

ATOZ ALERT

EU Commission releases DAC8 Proposal: Crypto assets in the focus and further expansion of automatic exchange of information

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On 8 December 2022, the EU Commission adopted a new proposal for a Directive amending the Directive on Administrative Cooperation (2011/16) (also referred to as “DAC8”).

The proposal puts forward:

- **changes to existing provisions** on exchanges of information and administrative cooperation; and
- **extends the Directive's scope** to the automatic exchange of information with respect to information reported by reporting crypto-asset service providers. The rules on due diligence procedures, reporting requirements and other rules applicable to reporting **crypto-asset** service providers are based on the OECD **crypto-asset reporting framework** (“CARF”).

Automatic exchange of information

The reporting obligations under DAC would be extended as follows:

- **Information to be reported by reporting crypto-asset service providers**

DAC8 lays down the scope and conditions for the mandatory **automatic exchange of information** that will be reported by **reporting crypto-asset service providers** to the competent authorities.

Crypto-assets refer to any digital representation of a value or a right which may be transferred and stored electronically, using distributed ledger technology or similar technology.

Due diligence procedures

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.**

The aim of the procedures is to allow providers to identify, through **self-certification**, whether their clients are reportable or not. **Specific due diligence procedures** are proposed, depending on whether the crypto-asset user is an individual or a legal entity. The processes above should be completed for **new customers**, but also for **pre-existing clients within 12 months** after DAC8 enters into force.

Reporting obligations

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 rules will impact crypto-asset service providers¹ and crypto-asset operators² facilitating transactions for EU residents, irrespective of the size and location of the providers, i.e. whether based in the EU or in a third country.

The rules will impact crypto-asset service providers and crypto-asset operators **facilitating transactions for EU residents**, irrespective of the size and location of the providers, be they based in the EU or in a third country.

A reportable user is an EU-resident individual or an entity that is a customer of a reporting crypto-asset service provider for the purposes of reportable transactions. DAC8 also provides for specific carve-outs for users that are:

- companies listed on a regulated stock exchanges and their related parties,
- governmental entities,
- international organizations,
- central banks and certain other financial institutions.

Transactions entered into by entities falling within the scope of the carve-outs would not be reportable.

Exchange of information

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 (reporting EU crypto-asset service providers are required to disclose the information in the Member State where they are resident for tax purposes) to the competent authority of the relevant Member State where the reportable crypto-asset user is resident.

➤ Categories of income and capital to be reported

DAC8 would widen the categories of income subject to mandatory automatic exchange of information between the member states to include **non-custodial dividend income.**

¹ **Crypto-asset service providers** are defined as legal entities or undertakings that provide crypto-asset services to third parties on a professional basis and which are authorised to provide these services under the Regulation on Markets in Crypto-Assets ("**MiCA**").

² **Crypto-asset operators** are any individuals or legal entities providing crypto-asset services to third parties on a professional basis, but falling outside the scope of the **MiCA**.

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**, including:

- Income from employment,
- director's fees,
- life insurance products not covered by other Union legal instruments on exchange of information and other similar measures,
- pensions,
- ownership of and income from immovable property and royalties

with respect to **taxable periods starting on or after January 2026**.

➤ **Advance cross-border rulings for high-net-worth individuals**

DAC8 would widen the scope of automatic exchange of advance cross-border rulings and advance pricing agreements for persons other than natural persons to include **high-net-worth individuals who hold a minimum of EUR 1 000 000 in financial or investable wealth or assets under management, excluding that individual's main private residence**.

The amendment will oblige Member States to exchange with other Member States information on **advance cross-border rulings for high-net-worth individuals issued, amended or renewed between 1 January 2020 and 31 December 2025**. Such communication shall take place under the condition that they were still valid on 1 January 2026.

Other amendments

DAC8 would further provide for several changes to the Directive on Administrative Cooperation:

➤ **Reporting of the tax identification numbers of taxpayers**

➤ **Use of information**

The DAC should be amended to ensure that **information reported and exchanged under the DAC 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.

➤ **Use of information exchanges for other purposes**

In general, the Directive provides the possibility to **use the information exchanged for other purposes than for direct and indirect tax purposes to the extent that the sending Member State has stated the purpose allowed for the use of such information in a list**. The proposal removes the need to consult the sending Member State in cases where a use of information is covered in a list drafted by the sending Member State.

➤ **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**.

Timing aspects

Most of the amendments provided under DAC8 are meant to **apply as from 1 January 2026**.

The Commission opened a **feedback period from 8 December 2022 to 2 February 2023**, for citizens and stakeholders to express their views regarding the DAC8 proposal. Thereafter, the DAC8 proposal will be negotiated in the Council of the European Union, and the European Parliament will be consulted to provide a non-binding opinion.

Conclusion

The EU Commission adopted a proposal for DAC8 that would provide for several amendments to the Directive on Administrative Cooperation (DAC). The most important amendment would concern far-reaching reporting obligations regarding crypto assets.

The other important change of DAC concerns the widening of the scope of automatic exchange of advance cross-border rulings and advance pricing agreements for high-net-worth individuals.

Do you have further questions?



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