

## The European Battle for Data in Tax Administration: Balancing Innovation and Compliance

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Laura-Elena IONAȘCU (POSTOLACHE)<sup>1</sup>

**Abstract:** The development of Blockchain technology in recent years has underscored the need for legislative harmonisation through the creation of specific regulations at the level of the European Union. This technology has opened new doors to tax fraud and tax evasion activities in the tax field. As a response, the battle for data took the form of Council Directive (EU) 2023/2226 amending Directive 2011/16/EU on administrative cooperation in the field of taxation. The cost of ensuring transparency in this area falls on Crypto-Assets service providers, who are now required to collect and report more data to Member States. Through the fiscal cooperation mechanism, the tax authorities access to users' data is extensive, legitimised only by the interest to assure proper taxation and the security of the European Union's internal market. In this context, this study aims to outline an overview of the data collected for tax purposes within the Blockchain sector and the obligations of the involved parties.

**Keywords:** data, Blockchain, crypto, tax administration, DAC8, Crypto-Asset Service Provider, Crypto-Asset Operator, reporting obligations, administrative cooperation.

### Introduction

In recent years, the accelerated development of technology and the Internet has both simplified and complicated our lives through the mechanism of data processing. Since a few years ago, in the legal literature<sup>2</sup>, it was reported that access to data has become easier and more convenient than ever. Additionally, it has created a new boundless market of data, once the efficiency of data transfer and exchange has increased. At present, data is everywhere and everything, and in our perspective, it might be considered the "new gold" of our society.

In the taxation realm, data can be gathered from various sources, including public authorities and institutions, financial institutions, such as banks, as well as from private entities and individuals, through personal transactions, earnings, and expenditures. For tax administration, tax data processing can enhance the

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<sup>1</sup> PhD Student, „Alexandru Ioan Cuza” University of Iași, Law Faculty, e-mail: laurapostolache@outlook.com.

<sup>2</sup> C.T. Ungureanu, *Personal data protection in international contracts*, in *Analele Științifice ale Universității „Alexandru Ioan Cuza” Iași*, tomul LXIII, Științe Juridice, 2017, nr. II, pp. 135-154.

effectiveness and promptitude of tax collection. Supplementary, it might play a significant role in the proper identification of fraudulent activities. Reflecting on the crucial role of data and the new challenges raised by the technology blockchain, it is essential to identify new legal approaches to regulate the evolving taxation field.

The present paper aims to examine the response of the EU legislator on the question of accessibility and transparency of data for tax authorities and the fiscal impact of it on the actors of blockchain<sup>3</sup>. First, we will delve into a brief exploration of the meaning of the term "data" in the EU legislation and its nuances in different contexts. Also, we will try to determine the significance of data collection and processing, seeking to understand their role in the realm of taxation. Subsequently, we will analyse in depth the parties affected by the new regulations in crypto-markets and we will evaluate the rights and the obligations related to data reporting imposed on them. Furthermore, our goal is to critically scrutinise the compliance of the new provisions with human rights as protected by the EU Charter of Fundamental Rights.

### **I. A journey of a thousand miles begins with a single... data<sup>4</sup>**

The fundamental role of data in shaping our future was highlighted by the European Commission in 2020 when it promoted a strategy on data for the European Union<sup>5</sup>. In its perspective "Data is the lifeblood of economic development: it is the basis for many new products and services, driving productivity and resource efficiency gains across all sectors of the economy, allowing for more personalised products and services and enabling better policy making and upgrading government services."<sup>6</sup>

The new dimensions of data collection and utilisation in our society have emphasised the necessity to increase the attention granted to this law area, in order to develop fair and transparent regulations. At the European Union level, this situation has led firstly, to the elaboration of a Regulation aimed at protecting personal data, known as Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive

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<sup>3</sup> In this context, we aim to analyse the approach of the European Union on this subject matter. Therefore, we will not delve into the analysis of the provisions of our national legislation. The present study addresses a theoretical perspective of the use and exchange of data by tax authorities in the European Union, in the context of the new technologies of blockchain.

<sup>4</sup> Reference to the well-known quote of Lao Tzu: "A journey of a thousand miles begins with a single step."

<sup>5</sup> European Commission, *A European strategy for data*, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions, COM/2020/66 final, 19 February 2020.

<sup>6</sup> *Idem*, p. 2.

95/46/EC (General Data Protection Regulation)<sup>7</sup>. This was the first step of prominent protection of this right, aligned with Article 8 of the European Union Charter of Fundamental Rights<sup>8</sup>, titled "Protection of personal data".

The European Union has prioritised this right in every regulation with impact in this area, adopting new legal instruments to enhance the protection granted. The most important ones are the Regulation (EU) 2018/1807 of the European Parliament and of the Council on a framework for the free flow of non-personal data in the European Union, the Regulation (EU) 2019/881 of the European Parliament and of the Council on ENISA (the European Union Agency for Cybersecurity) and on information and communications technology cybersecurity certification and repealing Regulation (EU) 526/2013 (Cybersecurity Act), and the Directive (EU) 2019/1024 of the European Parliament and of the Council on open data and the re-use of public sector information.

Recently, the emergence of blockchain and its tokens has imposed a new and more active approach. For our present study, we will examine the dispositions of Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets.

To do this, we should respond firstly to the question: what is this element known as "data"? The term "data" is defined in the dictionary as "information, especially facts or numbers, collected to be examined and considered and used to help decision-making, or information in an electronic form that can be stored and used by a computer"<sup>9</sup>. In the European legal framework, we identify a comprehensive definition of this term in the provisions of Article 2 of the Regulation (EU) 2022/868 of the European Parliament and of the Council on European data governance. In this context, the term "data" is defined as "any digital representation of acts, facts or information and any compilation of such acts, facts or information, including in the form of sound, visual or audiovisual recording;"<sup>10</sup>. Surprisingly or not, this provision restrains the general meaning only to "digital" elements, excluding the physically written data.

On the other hand, as we already said, the European legislator has given particular attention to a specific category of data, respectively, the "personal data"<sup>11</sup>. Although there is no definition of data in general, in the Regulation (EU) 2016/679, the expression "personal data" is defined as "any information relating to an identified or identifiable natural person (data subject)". Also, this regulation emphasises a clarification on the phrase "identifiable natural person" considered as "one who can be identified, directly or indirectly, in particular by reference to an

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<sup>7</sup> OJ, L series, no. 119, 4 May 2016.

<sup>8</sup> OJ, C series, no. 326, 26 October 2012.

<sup>9</sup> Definition of data from the Cambridge Advanced Learner's Dictionary & Thesaurus, Cambridge University Press, accessed online at the link: <https://dictionary.cambridge.org/dictionary/english/data>.

<sup>10</sup> Article 2, paragraph 1 of the Regulation (EU) 2022/868.

<sup>11</sup> C.T. Ungureanu, *Legal remedies for personal data protection in European Union*, in „Logos, Universality, Mentality, Education, Novelty”. Section: Law 6.2, 2018, pp. 26-47.

identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person”.

In tax regulations, we would rather encounter the term “information” than “data”, but the meaning is the same. Tax authorities gather data about taxpayers within the procedures they carry out, the ultimate goal being to increase the efficiency of the administration and to limit fraud activities. To achieve this objective, at the European level, the mutual exchange of data is regulated as a form of administrative cooperation in fiscal matters, through the Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC<sup>12</sup>.

The Directive's text is unspecific regarding the definition of the term “information” and does not provide a specific list of the data considered. However, the provisions of Article 1 furnish some guidance on this matter, stating that it includes “information that is foreseeably relevant to the administration”. The broad interpretation of this term is intentionally chosen and also expected in this context since eventually, any definition could narrow the scope of the regulation application in ways that would be detrimental to the national interests of the Member States in fiscal matters.

Despite this manifest general nature of the regulation, the Directive indicates several ways in which the targeted information can be transferred, highlighting the “exchange of information on request”, the “automatic exchange”, and also a form of “spontaneous exchange”<sup>13</sup>. These provisions offer a more comprehensible approach to the data concerned, stating, for example, that the “automatic exchange” concerns “all information that is available concerning residents of that other Member State, on (...) specific categories of income and capital”.

In consequence, the term “information”, in the context of this Directive, encompasses both personal data and non-personal data. The result is a cumulative application of provisions from the two fields of data protection, respectively Regulation 2016/679 and Regulation 2018/1807. In this situation, according to Article 2 of Regulation 2018/1807: “In the case of a data set composed of both personal and non-personal data, this Regulation applies to the non-personal data part of the data set. Where personal and non-personal data in a data set are inextricably linked, this Regulation shall not prejudice the application of Regulation (EU) 2016/679”.

## **II. Blockchain, a new realm to be conquered by tax regulations?**

In response to the power and the control of the state in the economic sphere, humans began to seek a new payment system that could operate

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<sup>12</sup> OJ, L series, no. 064, 11 March 2011.

<sup>13</sup> Article 3 of the Council Directive 2011/16/EU.

independently of government supervision<sup>14</sup>. The impact of money devaluation and the economic crisis that began at the end of 2007, along with the general decrease of public trust in financial institutions<sup>15</sup> have transformed this desire into a necessity.

The cryptocurrency system is based on distributed ledger technology. To secure the transactions and to ensure the transparency of the process, the contracts are recorded and verified across a large number of interconnected nodes, a fact that could abolish the interaction with other central authorities<sup>16</sup>.

In consequence, we can say that the blockchain is built under the idea of a „new world” that is free from state control and intervention, where users are treated as „gods” in their actions. The main attractions include the decentralisation and autonomy of this system, as well as the advantages of conducting transactions using smart contracts and the inherent confidentiality of the system.

Given the relatively recent introduction of blockchain technology into our society, regulations at the European level emerged with some delay. The member states attempted to manage the legal aspects of the new technology in their own manner, applying the legal frameworks available already in their legislations<sup>17</sup> or developing various approaches in each member state.

The situation was changed once adopted Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937<sup>18</sup>. Since the advancement of these technologies represented a real trend back then at the European level, this regulation, known also as MiCA has clarified the legal definitions of the terms concerned and also the dimensions of the impact and effects of these technologies on our society.

The complexity and the ramifications of this act in this field offer us a glimpse of the laborious work of the EU legislator. It’s important to note that the regulation proposal<sup>19</sup> was initiated in 2020, as a part of the Digital Finance package. However, the current version has faced extensive discussions and multiple

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<sup>14</sup> O. Dragomir, *Criptomonedele și tehnologiile aferente acestora*, in *Revista Română de Drept al Afacerilor*, no. 3, 2021, online access at: <https://sintact.ro/#/publication/151022852?keyword=cripto&cm=SREST>

<sup>15</sup> D. M. Ilucă, *Regulating Bitcoin. Legal aspects regarding the use of Bitcoin*, in “Alexandru Ioan Cuza” University Annals, Tome LXIII, Legal sciences series, supplement, no. II, Iași, 2017, p. 312.

<sup>16</sup> V. Benson, B. Adamyk, A. Chinnaswamy, O. Adamyk, *Harmonising cryptocurrency regulation in Europe: opportunities for preventing illicit transactions*, in *European Journal of Law and Economics*, no. 57, 2024, p. 38, online access at: <https://doi.org/10.1007/s10657-024-09797-w>.

<sup>17</sup> *Ibidem*.

<sup>18</sup> OJ, L series, no. 150, 9 June 2023.

<sup>19</sup> Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937, COM/2020/593 final, Brussels, 24 September 2020.

amendments, illustrating a nuanced understanding of the subject matter. At this time, the legal framework is a comprehensive one, including the representation of the actors in this market and emphasising on their rights and obligations.

From the perspective of the present study, we should consider the main definitions of this topic, respectively "crypto-asset" and „crypto-asset service provider". From a practical point of view, the elaboration of specific definitions has encountered many impediments caused by the various interpretations of these terms in Member States, often being interchangeable and creating legal uncertainty<sup>20</sup>.

However, the European legislator decided on a final interpretation of this syntagma; according to its meaning, a "crypto-asset" is seen as "a digital representation of a value or of a right that is able to be transferred and stored electronically using distributed ledger technology or similar technology". A new element was the definition of the "crypto-asset service provider" (CASP) which is defined as "a legal person or other undertaking whose occupation or business is the provision of one or more crypto-asset services to clients on a professional basis, and that is allowed to provide crypto-asset services in accordance with Article 59".

As regards the crypto-asset service providers, according to this definition, they are not limited to only legal persons; any other entity that provides a crypto-asset service with character of continuity and pursuing a professional objective will be qualified as a CASP. Also, MiCA has imposed new obligations for licence requirements for CASPs to coordinate their statute in the Member States and secure these transactions on the internal market<sup>21</sup>. However, this regulation does not imply obligations in the taxation field for them.

Therefore, from a tax perspective, this new technological conquest and the income generated in this way should represent the object of taxation. To achieve this goal, tax authorities required access to the transaction and income data of the persons involved in the crypto trade. Challenges arose due to the cross-border nature of the trading process and the anonymous characteristic of the participants<sup>22</sup>. When the trading activities take place within the same country, tax authorities can more easily access the data involved, compared to the situation when the provider and the client are located in different jurisdictions.

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<sup>20</sup> V. Benson, B. Adamyk, A. Chinnaswamy, O. Adamyk, *op.cit.*, p. 39.

<sup>21</sup> O. Dragomir, *Propunerea de Regulament privind piețele criptoactivelor și de modificare a Directivei (UE) 2019/1937*, in *Revista Română de Drept al Afacerilor*, no. 3, 2022, online acces at: <https://sintact.ro/#/publication/151025536?keyword=crypto&cm=SREST>.

<sup>22</sup> To become a part of the "chain" and to participate in the peer-to-peer network, it is not necessary to register. The procedure implies simply the download of the software, a method that grants access to everybody to participate, regardless of the loci of the neophyte. Moreover, the system does not request any identification data; in consequence, the participants can choose a pseudonym. More information about the mechanism of the blockchain in T. van der Linden, T. Shirazi, *Markets in crypto-assets regulation: Does it provide legal certainty and increase adoption of crypto-assets?*, in *Financial Innovation*, 9(1): 22. <https://doi.org/10.1186/s40854-022-00432-8>

Moreover, under the terms of the Directive 2011/26/EU, the majority of crypto-assets are exempt from the reporting requirements stipulated by the Directive due to their non-conformance with the criteria associated with funds held in depository accounts or their classification as financial assets. Furthermore, entities operating within the crypto market, such as crypto-asset service providers and operators, have fallen outside the scope of the definition of a financial institution under Directive 2011/16/EU<sup>23</sup>.

In this context, without access to this type of data for tax authorities, the taxpayers could easily commit tax evasion<sup>24</sup>. Being unable to seek the transactions realised, manifested usually as speculative trading or payment of goods and services in cryptocurrencies<sup>25</sup>, the authorities (the absent creditor<sup>26</sup>) stay unaware of the participants in the crypto realm. Also, this state of affairs could easily offer new dimensions to money laundering and several other crimes<sup>27</sup>.

In consequence, a straightforward and feasible solution was to create a regulation that imposed cooperation among Member States on the exchange of specific information on crypto trading. In addition, to obtain access to this data, it was necessary to implement a new set of obligations for the crypto-assets service providers. According to this objective they had become an intermediary and a connection between clients (seen as a subject of taxation) and tax authorities.

### III. A new milestone for tax data: DAC 8

With the aim to create a more fair and transparent market, on 17 October 2023, it was adopted the Council Directive (EU) 2023/2226 amending Directive 2011/16/EU on administrative cooperation in the field of taxation<sup>28</sup>. From the historical legislative perspective, this act represented the seventh amendment to the Administrative Cooperation Directive, a fact that has attracted the appellation „DAC 8”.

Considering the almost simultaneous adoption of the two normative acts, their terms are coordinated to avoid excessive administrative burdens for CASPs<sup>29</sup>. However, DAC8 covers a more diversified range of subjects that are requested to offer data to tax authorities, compared to MiCA.

Regarding the reporting obligation, the directive established in Annex III, Section IV, the crypto-assets whose trading must be reported by the service provider. For this purpose, they are covered by the term “Reportable Crypto-Asset” which means “any Crypto-Asset other than a Central Bank Digital Currency,

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<sup>23</sup> Statement of reasons for the Directive 2023/2226, point 10.

<sup>24</sup> A. Brodzka, “*The future of automatic tax information exchange in EU countries*”, in US-China Law Review, vol. 12, 2005, pp. 352-363.

<sup>25</sup> D. M. Ilucă, *op. cit.* p. 317.

<sup>26</sup> I.M. Costea, “*Taxing forms in the digital environment*”, SHS Web of Conferences, no. 177, Legal perspectives on the Internet, COPEJI 6.0., 2023, p. 6

<sup>27</sup> V. Benson, B. Adamyk, A. Chinnaswamy, O. Adamyk, *op. cit.*, p. 39.

<sup>28</sup> OJ, L series, no. 2023/2226, 24 October 2023.

<sup>29</sup> Statement of reasons for the Directive 2023/2226, point 7.

Electronic Money, or any Crypto-Asset for which the Reporting Crypto-Asset Service Provider has adequately determined that it cannot be used for payment or investment purposes". We notice that this definition is a general one, the Council of the European Union preferring to expressly exclude elements that have some similarities with cryptocurrency (regarding their digital nature), leaving also room for other new technologies that could be developed in the following years.

On a legal basis, the approaches proposed in this new regulation follow the line established by the Organisation for Economic Co-operation and Development in its guidelines, entitled the "Crypto-Asset Reporting Framework" (CARF)<sup>30</sup>, as well as the requirements imposed by the amendments to its Common Reporting Standard<sup>31</sup>.

"The Battle for Tax Data" is therefore set in the digital environment between three main characters: the Member States, the Reportable Crypto-Asset Service Providers, and the relevant taxpayers/clients. But how does this regulation affect their behaviour, and what is their final goal?

Between the clarifications brought by the new amendments, the Directive currently comprises some new definitions of its terms in the strict interpretation of this act. In this background, the term "client" has another form than in the MiCA, the scope being a harmonised interpretation of the three mentioned subjects' special characteristics. In the context of this Directive, it refers to "any intermediary or relevant taxpayer that receives services, including assistance, advice, counsel or guidance, from an intermediary subject to legal professional privilege in relation to a reportable cross-border arrangement."

On the other hand, the term "Reporting Crypto-Asset Service Provider" means "any Crypto-Asset Service Provider and any Crypto-Asset Operator that conducts one or more Crypto-Asset Services effectuating Exchange Transactions for or on behalf of a Reportable User". The difference between a Crypto-Asset Service Provider and a Crypto-Asset Operator is given by the MICA, an act that establishes the background for the first term. In this context, a "Crypto-Asset Service Provider" will be identified in accordance with the dispositions of Article 3(1), point (15), of Regulation (EU) 2023/1114<sup>32</sup>. Meanwhile, a "Crypto-Asset Operator" is any other provider of Crypto-Asset Services not regulated under this act, respectively, it covers the entities located in jurisdictions outside of the

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<sup>30</sup> OECD, *Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard*, Paris, 2022, <https://www.oecd.org/tax/exchange-of-tax-information/crypto-asset-reporting-framework-and-amendments-to-the-common-reporting-standard.htm>.

<sup>31</sup> Statement of reasons for the Directive 2023/2226, point 9, grants express references to the interpretations offered by the legal framework proposed by OECD.

<sup>32</sup> According to the MICA, (15) a 'crypto-asset service provider' represents "a legal person or other undertaking whose occupation or business is the provision of one or more crypto-asset services to clients on a professional basis, and that is allowed to provide crypto-asset services in accordance with Article 59".

European Union borders. Also, a CAO will be any other entity that provides crypto services but is regulated under other acts than MICA.

The "Reportable user" remains always a Crypto-Asset User<sup>33</sup>, who is also a Reportable Person<sup>34</sup> resident in a Member State. In this case, to correctly identify it, the two definitions have to be corroborated, resulting that the reportable user being understood as a client/consumer of a Reporting Crypto-Asset Service Provider involved in Reportable Transactions being either an individual, an Entity, or an estate resident in a Member State, apart from the Excluded Persons.

Regarding the "excluded persons", this category is expressly determined in the same annex, and it refers to: "(a) an Entity the stock of which is regularly traded on one or more established securities markets; (b) any Entity that is a Related Entity of an Entity described in point (a); (c) a Governmental Entity; (d) an International Organisation; (e) a Central Bank; or (f) a Financial Institution other than an Investment Entity". This enumeration encompasses especially the entities which are already strongly regulated in the field of exchange of information for tax purposes.

Nonetheless, it provides the general definition for a "Controlling Persons", which according to this text represents the natural persons who exercise control over an Entity.

#### **IV. An overview of the new obligations for RCASPs and Member States**

DAC 8 extends the cooperation between Member States on fiscal matters, offering the possibility of exchanging data received from RCASPs. For this purpose, a new article was added, which specifies the "scope and the conditions of

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<sup>33</sup> According to the Directive, a Crypto-Asset User represents "an "individual or Entity that is a customer of a Reporting Crypto-Asset Service Provider for the purpose of carrying out Reportable Transactions. An individual or Entity, other than a Financial Institution or a Reporting Crypto-Asset Service Provider, acting as a Crypto-Asset User for the benefit or account of another individual or Entity as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as a Crypto-Asset User, and such other individual or Entity is treated as the Crypto-Asset User. Where a Reporting Crypto-Asset Service Provider provides a service effectuating Reportable Retail Payment Transactions for or on behalf of a merchant, the Reporting Crypto-Asset Service Provider shall also treat the customer that is the counterparty to the merchant for such Reportable Retail Payment Transactions as the Crypto-Asset User with respect to such Reportable Retail Payment Transaction, provided that the Reporting Crypto-Asset Service Provider is required to verify the identity of such customer by virtue of the Reportable Retail Payment Transaction pursuant to domestic anti-money laundering rules".

<sup>34</sup> In this context, "Reportable Person" means "a Member State Person other than an Excluded Person." Special attention should be accorded to the term "Member State Person" which refers not solely to "an Entity or individual that is resident in any Member State under the tax laws of that Member State", but also could be represented by "an estate of a decedent that was a resident of any Member State".

mandatory automatic exchange of information reported by RCASP". The newly added Article 8ad set in paragraph 3 the data concerned by this mechanism. Each Member State shall exchange this information within a term of "nine months following the end of the calendar year to which the reporting requirements applicable to Reporting Crypto-Asset Service Providers relate"<sup>35</sup>. Starting from 1 January 2026, the information shall be communicated for the relevant calendar year or other appropriate reporting period<sup>36</sup>.

The directive also institutes new legislative obligations for the Member States. They are required to take new and appropriate measures in order to accomplish the registration of the RCASP and to ensure their compliance with the reporting obligations.

The RCASPs, on the other hand, should comply with a new set of obligations in this field. The directive established mainly for CASPs and CAOs a responsibility which has two components: a due diligence obligation manifested in their procedures of collecting data, and also an obligation to attain a predetermined result regarding the communication of the relevant data to tax authorities.

First, we will examine the obligation to collect the data from Reportable Users. To establish if a Crypto Asset User is a Reportable User, the RCASP should obtain a "self-certification" from him, to determine his fiscal residency<sup>37</sup>. Moreover, it includes an obligation of due diligence, because the RCASPs should verify the "reasonableness" of this certification, to assure, based on his information and any other relevant information it could access, the validity of it<sup>38</sup>. In the same way, it has to determine and verify the Controlling Persons of the Entity Crypto-Asset User.

Second, it has to inform the tax authorities of the data trading realised through their means. For the Crypto-Asset Operators (CAOs) not regulated under MiCA, the obligation is considered satisfied if they inform the tax authorities of the Member State where it is a resident for tax purposes<sup>39</sup>. In its absence, it could inform the Member State where it is incorporated and has to file tax returns regarding its income<sup>40</sup>. Lastly, it could be the Member State from where it is managed, or where it has its regular place of business<sup>41</sup>. For CASPs, the report is requested in front of the competent authority of the Member State of registration (where they have obtained its MiCA authorisation)<sup>42</sup>.

Among the mandatory information to be communicated by CASPs are listed the name and the address, any TIN issued to it, and the Member States in

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<sup>35</sup> Article 1, paragraph 6, point 6 of the Council Directive (EU) 2023/2226.

<sup>36</sup> *Ibidem*.

<sup>37</sup> Annex III, Section III, point A of the Council Directive (EU) 2023/2226.

<sup>38</sup> *Ibidem*.

<sup>39</sup> M. Bernt, *DAC8: Commentary on the European Union's New Crypto Tax Reporting Regime*, in *European Taxation*, 2023, p. 383.

<sup>40</sup> *Ibidem*.

<sup>41</sup> *Ibidem*.

<sup>42</sup> D. Post, C. Cipollini, *The DAC8 Proposal and the Future of Crypto-Asset Reporting: Some Preliminary Thoughts* in *Kluwer International Tax Blog*, 09 February 2023, p. 2.

which Reportable Users are residents<sup>43</sup>. In case of non-compliance, RCASPs will receive a reminder from the Member State of a single registration. Acquiring two reminders, but not before the expiration of 60 days, attracts sanctions for the operator, which will be prohibited from performing reportable transactions, and also penalties according to the legislation of each Member State<sup>44</sup>.

Secondly, it involves an obligation for Member States to exchange information in this field to surpass the difficulties raised by the international characteristic of this trading within the European Union. In this phase, the designated national authority of the Member State which receives the data is compelled to communicate the information about the users to the Member States for their tax residency, to be verified.

## **V. The costs for fair taxation in the Blockchain realm**

Nowadays, the presence of technology, digitalization, and the Internet in our lives is indisputable. We have analysed the involved parties regarding the new regulation on administrative cooperation in tax matters related to cryptocurrency. We have also noted new obligations in their responsibilities, which play a role in regulating and creating a safer and fairer blockchain network. This leads us to the question: Could collecting, using, and processing data in the tax field be harmful in some ways?

In this context, it would be a legitimate question if the RCASPs' obligation to report the transaction could represent to some extent an attempt to others' rights protected by the European acquis.

Firstly, the collecting and the exchange of data could raise difficulties and may be seen as an infringement of the right to the protection of personal data, protected under Article 8<sup>45</sup> of the Charter of Fundamental Rights. The European Data Protection Supervisor (EDPS) has presented a point of view on the new regulation, considering that the new rules comply with the GDPR<sup>46</sup>.

In this respect, the text of the Directive establishes a maximum period in which the obtained data can be kept, namely five years<sup>47</sup>. At the same time, to avoid

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<sup>43</sup> *Ibidem*.

<sup>44</sup> Annex III, Section V, paragraph A, point 2 of the Directive EU 2023/2226.

<sup>45</sup> The legal text, entitled "Protection of personal data" states that "1. Everyone has the right to the protection of personal data concerning him or her. 2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified. 3. Compliance with these rules shall be subject to control by an independent authority".

<sup>46</sup> The European Data Protection Supervisor (EDPS), Opinion 6/2020 on a proposal for an amendment of Council Directive 2011/16/EU relating to administrative cooperation in the field of taxation, 28 October 2020, [https://www.edps.europa.eu/data-protection/our-work/publications/opinions/edps-opinion-proposal-amendment-council-directive\\_en](https://www.edps.europa.eu/data-protection/our-work/publications/opinions/edps-opinion-proposal-amendment-council-directive_en)

<sup>47</sup> Article 1, paragraph 11, point 3 of the Council Directive (EU) 2023/2226.

the use of data for other purposes than those expressly provided for, new rules have been established for this scope.

The Member States are supposed to deal with this data under the obligation of official secrecy, offering in this way more guarantees of its protection. Also, in order to assure the safety of the automatic exchange between Member States, by 31 December 2026, the Commission is tasked with the responsibility of creating and providing a secure central register that contains information about how Member States are collaborating administratively in the area of taxation<sup>48</sup>.

Moreover, according to the DAC8, the Member States could use the data "for the assessment, administration, and enforcement of the national law of Member States concerning the taxes referred to in Article 2 (a.n. of the Directive 2011/16/EU<sup>49</sup>) as well as VAT, other indirect taxes, customs duties, and anti-money laundering and countering the financing of terrorism". In fact, the provisions in discussion set a broad framework for the use of data gathered, to ensure not only an improved collection of taxes, but also to encourage and support the fight against tax fraud and tax evasion.

Furthermore, it offers Member States the possibility to disseminate the data to a Third Member State. If the Second Member State considers that the information would be useful in taxation scope to another State, it could communicate this data accordingly with the procedure determined under the Directive 2011/16/EU<sup>50</sup>. First Member State could oppose the communication of the information, by a response in this matter within 15 calendar days.

On the other hand, DAC 8 addresses specific discussions for the private sector and the administrative burdens it faces, for RCASPs to comply with the due diligence and reporting obligations it sets<sup>51</sup>.

For small businesses, the resources necessary to obtain the requested data and to transfer it to the tax authorities could represent an obstacle ahead to the freedom to conduct a business. For instance, this right is protected under article 16 of the European Charter of Human Rights which specifies that "The freedom to conduct a business in accordance with Union law and national laws and practices is recognised."

Regarding this aspect, it is important to emphasise that the above mentioned articles are not an absolute right. In accordance with the article 52 of the Charter of Fundamental Rights, protection of personal data and the freedom to conduct a business could be the subject to some limitations<sup>52</sup>.

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<sup>48</sup> M. Bernt, *op. cit.*, p. 383.

<sup>49</sup> Article 2 paragraph 1 of the Directive 2011/16/EU provides that "This Directive shall apply to all taxes of any kind levied by, or on behalf of, a Member State or the Member State's territorial or administrative subdivisions, including the local authorities". The text also contains some exceptions from this rule, in the paragraphs 2-4.

<sup>50</sup> Article 1, paragraph 7, point c) of the Council Directive (EU) 2023/2226.

<sup>51</sup> I.M. Costea, *op. cit.* p. 8.

<sup>52</sup> K.S. Must, *Taxpayers' right to privacy and freedom to conduct business in light of DAC-6*, Master's Thesis in International Business Taxation, School of Law, Tilburg

In this case, the evaluation of these fundamental rights should be realised through the comparison with the opposite principles raised in this field. In this spectrum, the principle of fair taxation and the freedom to access services are a priority, in order to ensure a competitive and fair internal market.

### **Is it a real battle? Our conclusions**

Data is the new fuel of society that sets both the private and public environment in motion. In the fiscal field, the tax authorities rely on data to ensure taxpayers' compliance with their obligations and to maintain uniform taxation, combating fraud and tax evasion. On the other hand, taxpayers seek to minimise their tax burden, using various methods at their disposal<sup>53</sup>. In this context, the Blockchain technology, most commonly associated with Bitcoin, smart contracts, NFTs, and other cryptocurrencies, was initially perceived as an environment external to state sovereignty. However, the taxation of blockchain activities has proven to be inevitable.

Along with the increase in the number of people engaged in this new decentralised and anonymous system, the problem of collecting data on the transactions has attracted an important interest from both Member States, in particular, and the European Union institutions.

The conflict between the two opposing interests, namely the collection of data by state authorities for tax purposes and the preservation of their confidentiality, desired by blockchain users, has manifested itself, especially in recent years, with the emergence of new regulations in this matter. The „victims” of this conflict turned out to be the Crypto-Asset Service Providers, obliged by the new regulations to assure a greater transparency of the environment, in terms of transactions. This goal has to be accomplished by communicating the data of the participants in the operations to the tax authorities by digital means. As it was stated before, „to avoid corruption, the key then is to design incentive structures in such a way that the agent acts in the interest reducing the opportunities for corruption, and strengthening the mechanisms for monitoring and punishment”<sup>54</sup>.

Although the new administrative tasks may represent some limitations of the right to conduct a business, they are viewed as necessary for the internal market. The rights of intermediaries have been sidelined in favour of establishing a uniform competitive environment and enduring efficient taxation of taxpayers. In this context, the digitalisation of the tax system brings new obligations for the providers of services and goods and also for the intermediaries, a situation that was qualified as “acceptable” for combating tax fraud. This path has already been

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University, 2020, p. 19.

<sup>53</sup> M.Kačaljak, “*Paying taxes in the Digital Age*”, in Bratislava Law Review, vol. 4, no. 2, 2020, pp. 21-30.

<sup>54</sup> O.O. Fagbohun, O. Obiyemi, “*Development of an Informal Sector and Tenement Taxes Monitoring and Compliance Enforcement Using Intelligent Based Electronic Policing System*”, in Advances in Research, vol. 13, no. 1, 2018, pp. 1-16.

explored in previous years, an appropriate example in this case being the project of São Paulo Tax Invoice (Nota Fiscal Paulista) initiated by the Government of the State of São Paulo, in Brazil<sup>55</sup>.

Cooperation between Member States in this field has also been recognized in the legal literature<sup>56</sup> as "a method adopted by states in a globalised system for the sustainability of the taxation field, playing an important role in facilitating the correct assessment of fiscal obligations and tax recovery and taxes, at the same time helping the taxpayer by respecting his rights".

We agree that a uniform set of rules on data in fiscal matters could represent a better approach to handling tax evasion and tax fraud. Also, for its subjects, it offers a specific procedure to deal with tax authorities, avoiding a multitude of legislative state mechanisms. Otherwise, in the absence of harmonisation at the level of the European Union, the tax authorities would still have tracked the incomes made through Blockchain. In this case, every Member State would establish for CARSPs their own rules, which may vary in terms of interpretation and obligations, increasing their administrative burden. Moreover, the legislative differences in this specific matter between Member States would transform the internal market into chaos, affecting the services offered by RCASPs.

From a user's perspective, their data collecting for tax purposes is a common procedure. Thus, the introduction of closer supervision in the Blockchain field is not a surprise, despite the decentralised nature of this system.

The data exchange system between Member States, as regulated by the amendments to Directive 2011/16/EU should not pose any threat to taxpayers' data. In any case, their simple engagement on the Internet, within this system, implies an automatic distribution of data concerning them. In this context, the main role of the service providers is to inform users about the transfer of their data to tax authorities. At the same time, we observe additional obligations for them. The obligation to communicate user data to the authorities of the Member States is a result obligation, sanctioned even with the prevention of the activity by the respective RCASP. At the same time, we note the existence of a due diligence obligation regarding the responsibility to collect data from users. Under these conditions, the anonymity provided by Blockchain is eroded, at least within these procedures.

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<sup>55</sup> N. Oller De Mello, M.L.A. Fernandez, V.A. Zapparoli Castro Melo, E.M. Dias, C.F. Fontana, *"New technologies for Nota Fiscal Paulista (São Paulo Tax Invoice): Automation of the tax documents issue process in the retail of the state of São Paulo – Brazil*, in Wseas transactions on systems and control, issue 12, Volume 5, 2010.

<sup>56</sup> A.N. Dragordan, *Suveranitatea fiscală națională versus cooperarea fiscală interstatală\**, in Revista Română de Drept al Afacerilor, no. 9, 2015, online access at <https://sintact.ro/#/publication/151009845?keyword=cooperare%20administrativa%20fiscal&cm=SREST>.

On the other hand, we have doubts about whether tax authorities will be able to analyse all the data they receive under Directive 2011/16/EU<sup>57</sup>. At least for the moment, the Member States do not have enough resources from an administrative point of view to fully achieve the intended purpose of data collection.

The continuous technological advancements in the sphere of the Internet, artificial intelligence and the transfer of certain legal relations to the blockchain sphere represent indeed the future of our society. It's inevitable that there will be opposition and dissatisfaction with certain regulations that initially seem to restrict users' rights. However, the regulation of legal relations is a necessity in this field as well. Only in this way can the European Union's internal market remain a safe and competitive place where the rights of all people are protected.

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<sup>57</sup> M. Falzon, M. Curmi, *DAC 8: Reporting and Exchange of Information on Crypto-Assets*, on Zampa Debattista blog, 2024, online access at <https://zampadebattista.com/insights/dac-8-reporting-and-exchange-of-information-on-crypto-assets/>.

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