

# EU Directive (DAC8) adopts wider reporting requirements for crypto and other transactions

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## In brief

The Council of the EU adopted, on 17 October 2023, a [Directive](#) amending the EU rules on administrative cooperation in the area of taxation (DAC8). The amendments primarily pertain to the reporting and automatic exchange of information on certain revenues from crypto asset transactions and the provision of advance tax rulings for the wealthiest (high net worth) individuals. The Directive aims to strengthen the existing legislative framework by broadening the scope for registration and reporting obligations and improving overall administrative cooperation between tax administrations.

### *The takeaways:*

- DAC8 extends the scope of automatic exchange of information under DAC to information that will have to be reported by crypto-asset service providers on transactions (transfer or exchange) of crypto assets and e-money. The provisions of DAC8 on due diligence procedures, reporting requirements, and other rules applicable to crypto-asset service providers largely reflect the Crypto-Asset Reporting Framework (CARF) and a set of amendments to the Common Reporting Standard (CRS), which were prepared by the OECD under the mandate of the G20. The G20 endorsed the CARF and the amendments to CRS, both of which it considers to be integral additions to the global standards for automatic exchange of information.
- DAC8 includes provisions on exchange of certain advance cross-border rulings concerning the ‘worth’ or residence of individuals, with the stated intention, “to reduce the risks of tax evasion, tax avoidance and tax fraud,” as the current provisions of DAC do not cover this type of income.
- DAC8 seeks, “to improve the rules on reporting and communication of the Tax Identification Number (TIN), in order to facilitate the task of tax authorities of identifying the relevant taxpayers and correctly assessing the related taxes,” and to amend DAC provisions on penalties that are to be applied by Member States to persons for failing to comply with national legislation on reporting requirements adopted pursuant to DAC.

The Directive was adopted by Member States in the Council, by unanimity. The Directive was subsequently [published](#) in the Official Journal on 24 October. It will enter into force on 13 November 2023 (being the twentieth day following that of its publication). Member States will have until 31 December 2025 to transpose the new rules into national law with first application for most provisions from 1 January 2026.

## In detail

### Crypto assets and e-money

This Directive applies to crypto-asset service providers, whether they are regulated or not (the latter will be required to register in one single Member State for the purpose of complying with their reporting obligations). Crypto assets that can be used for payment or investment purposes are reportable under this Directive unless the equivalent information is reported to a non-EU jurisdiction with an effective qualifying competent authority agreement in place to exchange the information with EU Member States. The meaning of crypto assets for this purpose is very broad and includes crypto assets that have been issued in a decentralised manner, as well as stablecoins, including e-money tokens and certain non-fungible tokens (NFTs).

*Observation:* Reporting crypto-asset service providers will have to collect, verify and report a range of information on their users. Although the prelims to the Directive state that the administrative burden should be minimised for the industry so that it is able to develop its full potential within the Union, service providers will have a significant amount of work to do.

### Advance cross-border rulings to individuals

The automatic exchange of advance cross-border rulings is extended by the Directive to individuals that are said to meet a high-net-worth threshold or that are seeking a residence ruling. This applies generally to rulings issued, amended or renewed after 1 January 2026. However, an exclusion is provided for rulings on taxation at source with regard to non-residents' income from employment, director's fees, and pensions, unless the threshold is also met.

*Observation:* Although said to pertain to high-net-worth individuals, what is relevant is the size of the amount referred to in the ruling rather than the wealth of the taxpayer—where the amount of the transaction or series of transactions involved exceeds EUR 1,500,000 (or the equivalent amount in any other currency).

### Other provisions

The application of the provisions incorporated into DAC reporting rules by this or any of the previous versions - DAC1 through to DAC8—is further strengthened by this Directive.

- Income derived from non-custodial dividends is included in the categories of income subject to the automatic exchange of information.
- Member States will have to ensure that individuals' and entities' TINs are collected and shared; to accomplish this the Commission is authorised to develop a verification tool.
- The Directive clarifies that information communicated between Member States can also be used for the assessment, administration and enforcement of customs duties, for anti-money laundering, for combating the financing of terrorism and potentially for other serious issues.

- The competent authority of each Member State will have to install an effective mechanism to ensure the use of the information acquired.
- The minimum retention period for information obtained should not be longer than necessary, but not shorter than five years.
- Lawyers acting as intermediaries, where they are exempt from a reporting obligation on account of legal professional privilege, will not have to notify other intermediaries (but will still have to notify their client of that client's reporting obligations).

**Observation:** While earlier drafts sought to harmonise penalties, the choice of penalties remains within the discretion of Member States, though the penalties chosen should be effective, proportionate and dissuasive.

## Let's talk

For a deeper discussion of how the DAC8 amendments might affect your business, please contact:

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