

EPIF response to the European Commission proposal amending the Directive on Administrative Cooperation in the Field of Taxation (DAC8)

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Introduction

On 8 December 2022, the European Commission adopted its proposal amending the EU Directive on administrative cooperation in the field of taxation, also known as DAC8. This proposal has been highly expected by the industry and is a positive step forward to improve tax transparency and minimize the risks of under-reporting of taxable income. DAC8 aligns the European tax transparency requirements with those agreed in August 2022 by the OECD under its Crypto-Asset Reporting Framework (CARF) and amended Common Reporting Standards (CRS). EPIF members were actively involved in the discussions at the OECD level and very much welcome that the European implementation of CARF and amended CRS remained very close to the international agreement.

As a general note, whilst this international alignment is of crucial importance, EPIF members note that the DAC8 is only one of a collection of European actions that have been taken to improve protection, stability and transparency in crypto-asset markets. The soon to be published Markets in Crypto-Assets (MiCA) Regulation creates an already strong framework for crypto-assets and establishes an important understanding of definitions in the relevant market. Likewise, there are also ongoing negotiations on the new anti-money laundering rules that are likely to require enhanced due diligence and KYC measures to these assets. Against this backdrop, EPIF reiterates that it is important to ensure consistency between all these files.

With regards to the provisions in the proposal, EPIF members consider that the European Commission has reached a reasonable balance between minimizing the risk of tax avoidance and what is technically feasible for the entities responsible for the reporting activities. Notwithstanding, certain elements still raise concerns and require additional clarifications, notably in terms of the in-scope assets and the reporting obligations. These are explored in more detail below.

Reportable crypto-assets and Reporting CASPs

As an initial observation, we note that this proposal is much broader in scope than existing EU legislation. The proposal extends the existing reporting transparency framework under DAC8 to cover assets that are considered as being used for payment or investment purposes. Therefore, it is our understanding that DAC8 captures not only crypto-assets in their MiCA sense but also Central Bank Digital Currencies (CBDC) and e-money, as long as they are used as a mean of payment or for investment purposes.

With regards to e-money products, EPIF very much welcomes that, for the purposes of DAC8, e-money does not include products created for the sole purpose of facilitating a transfer of funds from a customer to another pursuant customer's instruction. This is an important exemption to be in place. However, EPIF notes that an additional exemption should be provided for products with a reasonable storage/balance information. We understand that this carve-out is currently not envisaged under the DAC8 and therefore creates a divergence point with the OECD amended CRS. A threshold-based reporting of e-money transactions would still achieve the aimed reporting transparency of the DAC8 without hurting the financial inclusion benefits derived from e-money.

With regards to crypto-assets, we welcome that the definitions used for the purpose of DAC8 align with those under the MiCA Regulation. The DAC8 introduces that Reporting crypto-asset service providers (CASPs) are those that permit reportable users to complete transactions to be in scope of the requirements, which can be both CASPs as defined in the MiCA Regulation and crypto-asset operators (i.e., providers of crypto-asset services on a professional basis but are not captured by MiCA). EPIF has always considered that the entity that has the direct relationship with the Crypto-Asset User is the entity that should have the primary reporting obligation and therefore very much welcomes this alignment with MiCA is crucial to retain in order to bring about further legal clarity for the industry and ensure that scope for loopholes is minimized.

One element that EPIF members would see value being clarified is the differentiation between the service's crypto operators and MiCA entities provider. As an example, DAC8 makes an explicit reference to operators trading in non-fungible tokens (NFTs), which are to be reportable assets for Reporting operators. As NFTs are not in scope of MiCA, this would imply that MiCA-licensed entities trading in NFTs would not be required to report similar transactions that would be considered reportable under DAC8 for crypto operators. Should this be the case, an unlevel playing field would be created for NFTs between the different providers. Moreover, and similarly to MiCA discussions, EPIF stresses that there is no clear definition of what represents an NFT for financial purposes.

Reporting Obligations

With regards to the reporting obligations that apply to Reporting CASPs, EPIF notes that the most important principle to retain is legal certainty. Tax transparency rules can be quite exhaustive which, in conjugation with the multitude of developments in crypto markets, can pose significant challenges to in-scope entities. Nevertheless, ensuring that due diligence procedures and an adequate level of reporting is kept is essential. EPIF agrees that Reporting CASPs should report both their domestic and cross-border transactions for their EU users. We also very much welcomed the policy option endorsed by the European Commission to have information aggregated by type of reportable crypto-asset rather than individual reporting. EPIF considers this a balanced approach that will enable the relevant information to be exchanged without overburdening the entities responsible for reporting and tax authorities and administrators.

DAC8 also requires CASPs to perform due diligence on reportable crypto-asset users, which in essence are customers of the CASP that carry-out reportable transactions. CASPs are to be required to collect self-certification and relevant documentation from their customer to determine whether they are to be considered a reportable crypto-asset user, subject to reporting requirements.

ABOUT EPIF (EUROPEAN PAYMENT INSTITUTIONS FEDERATION)

EPIF, founded in 2011, represents the interests of the non-bank payment sector at the European level. We currently have over 190 authorised payment institutions and other non-bank payment providers as our members offering services in every part of Europe. **EPIF** thus represents roughly one third of all authorized Payment Institutions (“PI”) in Europe. All of our members operate online. Our diverse membership includes a broad range of business models, including:

- Three-party Card Network Schemes
- E-Money Providers
- E-Payment Service Providers and Gateways
- Money Transfer Operators
- Acquirers
- Digital Wallets
- FX Payment Providers and Operators
- Payment Processing Services
- Card Issuers
- Independent Card Processors
- Third Party Providers
- Payment Collectors

EPIF seeks to represent the voice of the PI industry and the non-bank payment sector with EU institutions, policy-makers and stakeholders. We aim to play a constructive role in shaping and developing market conditions for payments in a modern and constantly evolving environment. It is our desire to promote a single EU payments market via the removal of excessive regulatory obstacles.

We wish to be seen as a provider for efficient payments in that single market and it is our aim to increase payment product diversification and innovation tailored to the needs of payment users (e.g. via mobile and internet).