Position Paper

Bitkom Position Paper on the Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard

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Summary

Bitkom welcomes the OECD's public consultation for the development of the Crypto-Asset Reporting Framework and the Amendments to the Common Report Standard. We want to further highlight the appreciation for the Federal Ministry of Finance's "IT Discussion Group" (IT Gesprächskreis) to facilitate the exchange between regulatory bodies and industry.

Bitkom generally agrees with the provided framework but wants to raise awareness regarding some issues where the current draft needs clarification. In general, we call for a similar treatment of Crypto-Asset payments to cash payments and want to highlight the need for proportionality. Further, we urge to create homogeneous reporting standards across different jurisdictions.

When it comes to the provision of definitions, it is important that it is unambiguous who needs to report and what it means, for example, to be the 'closest to the customer'. In line with this, Bitkom cautions to not implement too many pre-rules for different blockchains, which cannot feasibly be implemented by Reporting Crypto-Asset Service Providers.

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Crypto-Asset Reporting Framework (CARF)

Crypto-Assets in scope

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 of covered Crypto-Assets is perceived as appropriate. Yet, Bitkom wants to highlight the importance of a harmonized definition of Crypto-Assets in order to maintain a level playing field across different jurisdictions.

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

The provided definition is considered appropriate to identify Crypto-Assets that operate in a closed-loop environment.

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?**

Bitkom is not aware of further types of Crypto-Assets that should be excluded from the scope.

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?**

At the moment, there seem to be no circumstances where an NFT is covered under the definition of Crypto-Assets, but not considered as virtual or financial assets. However, we invite the OECD to work towards harmonization and to focus on the underlying function of non-fungible assets in order to enable future developments to be covered.

Intermediaries in scope

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

The scope of the intermediaries is acceptable.

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?**

The idea of selecting the intermediary closest to the customer for reporting is considered reasonable. Nonetheless, the definition of what it means to be the 'closest to the customer' needs to be defined unambiguously and clearly.

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?**

While double reporting must be avoided, there is a need for homogeneous reporting standards across different jurisdictions. Regulators should introduce common technical standards, data formats, as well as interfaces.

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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?**

In general, intermediaries can maintain valuations of the equivalent Fiat Currency fair market values of Crypto-Assets. However, without clear definitions on which reference prices shall be used to calculate Crypto-Asset fair market value, major challenges in reporting such market values remain. Furthermore, the timing of reporting market values needs to be unified. Regarding this, the trading price and the timestamp of the trade should be used for trades. For other transactions, the average mid-price at the settlement time of a predefined data source should be used, whereby the settlement time corresponds to the time the funds are available to the customer on the respective platform.

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

Other alternative approaches are not available, to the best of our knowledge.

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.**

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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 com-**

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pliance 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?

To begin with, not every payment using Crypto-Assets should constitute a taxable event, as this would lead to an infeasible amount of documentation for Crypto-Asset Service Providers and would clearly hinder technology adoption by customers. Bitkom generally argues for a similar treatment of Crypto-Asset payments to cash payments and wants to highlight the need for proportionality. It is clear, that these thresholds require smurfing detection systems, similar to the smurfing detection systems used with Fiat Currencies.

5. **Concerning the requirement to report transfers based on certain pre-defined transfer types (e.g. hard-forks, 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?**

Crypto-Asset Service Providers should only have to provide data for transfer types that they are actively involved in (e.g., an exchange offering staking to their customers). In addition, new types of transfers will occur in the future and an incoming reporting framework should be broad enough to already cover potential new types of transfers. However, Bitkom wants to highlight that, for instance, if a specific service provider does not technically support a hard fork, it also should not constitute a taxable event for 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?**

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This generally depends on the underlying blockchain technology of the respective Crypto Asset but is not possible for all Crypto-Assets. For example, some blockchain types that enable netting of individual transactions, can make it impossible to determine the exact source address of funds. Special pre-rules for different blockchains are not feasible and may elicit strategic behavior of blockchain projects regarding the underlying blockchain design.

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?**

Bitkom is in favor of a time window of two months (i.e., March 1st of the following year) to enable sufficient data checks.