



Euro Tax Flash from KPMG's EU Tax Centre

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DAC 8: reporting and exchange of information on crypto-assets and cross-border rulings to certain individuals agreed by the Council

[Directive on Administrative Cooperation – Automatic Exchange of Information – Crypto assets – Tax rulings to high-net-worth individuals](#)

On May 16, 2023, the Economic and Financial Affairs Council of the EU (ECOFIN) reached [agreement](#) on the proposal to extend the Directive on Administrative Cooperation¹ (DAC) to cover the exchange of information on crypto-assets, as well as tax rulings for individuals (DAC8).

The agreed text is largely in line with the initial [proposal](#) issued by the European Commission (EC or Commission). A key amendment includes the removal of a common system of minimum penalties for serious non-compliance offences, that would have been applicable both to existing and proposed disclosure requirements.

Background

In its Action Plan for fair and simple taxation supporting recovery, the European Commission identified the need to further expand the DAC to alternative means of investment and payment (e.g. crypto-assets, e-money). Following a consultation period during which the EC collected stakeholders' views, a proposal was issued on December 8, 2022 – as reported in EuroTaxFlash [Issue 498](#).

Key amendments proposed by the Commission included:

- *Crypto-assets and e-money*: extending the EU tax transparency rules to cover crypto-assets and e-money. DAC8 would apply to all crypto-assets service providers (CASPs) providing a service in the EU,

¹ Council Directive 2011/16

irrespective whether they are regulated under Markets in crypto-assets (MiCA) Regulation² or not. As a first step, in-scope CASPs would be required to collect and verify self-certification forms from all their clients – in line with specific due diligence procedures, information from EU clients. Subsequently, certain information would be reported to the relevant competent authorities. Under a third step, this information would be exchanged by the recipient Member State with the tax authorities of the Member State where the reportable user is tax resident. The rules proposed were largely consistent with the OECD's Crypto-Asset Reporting Framework (CARF)³ and aligned with the definitions included in the MiCA.

- *Rulings issued to high-net-worth individuals*: extending the automatic exchange of advanced cross-border rulings to cover rulings issued to individuals. The EC proposal targeted rulings issued to high-net-worth individuals – defined as holding a minimum of EUR 1,000,000 in financial or investable wealth or assets under management, excluding their main private residence.
- *Penalty regime*: Member States would be required to introduce a minimum level of penalties for serious non-compliant behavior, applicable to all existing reporting requirements. The minimum penalties varied based on the type of infringement, the turnover of the non-compliant reporting entity and on whether the offender was a company or an individual.
- *Reporting of the tax identification number (TIN)*: introducing new requirements to collect and exchange information on TINs.
- *Transaction blocking*: Under DAC8 if a CASP has not obtained the required information within 60 days and after 2 chasers, they must prevent the crypto-asset user (CAU) from performing exchange transactions.
- *Other*: extending the scope of the mandatory automatic exchange of information between Member States to cover non-custodial dividend income.

Rules agreed on by the Council

Revision of the DAC to cover crypto-assets

The final text agreed by the Council is largely in line with the initial EC proposal. The reporting deadline of January 31 of the following calendar year – by when reportable CASPs had to disclose the required information to the relevant authorities, was removed. Instead, reportable CASPs are allowed to carry out the reporting throughout the following calendar year.

Reporting crypto-asset service providers (RCASPs), i.e. in-scope crypto-asset service providers and crypto-assets operators, will be required to carry out due diligence procedures to identify whether their clients are reportable or not. The due-diligence and related reporting requirements apply to:

1. an RCASP that is authorised by a Member State, or allowed to provide crypto-asset services following a notification to a Member State by under MiCA; or
2. an RCASP that does not fall under (1) and is:
 - a) an entity or individual resident for tax purposes in a Member State;

² The MiCA regulation, adopted by the Council on May 17, 2023, regulates the issuance and trading of crypto-assets within the EU.

³ Approved in August 2022, the CARF is designed as a global initiative that aims to ensure transparency with respect to crypto-asset transactions and contains model rules that can be transposed into domestic legislation, as well as commentary to help administrators with implementation. For more details please refer to a [tax alert](#) prepared by KPMG in the UK.

- b) an entity that (i) is incorporated or organised under the laws of a Member State and (ii) either has legal personality in a Member State or has an obligation to file tax returns or tax information returns to the tax authorities in a Member State with respect to the income of the Entity;
- c) an entity managed from a Member State; or
- d) an entity or individual that has a regular place of business in a Member State.

Under the initial text of the Directive, an exemption from the reporting and due diligence requirements was available for entities authorised by a Member State under MiCA if these requirements were completed in another Member State or in a non-EU jurisdiction that effectively exchanges relevant information with Member States with regard to reportable users. That provision was removed from the final text so that RCASPs that are either authorized in a Member State or allowed to provide relevant services under MiCA will be required to meet their obligations in that Member State. Such an exemption is, however, available for RCASPs that fall under point (2) above, subject to conditions and provided that the relevant Member State is notified accordingly.

Exchange of information on cross-border rulings related to individuals

The final text moved away from the EC's proposal that targeted tax rulings issued to high-net-worth individuals. Instead, Member States agreed to exchange information on cross-border rulings involving the tax affairs of individuals when:

- the amount of the transaction or series of transactions of the ruling exceeds EUR 1,500,000; or
- the scope of the ruling is to determine the tax residence of the individual.

The rules would only cover rulings issued, amended, or renewed after January 1, 2026. Rulings issued prior to that date, but still valid as at January 1, 2026 are not in scope.

Penalty regime

Member States were not able to agree on the framework of minimum penalties proposed by the Commission. Therefore, the related article was removed from the final text meaning that penalties remain within the discretion of Member States, but should be effective, proportionate and dissuasive.

Reporting of the TIN

The final text strengthens the Commission's proposal to collect and include the TIN of reported individuals and entities. Member States are required to ensure:

- the reporting of the TIN in the context of the exchanges related to certain categories of income and capital subject to mandatory automatic exchange of information (DAC1);
- the collection of the TIN and its inclusion in the exchanges of information in the context of advance cross-border rulings and advance pricing agreements (DAC3), country-by-country reports (DAC4) and reportable cross-border arrangements (DAC6). DAC 6 already required the reporting of the TIN for intermediaries and relevant taxpayers, but the amendments extend this requirement to cover the TIN of any other person in a Member State likely to be affected by the reportable cross-border arrangement.

The deadline to comply with the requirements above was extended from the initial January 1, 2026, to:

- January 1, 2030 for the categories of income and capital subject to the exchange of information;
- January 1, 2028 for the other exchanges listed above.

An amendment to the DAC 8 preamble encourages Member States to timely transpose the domestic legal requirements to report the TIN. The wording also highlights the importance of ensuring proper matching of country-by-country reports in light of the safe harbors set out in the Minimum Tax Directive⁴.

DAC 6 amendments to comply with the CJEU decision in case C-694/20

The final text amends the requirements for intermediaries, who are subject to legal professional privilege, to notify other intermediaries of their reporting obligation under DAC6. The changes were made in light of the Court of Justice of the European Union (CJEU) decision in case C-694/20 – see EuroTaxFlash [Issue 497](#).

Member States are allowed to introduce a waiver from the notification requirement above for intermediaries benefiting from legal professional privilege. Such intermediaries would nevertheless still be required to inform clients about their reporting obligations. In addition, DAC8 no longer requires the identification of legal professional privilege intermediaries as one of the items to be submitted to the tax authorities in the DAC6 report.

Other amendments to the DAC8 proposal

The final text includes a provision aimed at ensuring the effective use of the information acquired through the reporting and exchange of information under the DAC. Member States are required to put in place effective mechanisms to ensure the use of such data. The preamble explains that these mechanisms could include voluntary compliance programs, notifications to generate disclosure, awareness campaigns, prefilling tax returns, risk assessments, limited audits, general audits, tax coding, tax estimation, assimilation into domestic systems and other tax-related measures.

Next steps

The text agreed by the Council represents the final version of DAC8. The Directive will be formally adopted once the European Parliament have given their non-binding opinion. The Parliament's Committee on Economic and Monetary Affairs (ECON) has [tabled](#) several amendments to the text. The proposed changes are tentatively scheduled to be adopted by ECON on May 30, 2023, and the file is expected to be voted in the Parliament's plenary sitting on July 10, 2023. However, as suggested by the Council's [press release](#), the Council has already agreed on the final text and any changes potentially proposed by the Parliament would not be considered.

With the exception of the TIN related provisions above, Member States would need to transpose the Directive by December 31, 2025. The rules would become applicable as of January 1, 2026 (with some exceptions). This timeline is aligned to the CARF.

⁴ Council Directive (EU) 2022/2523 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups

EU Tax Centre comment

Similar to DAC7, DAC8 was approved in record time – six months from the publication of the EC’s initial proposal. The Directive significantly expands the scope of reporting and automatic exchange of information in the EU and closes gaps identified by the European Parliament⁵ and the European Court of Auditors⁶ related to advance tax rulings issued for certain individuals. By agreeing on DAC 8, the EU took a forefront role in transposing the CARF and the OECD’s amendments to the Common Reporting Standard (CRS). The final text nevertheless maintains some of the differences between CARF and DAC8 explored in the [related](#) KPMG report.

Some Member States had previously expressed their reluctance to introduce a floor on penalties for non-compliance with the various obligations under DAC – it appears that the Commission was not successful in their attempt overcome these objections. The amended text still attempts to improve the efficiency of DAC by urging Member States to make effective use of the data reported to them or received from other Member States.

Whilst the final text encourages Member States to timely implement the provisions related to TINs, Belgium expressed their disappointment on the timeline proposed by DAC8. In a statement [released](#) on May 12, 2023, Belgium strongly recommends that Member States implement TIN reporting from January 1, 2024, with the aim to ensure the effective function of the safe harbors in the Minimum Tax Directive.

The MiCA was also formally [adopted](#) in the same ECOFIN meeting, as was the Transfer of Funds Regulation (TFR). Both Regulations are relevant for the application of DAC8, which refers to the two texts for definitions and authorization requirements.

The Council did not hold a state of play discussion on the Unshell proposal, as initially expected. It remains to be seen whether the upcoming Spanish Presidency will put this initiative on the agenda of EU Finance Ministers.

Should you have any queries, please do not hesitate to contact [KPMG’s EU Tax Centre](#), or, as appropriate, your local KPMG tax advisor.



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⁵ European Parliament resolution of 26 March 2019 on financial crimes, tax evasion and tax avoidance (2018/2121(INI)).

⁶ European Court of Auditors: Exchanging tax information in the EU: solid foundation, cracks in the implementation (January 26, 2021) – see E-News [Issue 125](#).

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