

# Tax transparency rules for crypto-asset transactions (DAC8)

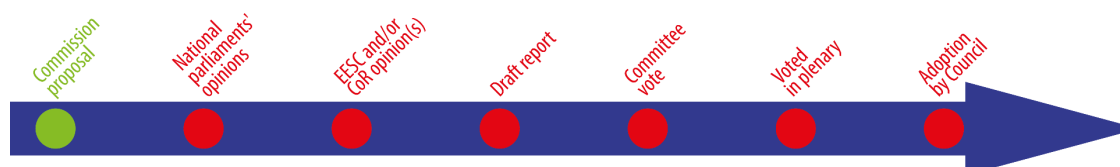
## OVERVIEW

The crypto-asset sector, while still relatively new, has already changed the world of payments and investment forever. The fast-changing, mobile nature of the sector and its growing market prominence poses challenges, however, for tax authorities, which are not always able to track the capital gains made from trading crypto-assets.

On 8 December 2022, the European Commission proposed to set up a reporting framework which would require crypto-asset service providers to report transactions made by EU clients. This would help tax authorities to track the trade of crypto-assets and the proceeds gained, thereby reducing the risk of tax fraud and evasion. The reporting framework would be set-up by amending the Directive on Administrative Cooperation (DAC), which is the main framework for other data exchanges between tax authorities. The proposal also puts forward a series of (smaller) changes to improve the existing exchange of tax-related information.

The proposed directive is subject to a special legislative procedure, requiring unanimous support in the Council, following consultation of the European Parliament and the European Economic and Social Committee.

Proposal for amending Directive 2011/16/EU on administrative cooperation in the field of taxation		
<i>Committee responsible:</i>	Economic and Monetary Affairs (ECON)	COM(2022) 707 8.12.2022
<i>Rapporteur:</i>	Not yet appointed	2022/0413(CNS)
<i>Shadow rapporteurs:</i>		
<i>Next steps expected:</i>	Initial discussions in committee	Consultation procedure (CNS) – Parliament adopts a non-binding opinion



## Context

The European Union Directive on Administrative Cooperation (DAC) dates back to 2011. As the name suggests, the directive does not deal with the charging and payment of taxes itself, but rather allows for the collection and (increasingly automatic) exchange between Member States of tax-related information about individuals and companies. This allows national tax administrations to track and cross-check income streams, stop cases of tax fraud and evasion and impose taxes where required according to national legislation.

The DAC has been revised six times in the last decade (DAC1-DAC7), in particular in the light of budgetary constraints following the financial crisis of 2008 and the rise of tax scandals (Luxleaks, Panama papers, etc.). These revisions have expanded both the scope of taxpayers and the type of data about which reporting is required. This ranges from individuals' bank account details to the income earned by sellers on digital sales platforms.<sup>1</sup>

Table 1 – DAC overview

DAC	Information being reported and exchanged	Applicable as of
<a href="#">DAC1</a>	Income from employment, pension, director fees, income and assets from immovable property and life insurance <sup>2</sup>	January 2013/January 2015
<a href="#">DAC2</a>	Financial account data (account balances, gross amount of interest and dividends received, ...)	January 2016
<a href="#">DAC3</a>	Advance cross-border tax rulings and advance pricing arrangements of companies	January 2017
<a href="#">DAC4</a>	Country-by-country reports <sup>3</sup> on multinationals (data on revenue, profits, tax paid, number of employees, ...)	June 2017
<a href="#">DAC5</a>	Beneficial ownership and due diligence information as collected through the anti-money laundering legal framework.	January 2018
<a href="#">DAC6</a>	Potentially aggressive tax planning schemes of intermediaries (tax advisers, accountants, lawyers)	January 2021 <sup>4</sup>
<a href="#">DAC7</a>	Income earned by sellers on digital sales platforms	January 2023/January 2024

While the revisions of the DAC have primarily focused on the expansion of the exchange of information, recent updates have also strived to improve the working of the DAC itself. For instance, DAC7 established a legal framework for Member States to carry out 'joint audits', allowing two tax authorities (or more) to work together in auditing a taxpayer.

While the DAC has already been in place for a decade, with the amount of data being exchanged growing over time, it is difficult to express the DAC's added value in hard figures. In particular, increases in tax revenue as a result of the DAC are difficult to estimate, as this would depend on a multitude of factors. For example, it can be assumed that an ex-ante behavioural response is part of the added value of the DAC: when taxpayers are aware that multiple tax authorities will be able to cross-check the data, they may be more inclined to file their tax returns faithfully. In this context, the European Commission observed how several Member States had launched targeted awareness action around the DAC1 and DAC2 to take advantage of the possible deterrent effect on taxpayers. It can be expected that this taxpayer behavioural change would have resulted in 'improved tax compliance and tax correctness', the Commission [argued](#). Other unquantifiable benefits include better-quality information, and a more level playing field for companies.

## Existing situation

### Crypto-assets

The DAC8 proposal focuses on the exchange of information about the gains and profit made from crypto-transactions by EU users. The crypto market, whilst relatively new, has grown in importance over the years and radically changed the world of payments and investments. Bitcoin's market capitalisation alone reached €370 billion in January 2023, roughly the equivalent of Austria's entire economy.<sup>5</sup> While crypto assets such as Bitcoin and Ethereum are well-known, the Commission estimates that more than [9 000 crypto-assets](#) are already available on today's market.

The rise of these crypto-assets poses a number of challenges with which tax authorities across the world have been struggling: how should the income arising from the exchange of crypto-assets be treated for tax purposes? Should, for instance, value added tax (VAT) be charged between transactions? Because the crypto-technology is in itself new and still changing, Member States have struggled to come up with up-to-date and uniform tax legislation, and most Member States have so far not issued any tax guidance vis-à-vis crypto-exchanges. This has led to an uneven treatment of the crypto-sector within the internal market.

Furthermore, a central feature of the crypto-exchange world is a certain degree of opaqueness or 'pseudo-anonymity', the Commission argues. Trading on the crypto-market takes place without the involvement of classic financial institutions, such as banks, and without a central authority. The mobility in the crypto-market also makes it possible for the same crypto-asset to be traded multiple times per day. The often high volatility of crypto-asset value does not make an accurate tax charge any easier. All this makes it particularly difficult for tax authorities to have an accurate overview of the transactions made, and the profit gained from them by investors.<sup>6</sup>

In September 2020, the European Commission tabled a proposal for a regulation on markets in crypto-assets (hereafter referred to as 'MiCA'). The objective of MiCA is to replace national legislation on crypto-assets with a harmonised EU legal framework. Under the MiCA regulation, crypto-service providers would need to ask for permission from a Member State's authorities to operate within the EU. This should also lead to better protection for crypto investors in the EU. A provisional [agreement](#) on MiCA was reached in June 2022, with the regulation expected to be enforced in the second half of 2024. While the MiCA should allow for greater scrutiny of the crypto-market, the Commission believes it does not provide sufficient information for tax assessment purposes.

The crypto-market was not covered under earlier DAC provisions. The [DAC2](#) requires banks to collect customer information and list the income credited to customer accounts – such as dividends, interests, etc. While DAC2 has proved to be a valuable source of knowledge, often dubbed as the end to 'banking secrecy' in the EU, its implementation dates back to 2016, and could not predict the rise of the crypto-market. Any proceeds from crypto-assets are therefore not considered as reportable income under the current legal framework, nor are crypto-asset providers considered to be financial institutions subject to reporting under DAC2.

### Functioning of the DAC

In the broader context of the DAC, various stakeholders, academics, the European Court of Auditors and the European Parliament, have expressed their concern about the current functioning of the legislation and the existence of potential inefficiencies and even loopholes.

On the subject of penalties for instance, the DAC mandates that penalties should be 'effective, proportionate and dissuasive', but leaves the exact nature and size of the penalties and its implementation to the Member States. This has led to a wide variation in penalty measures between Member States. According to a Commission [survey](#) on DAC penalties, if multinationals fail to provide a country-by-country report in time (as mandated under DAC4), maximum fines could run from €300 (Latvia) to up to €870 000 in the Netherlands. Moreover, Member States have varying systems for

penalties in place. Some Member States charge a fixed monetary amount, regardless of the nature of the offense, while others make the fine dependent on the type of non-compliance (inaccurate filing vs. late filing vs. no filing). Some only specify a maximum penalty, while others have stricter penalties for repeat offenders or increase the penalty for each day beyond a report's filing deadline. The European Court of Auditors [remarked](#) that the Commission has not considered the 'size and deterrent effect' of the Member States' penalties and recommended the Commission expand its monitoring activities.

The DAC also operates with tax identification numbers (TINs). These TINs allocate a unique EU-wide number code to the individuals or entities whose data is being reported to the tax authorities. When tax authorities exchange the data between themselves afterwards, the use of the TIN can allow for quick cross-checking of information (for instance, cross-border income streams). When [evaluating the DAC](#), it was found that only a small minority of Member States was actively collecting TINs and sending them to the other Member States. A European Parliament Research Service 2021 [study](#) also recommends increasing the use of TINs.

e-money and e-money tokens are not currently explicitly covered by the DAC. However, some Member States do see e-money as being an inherent part to an individual's financial income, and thus subject to the reporting requirements under DAC2, while others do not. This has created an uneven reporting burden between Member States.

## Parliament's starting position

In its [resolution](#) of 4 October 2022 on the impact of new technologies on taxation (rapporteur: Lídia Pereira – EPP, Portugal), the European Parliament recognised the taxation challenges of crypto-assets and e-money, underlining the priority to broaden the DAC in this context. Given the global nature and fast-evolving environment of crypto-assets, the Parliament expressed its preference for an international approach on the topic, referring to work carried out by the Organisation for Economic Co-operation and Development (OECD).

On the subject of sanctions, an earlier European Parliament resolution [regretted](#) the lack of European Commission assessment of the size or degree of impact of the varying penalties in each Member State. The Parliament therefore called for 'more harmonised and effective sanctions with a deterrent effect on non-compliance' when revising the DAC.

## Preparation of the proposal

The Commission tabled a [communication on an action plan for fair and simple taxation supporting the recovery strategy](#) in June 2020, where it committed to update the directive on administrative cooperation and expand its scope to crypto-assets. The Commission argued that without greater tax cooperation, these (and other) new alternative forms of payment 'threaten to undermine the progress made on tax transparency in recent years and pose substantial risks for tax evasion'.

The European Commission launched a [public consultation](#) in March 2022. Responses were requested regarding e.g. the need to expand the DAC to crypto-assets and e-money, the type of customer and transaction information that crypto-asset brokers, issuers and wallet providers have readily available and may be of relevance to the tax authorities. Respondents warned about the potential patchwork of reporting schemes, if countries (continue to) take unilateral measures, and expressed their preference for a more harmonised approach. At the same time, respondents stressed the EU framework should avoid measures that would give the crypto-market in the EU a competitive disadvantage at global level. A majority of respondents expressed support for greater harmonisation and coordination on penalties, arguing this would allow for a greater effectiveness and a common understanding.

At global level, countries continue to discuss the tax treatment of crypto-trading. In October 2020, the OECD published an [overview](#) of the variety of tax measures vis-à-vis the crypto-sector and the

challenges facing tax authorities. The G20 then mandated the OECD to develop a reporting framework to help countries track crypto-asset transactions and collect information for tax purposes. In October 2022, the OECD published its [crypto-asset reporting framework](#) – dubbed the CARF – setting up a reporting framework for transactions in crypto-assets in a standardised manner. The CARF is a set of model rules, which countries can transpose into domestic legislation. At the same time, the OECD's [Common Reporting Standard](#) (CRS) was also slightly adapted regarding e-money and central bank digital currencies. The DAC8 proposal can be seen as the Commission's initiative to integrate both the CARF and the latest changes to the CRS into the EU's legal framework.

## The changes the proposal would bring

The European Commission tabled its proposed DAC8 directive ([plus annex](#)) on 8 December 2022, along with an [impact assessment](#). The proposed directive puts forward measures to exchange information on crypto-asset transactions, and also includes a number of other changes to take account of updates to the OECD's CRS, and to address inefficiencies or close potential loopholes in the DAC.

The Commission estimates the introduction of an EU crypto-asset reporting framework could raise additional tax revenue between €1 and €2.4 billion per year.

## Crypto-asset reporting framework

To introduce a reporting framework for crypto-asset transactions, the Commission's proposal closely follows the provisions of the OECD's CARF. The Commission also builds on the definitions used in MiCA for service providers and crypto-assets. In setting up the framework, and taking account of the impact assessment's result, the European Commission aims to find a middle ground between the granularity of the information requested and administrative burden on crypto-asset providers. The proposal deals exclusively with the reporting of information, and does not oblige Member States to impose (a minimum level of direct or indirect) taxes on the transactions.

The proposed directive identifies two types of entities that would be obliged to report information to the local authorities (Annex VI, Section IV, subparagraph B):

- Crypto-asset providers: any legal person or undertaking whose professional activity is the provision of one or more crypto-asset services to third parties. The definition as used in DAC8 is the same as that of MiCA.
- Crypto-asset operators: a provider of crypto-asset services other than a crypto-asset service provider. These operators do not fall within the scope of MiCA.

These entities (i.e. **'reportable crypto-asset service providers' or RCASPs**) would be subject to the DAC's reporting requirements if they have reportable users within the EU. This is regardless of the size of the RCASP, nor their residence (within or outside the EU).

In terms of whose transactions are reportable (i.e. **'reportable users'**), the directive would require information to be reported on individuals or entities, resident in the EU Member States, that are customers of the RCASPs (Annex VI, Section IV, subparagraph D).

The type of crypto-assets that need to be reported (i.e. **'reportable crypto-assets'**) are all crypto-assets that can be used for investment & payment purposes (Annex VI, Section IV, subparagraph A). e-money, e-money tokens and central bank digital currencies (CBDCs) are considered.

Transactions that the RCASPs would need to report (i.e. **'reportable transactions'**) by the RCASPs are any exchange transactions and transfers of reportable crypto-assets (both domestic and cross-border transactions), including transactions of reportable crypto-assets for fiat currencies, and transactions between reportable crypto-assets (Annex VI, Section IV, subparagraph C).

The data that RCASPs would need to provide are listed in the table below. To allow easy comparability and cross-checking of information, the data have to be reported **sub-divided per user and per crypto-asset** the user has traded.

Table 2 –Reporting requirements

Reportable crypto-asset service providers	Reportable user (individual)	Reportable crypto-assets
<ul style="list-style-type: none"> <li>➤ Name</li> <li>➤ Address</li> <li>➤ TIN</li> <li>➤ Identification number and global legal entity identifier (if available)</li> </ul>	<ul style="list-style-type: none"> <li>➤ Name</li> <li>➤ Address</li> <li>➤ TIN</li> <li>➤ Member State of residence</li> <li>➤ Date and place of birth</li> </ul>	<ul style="list-style-type: none"> <li>➤ Full names of the crypto-assets and their type</li> <li>➤ Amounts paid or received from exchanging crypto-assets for fiat currency, number of such transactions, number of units transacted</li> <li>➤ Value of the crypto-asset (at acquisition) and the gross proceeds (upon disposal), in case of crypto-to-crypto transactions (information has to be reported on both crypto-assets exchanged in the transactions), number of such transactions, number of units transacted</li> <li>➤ Transfers to un-hosted distributed ledger addresses</li> <li>➤ Reportable retail payment transactions<sup>7</sup></li> </ul>

Data source: [Annex VI, Section II](#).

Crypto-asset providers will need to report these data to the Member State who has granted them authorisation under the MiCA regulation to issue and trade crypto-tokens. Crypto-asset operators, who are not covered by MiCA, need to register within a Member State of their choice, and file their reports there subsequently (Annex VI, Section IV). Non-EU crypto-asset operators can be relieved from the EU registration and EU reporting obligations in cases where the third country in which the crypto-asset operator is located already has a similar reporting framework in place and exchanges the information with the EU Member States, known as an 'Effective Qualifying Competent Authority Agreement' (Annex VI, Section I). The Commission shall determine whether third-countries' arrangements are sufficiently similar to the EU's own reporting framework (Article 8ad(11)).

The reporting arrangements would begin as of **1 January 2026**. This deadline would allow for the MiCA regulation to be in place beforehand. The Commission shall, by means of implementing acts, establish practical arrangements to ensure that the exchange of reported information can be done in a standardised report. RCASPs would need to report by 31 January of the year following the year to which the information relates (Annex VI).

Unlike the OECD's CARF, the proposed EU directive also requires RCASPs to act in cases where a crypto-asset user does not provide the data required to the RCASP after two reminders, but not prior



to the expiration of 60 days. In such a case, the RCASP would have to prevent the user from exchanging transactions (Annex VI, Section V).

## High-net-worth individuals, sanctions policy and other changes

To improve the effectiveness of the directive, the proposal includes a series of (smaller) changes, relating to for instance, cross-border rulings for high-net-worth individuals, the use of the DAC in the context of international sanctions, and the inclusion of e-money and central bank digital currency.

- Whereas the current DAC only requires an exchange between tax authorities on the **cross-border rulings** of companies, the Commission proposes (Article 3a) to extend this to high-net-worth individuals (individuals whose financial or investable wealth or assets – excluding their private residence – is above €1 million). Member States would need to exchange with the other Member States any advance cross-border ruling issued to these high-net-worth individuals, which were either issued, amended or renewed after 1 January 2020 and which are still valid on 1 January 2026. The change would not alter high-net-worth individuals' or tax administrations' ability to request and issue an advance cross-border ruling. While this provision is not mandated by the OECD's CSR, it is likely that the European Commission added this provision in the wake of the [Pandora papers](#), which revealed alleged tax evasion cases by politicians, billionaires, celebrities, etc.
- An amendment is proposed to Article 16(2) to clarify that the information exchanged under DAC can be used for **purposes other than tax**, including any measures covered under Article 215 TFEU, which deals with the imposition of economic sanctions by the EU on third countries. The European Commission, in its introduction to the proposed DAC8 directive, states that this amendment is required to allow 'necessary action to enforce sanctions against Russia'. For instance, the data reported under the DAC could be used to check whether an entity is circumventing or violating the sanctions imposed on Russia.
- As an extension to DAC1, which requires the exchange of information on a number of categories of individuals' income and capital, the Commission proposes to add a '**non-custodial dividend income**' – income from dividends that are not paid or cashed in a custodial account – to the list of reportable information (Article 8(1)). This is consistent with the latest update to the OECD's CSR.
- To ensure legal certainty regarding the inclusion of **e-money and e-money tokens** in the DAC, the Commission amends Annex I to clarify that these are included within the scope of the directive. Central bank digital currencies (**CBDCs**) are also added. Despite sharing similarities with crypto-products, these would not be covered by DAC8, but rather by DAC2. The Commission argues that e-money products and CBDCs, unlike the reportable crypto-assets under DAC8, are more stable in value and less susceptible to multiple-day trading. Therefore only reporting of the balances will be required for these products, rather than individual transactions (as under DAC8). This is consistent with the latest update to the OECD's CSR.
- To ensure Member States make effective use of the **TIN**, the directive proposes that TINs are always included when Member States exchange data under the DAC (Article 27c). The Commission also proposes to develop a new digital tool which should allow Member States to automatically verify a TIN is correct.

## Minimum penalties

On the subject of penalties, the Commission proposes (Article 25a) to introduce a **harmonised minimum level of penalties** for the whole DAC (i.e. not solely related to DAC8). In case more than 25 % of an individual's or entity's report is made up of incomplete, incorrect or false data, or if they

fail to file a report at all, including after two administrative reminders, the Commission proposes that Member States put penalties of a minimum financial amount in place. It does so by making a distinction between who is being charged with the penalty and their turnover (see table below).

Table 3 – Minimum penalties

Legal entity, whose turnover is below €6 million

Non-compliance	DAC2 (financial institutions)	DAC4 (multinationals)	DAC6 (intermediaries)	DAC7 (platforms)	DAC8 (RCASPs)
<b>Minimum penalty</b>	€50 000	NA <sup>8</sup>	€50 000	€50 000	€50 000

Legal entity, whose turnover is above €6 million

Non-compliance	DAC2 (financial institutions)	DAC4 (multinationals)	DAC6 (intermediaries)	DAC7 (platforms)	DAC8 (RCASPs)
<b>Minimum penalty</b>	€150 000	€500 000	€150 000	€150 000	€150 000

Natural person

Non-compliance	DAC2 (financial institutions)	DAC4 (multinationals)	DAC6 (intermediaries)	DAC7 (platforms)	DAC8 (RCASPs)
<b>Minimum penalty</b>	NA	NA	€20 000	€20 000	€20 000

Data source: [Article 25\(a\)](#).

## Legislative process

The legislative proposal (COM(2022) 707) was presented on 8 December 2022. It falls under the consultation procedure ([2022/0413 \(CNS\)](#)), requiring unanimous support in Council, following consultation of the European Parliament and the European Economic and Social Committee. In the Parliament, the proposal has been assigned to the Economic and Monetary Affairs (ECON) Committee, where a rapporteur is to be appointed shortly.

In the Council, the proposal is being examined within the Working Party on Tax Questions (direct taxation). A first exchange of views was held on 9 January 2023.

## EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

[Assessment of recent anti-tax avoidance and evasion measures \(ATAD & DAC 6\)](#), Directorate-General for Internal Policies (DG IPOL), European Parliament, March 2022.

Eckhard, B. [Implementation of the EU requirements for tax information exchange](#), EPRS, European Parliament, February 2021.

Hallak I. [Markets in Crypto-Assets \(MiCA\)](#), EPRS, European Parliament, November 2022.

Karaboytcheva M., [Advances in administrative cooperation in the field of taxation](#), EPRS, European Parliament, April 2021.



## OTHER SOURCES

European Court of Auditors, [Exchanging tax information in the EU: solid foundation, cracks in the implementation](#), January 2021.

European Parliament, [Taxation: administrative cooperation](#), Legislative Observatory (OEIL).

OECD, [Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Tax Policy Issues](#), October 2020.

OECD, [Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard](#), October 2022.

Thiemann A., [Cryptocurrencies: An empirical view from a tax perspective](#), Joint Research Centre, European Commission, December 2021.

Zavatta R. et.al., [Evaluation of Council Directive 2011/16/EU](#), Evaluation study made for the European Commission, September 2019.

## ENDNOTES

- <sup>1</sup> In this context, both the European Commission and the OECD have recognised the progresses made in this area and both frame the introduction of information exchanges on crypto-asset transactions as a way to ensure that the recent gains made through the DAC (or through the OECD's Common Reporting Standard) are not eroded.
- <sup>2</sup> While DAC1 ensured the automatic exchange of information on five types of income, it also made sure that tax authorities could exchange information on request (EOIR) or spontaneously exchange information (SEOI) – if one country considers it could be of interest to another.
- <sup>3</sup> The country-by-country reports will also be made public, albeit with a number of adjustments, under the directive regarding the disclosure of income tax information by certain undertakings and branches (public country-by-country reporting – Public CbCR).
- <sup>4</sup> The DAC6 was originally intended to apply from July 2020, but the EU allowed Member States to postpone the application of DAC6 by six months, due to the COVID-19 outbreak.
- <sup>5</sup> [Coin market cap](#) (accessed on 16 January 2023).
- <sup>6</sup> A study by Thiemann (2021) estimates the total realised capital gains by EU citizens from Bitcoin amounted to €3.6 billion in 2020. If all realised capital gains made from Bitcoin would have been taxed at 25 %, the revenue raised across the EU would have been close to €1 billion.
- <sup>7</sup> Transfer of reportable crypto-assets in consideration of goods or services for a value exceeding €50 000.
- <sup>8</sup> The DAC4 applies exclusively to companies who have a turnover above €750 million.

## DISCLAIMER AND COPYRIGHT

This document is prepared for, and addressed to, the Members and staff of the European Parliament as background material to assist them in their parliamentary work. The content of the document is the sole responsibility of its author(s) and any opinions expressed herein should not be taken to represent an official position of the Parliament.

Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy.

© European Union, 2023.

[eprs@ep.europa.eu](mailto:eprs@ep.europa.eu) (contact)

[www.eprs.ep.parl.union.eu](http://www.eprs.ep.parl.union.eu) (intranet)

[www.europarl.europa.eu/thinktank](http://www.europarl.europa.eu/thinktank) (internet)

<http://epthinktank.eu> (blog)

First edition. The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure.