**Field Report: UK Berkeley Program (Austrian Marshall Plan Foundation)**

What an incredible journey! I am deeply honored to have spent three enriching months as a research fellow at the prestigious University of California, Berkeley. This unique experience allowed me to gain valuable insights from two esteemed departments: the Economics Department and the International European Studies Institute (IES), under the guidance of Prof. Alan Auerbach and Prof. Jeroen Dewulf.

I would like to thank my hosts and the Austrian Marshall Plan Foundation for their trust and support through the UC Berkeley Program Scholarship. Berkeley truly welcomed me with open arms, and beyond the academic insights, I enjoyed the charming California atmosphere and met incredibly kind people.

During my stay, I had the opportunity to participate in a variety of activities that greatly enhanced my research and professional development. I attended numerous events hosted by UC Berkeley, which allowed me to interact with scholars from various legal and non-legal fields. It was particularly enriching to learn about different theoretical and methodological approaches from scholars in the Department of Economics and the IES. I was honored to be invited to attend the weekly Public Finance Seminar at the Robert D. Burch Center for Tax Policy and Public Finance, where tax research was discussed with professors and academics. I also attended a symposium organized by the Robert D. Burch Center, the Center for Labor Economics, and the James M. and Cathleen D. Stone Center, Department of Economics. The Economics Institute also provided me with a workspace where I met graduate students from a variety of economics backgrounds.

The research stay at UC Berkeley allowed me to advance my dissertation project significantly. During my stay, I published part of my findings in the SWI, focusing on the proposed new DAC 8 regulation. Another paper, which takes a US-EU comparative approach to this topic, is in progress and will be completed upon my return to Austria. In addition, I had the privilege of presenting my research at a colloquium organized by the Visiting Scholars at IES on May 25. This platform provided a wonderful opportunity to interact on a weekly basis with fellow researchers, provide feedback, and exchange ideas on various projects within the IES Institute.

A highlight of my stay was attending the Consensus2024 event organized by CoinDesk in Austin. This conference is one of the world's largest and most influential gathering in the cryptocurrency, blockchain, and Web3 community. It provided me with up-to-date information on the crypto landscape and allowed me to network with a diverse group of individuals, including professors, researchers, crypto intermediaries, taxpayers, auditors, regulators, and investors. This experience was instrumental in gaining contacts for my interviews and advancing my thesis project.

My time at UC Berkeley was a transformative experience that I can wholeheartedly recommend to others. The combination of academic enrichment, professional development, and personal connections made it an unforgettable journey. For future participants, I suggest packing some warm clothing, as Berkeley can be cooler than expected, even in California.

Thank you once again to the Austrian Marshall Plan Foundation and my hosts at UC Berkeley for making this incredible opportunity possible.

**Final Report**

## DAC 8: Extension of Cross-Border Information Exchange to Crypto Assets

On December 8, 2022, the European Commission presented a proposal for the seventh amendment of the Directive 2011/16/EU on administrative cooperation in the field of direct taxation (DAC 8), requiring crypto-asset providers to report transactions by their EU clients. The Directive was unanimously adopted by Member States in the Council on October 17, 2023, and published in the Official Journal on October 24, 2023. The aim of the Directive is to enable tax authorities to better track crypto-asset income through the cross-border exchange of information, thus countering tax evasion and avoidance. In addition to the reporting obligation, the Directive also contains other changes, such as provisions relating to high-net-worth individuals. This article critically examines the amendment to the Directive.

### Overview of the Regulation

In December 2021, the Council announced that the European Commission intended to propose a revision of Directive 2011/16/EU on administrative cooperation in the field of taxation, specifically aiming to integrate the exchange of information on crypto assets. This initiative seeks to enhance transparency in the taxation of crypto assets, thereby more effectively combating tax fraud, tax evasion, and tax avoidance at the Union level. While specific reporting requirements already exist under the Foreign Account Tax Compliance Act (FATCA) in the US context, the Common Reporting Standard (CRS) at the EU and OECD levels only covered traditional financial assets, largely excluding crypto assets. Until now, it was unclear whether crypto assets or e-money could be considered “financial assets” and whether their providers or intermediaries could be classified as “financial institutions” under these reporting requirements. This gap is now to be closed by DAC 8 at the European level (and the Crypto Asset Reporting Framework [CARF] at the OECD level).

The DAC 8 proposal was presented on December 8, 2022. After the Council reached an agreement on its position on the amendments on May 16, 2023, the European Parliament issued its opinion on September 13, 2023, as part of the consultation

process. The Directive was finally adopted by the Council on October 17, 2023, and published in the Official Journal of the EU on October 24, 2023.

The update to Directive 2011/16/EU fundamentally relies on the CARF and CRS frameworks. Additionally, some definitions and approval requirements for crypto service providers from the Markets in Crypto-Assets Regulation (MiCA) and the Transfer of Funds Regulation (TFR) have been integrated.

**Key Features of the Directive**

The core innovation is the establishment of a reporting obligation for crypto transactions. Specifically, DAC 8 requires reporting entities to initially collect and verify relevant information on reportable crypto asset transactions. Subsequently, these verified details must be communicated to the relevant local authority by the end of the year following the reporting period, with initial reporting possible from January 1, 2026. In a third step, the reported information must be transmitted using a standardized electronic form within nine months after the end of the relevant calendar year from the local to the corresponding foreign authority.

The reporting obligation is purely a reporting duty and does not impose (minimum) taxation requirements. Also, unlike the DAC 8 draft, the final version of the Directive does not contain any significant sanction provisions.

Furthermore, the scope of Directive 2011/16/EU is expanded. Specifically, the provisions implemented under DAC 2 have been extended to include electronic money (e-money) and central bank digital currencies (CBDC) by adjusting Annex I. Additionally, the categories of income and capital established under DAC 1 have been expanded to include the category of dividend income for companies holding their shares outside a bank deposit account.

Another significant step is the extension to cross-border rulings that affect natural persons. Member States are now required to exchange information on cross-border tax rulings issued, amended, or renewed after January 1, 2026, provided these either exceed a transaction volume of 15 million euros or determine the tax residency of the person in the issuing Member State. Previously, under DAC 3, the exchange of cross-border tax rulings was limited to legal entities.

The procedures for administrative cooperation between EU Member States are also improved. Notably, receiving Member States can now use the received information for non-tax purposes without prior consultation with the information-providing Member State.

Lastly, the Directive ensures compliance with the right to respect for communication between lawyers and clients as enshrined in Article 7 of the EU Charter of Fundamental Rights. Following a judgment of the European Court of Justice on December 8, 2022, the information obligation under Article 8ab(5) of Directive 2011/16/EU as amended by DAC 6 only applies if the person to be informed is a client of the affected intermediary. This excludes the transfer of information to third parties with whom there is no direct legal relationship. Additionally, there was a slight adjustment in the reportable information regarding cross-border arrangements.

**Objective and Subjective Scope of DAC 8**

**Reporting Entities**

The personal scope of DAC 8 includes “any provider of crypto services [Crypto-Asset Service Provider; CASP] or crypto-asset operator [Crypto-Asset Operators CAO] offering one or more crypto-asset services that effect transactions on behalf of a reportable user.”

A CASP is defined as “any legal entity or other enterprise whose professional or commercial activity consists of providing one or more crypto-asset services commercially to customers” and is authorized to provide crypto-asset services under Article 59 MiCA. The DAC 8 Directive itself does not provide an independent definition of a CASP but refers to the definitions and approval requirements of MiCA. According to MiCA, such providers are authorized in the Member State in which they are deemed to be resident.

A CAO is described as a crypto service provider that does not fall under the MiCA definition but is still subject to the reporting obligation under DAC 8. Third-country providers operating in the Union without a physical presence must register. Tax nexus points include tax residency in an EU Member State, incorporation or organization under the national law of an EU Member State, legal personality or the obligation to

file tax returns in an EU Member State, management or habitual place of business in an EU Member State, or a permanent establishment in the EU.

CASPs and CAOs are referred to as “reporting crypto-asset providers” (RCASP) for DAC 8 reporting purposes. They are subject to the reporting obligation if they have users who are resident in the Union. Thus, the scope of DAC 8 extends beyond MiCA (e.g., including CAOs that do not actively solicit users in the EU or CAOs dealing with reportable NFTs).

**Material Scope for Specific Crypto Services**

Only crypto providers offering specific services and activities (such as custody and administration of crypto assets for third parties, operation of a trading platform, exchange of crypto assets for money or other crypto assets) are subject to the reporting obligation. The “crypto services” described in DAC 8 do not fully align with those of MiCA. DAC 8 extends the scope to activities such as staking and lending but limits it to services relevant for tax reporting. Consequently, only transactions involving exchanges and transfers of reportable crypto assets are covered. Services falling under MiCA but not considered a “crypto service” under DAC 8 (e.g., advisory services regarding crypto assets) are not reportable.

Decentralized autonomous organizations (DAO) and decentralized crypto exchanges (DEX) are exempt from the reporting obligation due to their unregulated nature and lack of an intermediary actor. This also applies to “unhosted wallets” or “cold wallets” self-stored crypto assets.

**Reportable Transactions**

The objective scope of DAC 8 is focused on “reportable transactions”, including exchanges and transfers of crypto assets. These involve the purchase, sale, exchange, trade, and transfer from a platform to, e.g., a cold wallet. A “exchange” in this context is defined as the exchange of reportable crypto assets for fiat currencies or other (reportable) crypto assets. A “transfer” is any transaction transferring a reportable crypto asset to or from a crypto asset address or account of a crypto asset user. The presence of a cross-border element is not required, but the user must be

resident in the EU and reportable. Thus, only transactions of a reportable EU resident user are covered.

**Reportable Users**

A reportable crypto asset user (natural person or legal entity) is a customer of a reporting crypto-asset provider for the purpose of executing reportable transactions. This requires that they are a “person of a Member State” not explicitly exempt from reporting. “Person of a Member State” refers to the tax residency of the natural person or legal entity. For entities without tax residency, like a Limited Liability Partnership, residency is determined by the place of effective management.

Exempt from reporting are publicly listed companies, group-affiliated companies, state entities, international organizations, central banks, and financial institutions (except investment companies). These are already subject to other reporting obligations, such as DAC 2 or regulatory obligations for publicly listed companies, to avoid duplicate reporting.

The DAC 8 draft also clarifies the definition of a crypto asset user in specific cases:

When a natural or legal person acts as a representative, custodian, authorized signatory, investment advisor, or intermediary on behalf of another natural or legal person, the principal is considered the crypto asset user, not the intermediary.

For RCASPs enabling mass payment transactions on behalf of merchants, the customers acting as the counterparty to these merchants are considered crypto asset users, provided that anti-money laundering identity checks are conducted.

**Reportable Crypto Assets**

DAC 8 reporting obligations apply to “crypto assets” defined as digital representations of value or rights that can be transferred and stored electronically using Distributed Ledger Technology (DLT) or similar technology. For the definition of DLT, DAC 8 refers to the MiCA regulation, which in turn refers to the definitions in Regulation (EU) 2022/858. According to this regulation, DLT is “a technology enabling the operation and use of distributed ledgers.” A “distributed ledger” is understood as “a storage of

information containing transaction records distributed and synchronized across a DLT network using a consensus mechanism."

The term "crypto asset" is broadly defined to cover a wide range of crypto assets without differentiating specific properties of the underlying DLT or consensus mechanism. However, the material scope of DAC 8 is limited to "reportable" crypto assets. A reportable crypto asset is any crypto asset not classified as digital central bank currency, e-money, or a crypto asset determined by the reporting crypto-asset provider to be unsuitable for payment or investment purposes.

Thus, the DAC 8 reporting obligation covers crypto assets used for payment and investment purposes, such as payment tokens, asset-referenced tokens, equity/debt tokens, certain decentralized issued crypto assets, and stablecoins, including e-money tokens. E-money and CBDCs are not subject to DAC 8 reporting as they are typically already covered by DAC 2 provisions. For NFTs, limited networks, and certain utility tokens, it must be assessed individually whether they are used for payment and investment purposes.

**Reportable Information**

According to DAC 8, the following information must be aggregated annually and detailed by user and type of reportable crypto asset, including transaction type:

- For the RCASP: Name, address, tax identification number, individual identification number, and, if available, global legal entity identifier.

- For the reportable crypto-asset user: This includes both controlling persons considered reportable users and the user themselves. Name, address, resident Member State(s), tax identification number(s), date and place of birth, and confirmation of a valid self-certification must be reported.

- Regarding the reportable crypto-asset: The full name and type of the reportable crypto asset must be provided. Detailed information is required for:

    - Acquisition and disposal of crypto assets in exchange for fiat currency: Total gross amount, aggregated number of acquired/sold units, and

number of transactions.

- Acquisition and disposal of crypto assets in exchange for other crypto assets: Aggregated fair market value at the time of acquisition/disposal, total number of units, and number of transactions.

- Reportable mass payment transactions: Aggregated total gross amount, total number of units, and number of mass payment transactions.

- Other transactions to or by crypto users (e.g., crypto asset as payment for goods or services): Aggregated fair market value, total number of units, and number of transactions by transfer type.

- Transactions to addresses not connected to an RCASP/financial institution: Aggregated fair market value and number of units of transfers to distributed ledger addresses not demonstrably connected to an RCASP or financial institution.

To facilitate the identification of reportable users by the RCASP, a user self-certification is required. This must be signed, confirmed, and dated when establishing a new business relationship, when circumstances change, and within a year after DAC 8 comes into effect for existing users. Identification services or third-party providers can be used, but the responsibility for fulfilling due diligence obligations remains with the reporting entity.

**Discussion Points**

**Extraterritorial Enforcement of the Reporting Obligation**

The discussion on the extraterritorial enforcement of the reporting obligation for non-EU CAOs under DAC 8 raises the question of violating national sovereignties. Applying the Directive to third-country providers that do not consent to EU regulation could draw parallels to the US FATCA. The European Commission justifies this extraterritorial reach in the DAC 8 Directive with the goal of creating a level playing field and preventing forum-shopping by RCASPs.

However, it remains to be examined whether extraterritorial application constitutes an infringement on national sovereignty, depending on various factors, including whether combating tax evasion and avoidance is a sufficient argument, especially if non-compliance with the DAC 8 regime can be due to ambiguities and missing definitions.

Companies without an EU nexus are not subject to DAC 8 but may fall under CARF, depending on their home state's signatory status.

Questions also arise regarding the enforceability of tax regulations against third-country nationals. From a regulatory perspective, it would be advisable to consider ways to ensure effective legal enforcement (especially for third-country nationals), particularly given that the minimum sanction requirements in the DAC 8 draft were omitted in the final version of the Directive, leaving this to the sovereignty of individual Member States.

**Information on Transactions of Non-EU Crypto Users**

Additionally, it raises the question of whether RCASPs should also collect and report information on transactions of non-EU crypto users to promote compliance with tax regulations. This could improve effectiveness in combating tax evasion and avoidance and allow for a more comprehensive assessment of transaction chains. However, it would entail considerable administrative effort for reporting entities, raising the question of whether this would still be deemed proportionate and appropriate concerning the regulatory objective.

**Lack of Harmonization of DAC 8 Regulation with the OECD CARF Framework**

Non-harmonization of the DAC 8 regulation with the OECD CARF framework could lead to competitive distortions. Therefore, harmonizing the regulations is essential. It is also necessary to examine how this aligns with the requirement for third-country CAOs to have qualified agreements for effective information exchange.

**Information Collection for Fully Decentralized Services**

The DAC 8 Directive focuses on centralized intermediaries and excludes fully decentralized services and applications. This raises the question of whether information collection for fully decentralized services would be meaningful and feasible.

Guidance is needed to distinguish fully decentralized from “pseudo”-decentralized crypto asset services for DAC 8 reporting purposes. The challenge with fully disintermediated technologies currently lies in identifying a responsible information holder for reporting purposes, but future technological developments could address these challenges. Expanding to natural persons who do not meet the reporting obligation criteria could also be considered (also raising the question of the interpretation of the term “commercial”).

**Usefulness of Expanding Data Collection**

Regarding data collection, DAC 8 is limited to the transfer and exchange of crypto assets, excluding the storage of the entire inventory. It should be examined whether expanding data collection would be useful, although this would entail significant data collection efforts, particularly for startups and smaller companies, and could pose potential risks for market consolidation towards “big players”.

Additionally, the question arises as to the limits of data retention solely for tax enforcement purposes (especially considering the principle of proportionality in Article 7 of the EU Charter of Fundamental Rights, Article 8 of the European Convention on Human Rights, Article 1 of the EU GDPR, and various high court rulings such as VfGH 14.03.2012, CJEU 29.7.2010).

Moreover, the numerous regulations requiring data collection (besides DAC 8, CARF, e.g., KYC-/KYB-/KYCC-/AML-, CESOP-, PoF-/PoW-data collection, to name a few examples) should be evaluated regarding their objectives and effectiveness (including transparency from regulators on what happens to the data/how it is processed).

The absence of a cross-border element in domestic transactions could also be seen as an infringement on national sovereignty. It is questionable whether justification through the smooth functioning of the internal market and preventing tax fraud and evasion is sufficient.

The inequality in disclosure requirements for crypto-assets compared to traditional financial instruments could violate neutrality. Justifying this inequality requires solid evidence.

**Interpretation of the Term “Used for Investment Purposes”**

The interpretation of the term “used for investment purposes” offers scope for interpretation and could be handled differently in various countries. Additionally, uniform qualification of crypto assets is complicated by diverging legal systems (e.g., in the case of tokens whose characteristics may change over time, making tax classification difficult beyond cross-border differences). Making such qualifications/classifications of crypto assets may seem disproportionate from a national perspective. This could be the case if a single state's national tax law does not require such differentiation to meet its national tax requirements. An example here is the Netherlands (or Liechtenstein in the OECD context of CARF). The Netherlands imposes a wealth tax on private cryptocurrency trading, so from a Dutch perspective, it does not matter to qualify a crypto asset but to record the wealth increase at the beginning and end of the fiscal year as a taxation criterion. Differences in national legal systems complicate uniform data collection (“one-size-fits-all solution”) and make collecting specific information not equally meaningful for all Member States (question of proportionality).

**Uniform Regulations for Taxation?**

The question arises whether it would be more effective to establish uniform EU-wide regulations for taxation before regulating EU-wide uniform data collection. Ultimately, the issue of harmonizing direct taxes at the EU level is a politically sensitive topic that requires careful discussion and consideration of various factors. The decision on whether and when harmonization is justified lies with the EU Member States and should be discussed and negotiated within the EU's political process.

**EU-wide Uniform Understanding of Terms**

Finally, the question arises whether a uniform EU-wide understanding of terms for crypto-assets and services like staking should be introduced to minimize interpretative differences. This is particularly relevant as EU directives set minimum standards that each Member State must implement individually, leading to significant interpretive differences. Aligning CARF and DAC 8 provisions could prevent competitive distortions in the international context.

**Final Assessment and Summary**

The current dynamics and potential of crypto-assets, as well as the resulting new business models, contrast with a rather rigid legal and information system. Decoupling value creation from physical factors has so far allowed crypto service providers to use high flexibility in profit shifting and thus in allocating tax claims. Despite the technical possibility of tracing assets, the associated costs and time pose a challenge for administrative authorities.

Implementing a DAC 8 reporting framework for crypto transactions is an essential step in addressing this issue. However, the decentralized and diverse nature of crypto-assets complicates uniform and comprehensive documentation at the European level.

The most significant challenges arise from the differing legal systems and varying definitions (e.g., staking). In my opinion, harmonized application of DAC 8 regulations can only be achieved through establishing uniform definitions and aligning legal provisions. Although harmonizing direct taxes at the EU level may be seen as an intrusion into national competencies and the need for unanimous decision-making as a political challenge, there are convincing arguments for such alignment.

Specifically, for some Member States like the Netherlands, certain information required for EU-wide data collection constitutes a disproportionate measure in the context of their own tax laws. Lack of harmonization at the international level not only risks tax avoidance but also favors large players over small and medium-sized enterprises, for whom compliance with different legal provisions in various countries incurs significant costs and could lead to potential market displacement. The implementation of the Directive by individual Member States, particularly Austria, is eagerly anticipated.

To read the full article (in German), please refer to SWI 4/2024, which can be found at the following link: https://www.lindedigital.at/#readstack