*

3. Do the nexuses described in paragraph A of Section I of the CARF ensure a comprehensive coverage of all relevant Reporting Crypto-Asset Service Providers? If not, under what circumstances would relevant Reporting Crypto-Asset Service Providers not have a nexus in any jurisdiction? In your view, should this be a potential concern, and if so, what solutions could be considered to address it?

*As stated in the general remarks, we believe that a level playing field is key to ensure a fair framework. Therefore an incentive for CASPs to establish itself in non-participating jurisdiction should be avoided. In order to reach that goals all CASPs that do not have a nexus to a participating jurisdiction should report to a participating jurisdiction all of its customers in that participating jurisdiction.*

### **Reporting requirements**

The CARF requires reporting with respect to Relevant Transactions in Crypto-Assets on the basis of their fair market value, determined and reported in a single Fiat Currency at the time of each Relevant Transaction.

1. Do intermediaries maintain valuations on the equivalent Fiat Currency fair market values of Crypto Assets? Do you see challenges in reporting on the basis of such fair market value? If yes, what do you suggest to address them?

*We would strongly recommend that reporting requirements established by CARF will include the respective number of units of crypto-assets traded but all information on valuation does not fall in the responsibility of the respective crypto asset service provider. We suggest aiming at introducing simple standards as to how market values are determined only once per day (e.g. end of day values).*

2. Are there preferable alternative approaches to valuing Relevant Transactions in Crypto-Assets?

*As some Crypto-Assets can only be bought with other Crypto-Assets, an alternative approach could be to allow valuations on the basis of BTC or ETH, which are commonly used as “base currencies” on exchanges. We would however assume that for taxation purposes taxable capital gains would typically need to be calculated in a national Fiat-Denomination. Accordingly valuations in BTC are unlikely to be useful.*



*Possible alternative approaches could include the income method, e.g. by considering their possible (speculative) earnings.*

3. Are there specific difficulties in applying the valuation rules for illiquid tokens, for example, NFTs or other tokens that may not be listed on a marketplace, to identify a fair market value? If so, please provide details of any preferable valuation methods that could be adopted within the CARF.

*Indeed, illiquid and unlisted tokens are examples of the significant challenges reporting CASPs will face when NFTs are in scope of the CARF. Resorting to the last traded price or an approximation based on comparable NFT asset classes can serve as proxies but the operational and administrative burden when resorting to these methods at large scale should not be underestimated. We believe that in most cases taxation should be related to realisation of profits, so we would recommend to focus on transactions rather than on valuation.*

4. Regarding Reportable Retail Payment Transactions, what information would be available to Reporting Crypto-Asset Service Providers pursuant to applicable AML requirements (including the FATF travel rule, which foresees virtual asset service providers collecting information on originators and beneficiaries of transfers in virtual assets) with respect to the customers of merchants in particular where the customer does not have a relationship with a Reporting Crypto-Asset Service Provider, for whom it effectuates Reportable Retail Payment Transactions? Are there any specific challenges associated with collecting and reporting information with respect to Reportable Retail Payment Transactions? What measures could be considered to address such challenges? Would an exclusion of low-value transactions via a de minimis threshold help reducing compliance burdens? If so, what would be an appropriate amount and what measures could be adopted to avoid circumvention of such threshold by splitting a transaction into different transactions below the threshold?

*Yes. this poses a challenge for CASPs that do not enter into a business relationship with the merchant's customer.*

*While the exclusion of low-value transactions via a threshold, e.g. in line with FATF's USD/EUR 1000 CDD threshold, would help reduce compliance burdens to some extent, we believe the proposal to include retail payment transactions in the CARF should be reconsidered altogether. Risks of splitting transactions to remain below the threshold can be mitigated with the use of existing transactions monitoring and blockchain analytics technology as well as (future) solutions such as decentralised identity.*





5. Concerning the requirement to report transfers based on certain pre-defined transfer types (e.g. hardforks, airdrops due to other reasons, loans or staking), do Reporting Crypto-Asset Service Providers have the knowledge necessary to identify, and classify for reporting purposes, transfers effectuated according to such transfer types? Are there any other transfer types that typically occur and that are separately identified for customers or for other purposes?

*Depending on the setup and business model, CASPs may not be in a position to identify such transfers. In particular reporting CASPs that do not (also) offer custody services to their customers.*

6. Concerning the proposal for reporting with respect to wallet addresses, are there any specific challenges for Reporting Crypto-Asset Service Providers associated with the proposed requirement to report wallet addresses that are the destination of transfers sent from a customer's wallet maintained by a Reporting Crypto-Asset Service Provider? Do Reporting Crypto-Asset Service Providers have, or are they able to obtain, information to distinguish wallet addresses associated with other Reporting Crypto-Asset Service Providers from wallet addresses that are not associated with another Reporting Crypto-Asset Service Provider? The OECD is also considering to require, in addition, reporting with respect to wallet addresses that are the origins of transfers to a customer's wallet maintained by a Reporting Crypto-Asset Service Provider. Is this information available and would providing it materially increase compliance burdens for Reporting Crypto-Asset Service Providers? Are there alternative requirements (e.g. reporting of the public keys associated with Crypto-Asset Users instead of wallet addresses) that could be considered to more efficiently increase visibility over transactions carried out without the intervention of the Reporting Crypto-Asset Service Provider?

*While identification of the destination wallet addresses is possible, their administration by or association with another CASP can pose challenges in practice, in particular where CASPs do not participate in mutual verification procedures or absent central databases.*

7. Information pursuant to the CARF is to be reported on an annual basis. What is the earliest date by which information on the preceding year could be reported by Reporting Crypto-Asset Service Providers?

*Given the novelty of reporting requirements and the necessary steps required to collect, classify and review the information prior to reporting, the reporting date should not be before the end of Q2 of the following year.*



## Due diligence procedures

1. The due diligence procedures of the CARF are in large part based on the CRS. Accordingly, the CARF requires Reporting Crypto-Asset Service Providers to determine whether their Entity Crypto-Asset Users are Active Entities (corresponding largely to the definition of Active NFE in the CRS) and, on that basis, identify the Controlling Persons of Entities other than Active Entities. Would it be preferable for Reporting Crypto-Asset Service Providers to instead document the Controlling Persons of all Entity Crypto-Asset Users, other than Excluded Persons? [...] Are there other elements of the CRS due diligence procedures that should be included in the CARF to ensure that Reporting Financial Institutions that are also Reporting Crypto-Asset Service Providers can apply efficient and consistent due diligence procedures?

*Our suggestion is to proceed using the same methodology as CRS reporting.*

2. An Entity Crypto-Asset User qualifies as an Active Entity if less than 50% of the Entity's gross income is passive income and less than 50% of the assets held by the Entity produce, or are held for the production of, passive income. The Commentary on the term "Active Entity" provides that passive income includes "income derived from Relevant Crypto-Assets". Are there any specific instances in which such income (e.g. income from mining, staking, forks or airdrops) should qualify as active income?

*Under the CRS we saw that the tax treatment should follow the classification for the Active Entity. Plus, the determination of Active Entity status should be based on the law of the jurisdiction of the Active Entity and not the jurisdiction of the CASP.*

3. The CARF removes the information collection and reporting obligations with respect to Crypto-Asset Users which are Excluded Persons. The OECD is still considering whether Reporting Crypto-Asset Service Providers should be included in the definition of Excluded Persons. Against this background, would Reporting Crypto-Asset Service Providers have the ability to obtain sufficient information on clients that are Reporting Crypto-Asset Service Providers to verify their status?

*We are of the view that reporting CASPs should be classified as Excluded Persons if they are subject to licensing or other authorization regimes in their respective jurisdiction. There should be alignment with the corresponding rules for financial institutions under CRS. Reporting CASPs could obtain such information on clients but it depends on the local laws.*



4. Section III.D enumerates effective implementation requirements in instances where a Reporting Crypto-Asset Service Provider cannot obtain a self-certification from a Crypto-Asset User or Controlling Person. Notably, these requirements specify that the Reporting Crypto-Asset Service Provider must refuse to effectuate any Relevant Transactions on behalf of the Crypto-Asset User until such self certification is obtained and its reasonableness is confirmed. Are there potential alternative effective implementation measures to those listed in Section III.D? If so, what are the alternative or additional effective implementation measures and which persons or Entities would be best-placed to enforce such measures?

*We agree that the self certification is best approach. We propose that self certification should be valid indefinitely as long as there are not material changes to the status.*

*We propose that the refusal to effectuate Relevant Transactions should not cover transactions that are effectuated in a closed (centralized) system and subject to safeguards to ensure that Crypto-Assets or fiat funds cannot be transferred or withdrawn from the wallet administered by the CASP.*

#### **Other elements of the proposal**

1. Comments are also welcomed on all other aspects of the Crypto-Asset Reporting Framework

*There are no additional comments to be made.*

Yours Sincerely

Bundesverband Blockchain e.V.