

DAC8: obligation to report on crypto-asset transactions 2/22/23



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As new types of assets and transactions emerge, amendments are made to Council Directive 2011/16/EU on administrative cooperation in the field of taxation. The European Commission has proposed new tax transparency rules for all service providers handling crypto-assets. On 16 May 2023 the EU finance ministers agreed on the compromise text of DAC8, which is coming up for approval soon.

The compromise text

Expected to take effect from 2026, these rules will require all service providers, no matter their size or location, to report on crypto-asset transactions made by EU-resident customers.

DAC8 is aligned with the Markets in Crypto-Assets Regulation and the anti-money laundering rules, and it adds to the rules on disclosures and reporting. DAC8 is also aligned with the OECD Crypto-Asset Reporting Framework and amendments to the OECD Common Reporting Standard.

To improve the member states' ability to detect and combat tax fraud and tax evasion, DAC8 will include the following elements:

- Regardless of their size or location, crypto-asset service providers must report on transactions made by their EU-resident customers. The proposal covers both domestic and cross-border transactions.
- Reporting obligations will extend to non-fungible tokens in certain cases.
- Financial institutions will be required to report on e-money and the central banks' digital currencies.

The DAC8 compromise text also requires countries to exchange information on cross-border rulings issued to individuals where a ruling has been issued on one or more transactions exceeding EUR 1.5 million and the amounts are identified in those rulings, and to exchange cross-border rulings determining an individual's tax residence in a member state. There are plans to exchange rulings issued after 2025.

It's important to note that the DAC8 proposal will require information to be disclosed by non-EU registered service providers with a customer in the EU. This means that relocating outside the EU will not help anyone evade the reporting obligation.

It was originally proposed that DAC8 should prescribe a minimum level of penalty for failure to comply with DAC. The compromise text no longer provides for this and merely states that such penalties should be effective, proportionate and dissuasive.