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DRAFT REPORT

on the implementation of the EU requirements for exchange of tax information:
progress, lessons learnt and obstacles to overcome
(2020/2046(INI))

Committee on Economic and Monetary Affairs

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EXPLANATORY STATEMENT - SUMMARY OF FACTS AND FINDINGS

In line with its responsibilities under Article 14 TFEU, the European Parliament has endeavoured to assess the enforcement and implementation of the Directive on Administrative Cooperation in the field of taxation (2011/16/EU) and its first three revisions (DAC2 – 4). Unfortunately, the European Parliament has been prevented from fulfilling its functions of political control under Article 14 TFEU, which are also reflected in paragraphs 20-24 of the 2016 Inter-Institutional Agreement on Better Law-making (IIA). Despite the express agreement of the three Institutions in paragraph 41 of the IIA on the importance of a more structured cooperation among them to assess the application and effectiveness of Union law with a view to its improvement through legislation, the European Parliament has not been granted access to the documents and data necessary to properly assess the implementation of Union law on administrative cooperation in the field of taxation.

Within the framework of this implementation report, the ECON Chair addressed a letter to the European Commission requesting access to documents on the implementation of the DAC. This request was ultimately rejected on 19 November 2020 on the ground that a large majority of Member States had objected to the Commission forwarding these documents to Parliament. According to Annex II, paragraph 2.1, of the 2010 Inter-Institutional agreement on the Framework Agreement on relations between the European Parliament and the European Commission, confidential information from a Member State can only be forwarded to Parliament with its consent. Except for the notable exceptions of Sweden and Finland, the Member States did not consent to granting access to the documents necessary for the European Impact Assessment (EIA) carried out ahead of this draft implementation report.

The Council's legal reasoning behind this refusal was that the Parliament's request amounted to an improper encroachment upon a competence that the Treaties clearly confer upon the Commission. This reasoning must be contested. When asking the Commission to be provided with access to Member States' information within the framework of an implementation report, Parliament is exercising its function of political control over the Commission, for which it might prove necessary to examine Member States' documents. In this connection, the principle of sincere cooperation between the Union and Member States enshrined in Article 4 TEU should be read as requiring from Member States to grant access to Parliament to their documents on the transposition and enforcement of EU legislation in possession of the Commission. A general refusal of documents originating from Member States with the reference to an IIA cannot put the European Parliament in a weaker position than ordinary citizens under Regulation 1049/2001.

As the European Parliament was not provided with the information necessary to exercise its function of political control, this implementation report is severely limited in its scope. A study prepared by *Economici Associati* in the context of the Commission's evaluation of DAC in 2019 was a main source of data on the implementation of the directive. However, as this study only covers the period from 2015 to 2017, the European Parliament is unable to evaluate more recent developments. For the reasons outlined above, the EIA had to rely to a large extent on publicly available information, such as the relevant documents published by the European Commission, interviews with tax administrations and European Commission officials, a stakeholder survey and information on the implementation of DAC provided by national parliaments.

Publicly available data on the volumes of exchanges of information (automatic and other) and the value covered by such exchanges is very limited, especially regarding bilateral flows of information between Member States. Based on the limited available data, the Economisti Associati study found that the volume of exchanges under DAC1-3 has increased markedly since the provisions entered into application. However, no quantitative information is available on the exchange of information concerning Country-by-Country Reports under DAC4. Only one national parliament (Germany) provided information on the existence of data on Country-by-Country Reports for the years 2016-2018 in response of a survey carried out in the context of the EIA. Further information on the implementation of DAC at Member State level was provided by the national parliaments of Austria, Belgium, Finland, Germany, Luxembourg and Portugal to complement the data of the Economisti Associati study. The publicly available data on exchanges of information at Member State level under the DAC remains scarce and patchy. Overall, the information available on the implementation of DAC1-4 is very limited.

The rapporteur apologises for his inability to deliver a fully-fledged implementation report. The European Parliament should be prepared to use all legal means at its disposal in order to receive access to all information necessary to assess the implementation of this important directive. Once the European Parliament is able to fulfil its control functions through access to documents, it should start working on an encompassing implementation report on the DAC.

The lack of data on the effectiveness of DAC1-4 as well as a lack of statistics on compliance costs and administrative burdens, which may be alleviated, are a source of serious concern beyond the most unfortunate implications for sincere inter-institutional cooperation. The quality of EU legislation suffers if it is not possible to conduct a meaningful audit of its costs and added value, as well as its coherence with other rules and regulations.

Scope of this Implementation Report

To the extent that this was possible, this report assesses the implementation of the obligations of information exchange under DAC1 and its subsequent amendments, which aim to combat tax fraud, tax avoidance and tax evasion by facilitating the exchange of information related to taxation. The focus is on the initial directive (DAC1) and the first three amendments (DAC2-4), as later amendments have only recently entered into application (DAC5-6) or had not yet been adopted when the present report was prepared (DAC7-8).

DAC was introduced to lay down the rules and procedures for cooperation between Member States on the exchange of information that is foreseeably relevant to the tax administration of the Member States. As the Parliament highlighted in its report on the proposal for a DAC7, the term ‘foreseeable relevance’ is intended to provide for exchange of information in tax matters to the widest possible extent.

The general objective of the DAC is to protect the financial interests of the Member States and the EU while ensuring the proper functioning of the single market. The initial directive DAC1 lays down the rules and procedures for cooperation between Member States on the exchange of relevant information between tax administrations of the Member States. The development and the extension of scope of DAC can be summarised as follows:

- DAC1: automatic exchange of information (AEOI) of five specific categories of income and capital (income from employment, director’s fees, pensions, life insurance

products and immovable property). Entry into force in 2013. AEOI provisions effective as of January 2015.

- DAC2: AEOI on financial accounts and related income (including information on account balance or value, amounts of dividends and interests, other financial income and capital gains). Entry into force in 2016.
- DAC3: AEOI on advance tax rulings (ATR) and advance price arrangements (APA), with information uploaded on a central platform maintained by the Commission. Entry into force in January 2017.
- DAC4: AEOI of Country-by-Country Reports (CbCR), which multinational enterprises (MNE) in the EU are required to file when their total consolidated revenue is equal or higher than €750 million. Entry into force in June 2017.
- DAC5: access by tax authorities to beneficial ownership information as collected under Anti-Money Laundering rules (AML). Entry into force in January 2018.
- DAC6: AEOI on tax planning cross-border arrangements and mandatory disclosure rules for intermediaries. Entry into force since July 2020.

Findings

Since 2011, the DAC has been continuously improved to widen the scope of the EOI in order to curb tax fraud, tax evasion and tax avoidance. However, some types of income and assets are still excluded from the scope, which presents a risk of circumventing tax obligations in cross border situations. In order to further improve the DAC, the following items of income or non-financial assets should be included under the DAC framework: capital gains related to immovable property and capital gains related to financial assets, non-custodial dividend income, non-financial assets such as cash, art, gold or other valuables held at free ports, custom warehouses or safe deposit boxes, and ownership of yachts and private jets. In addition, Member States should be required to exchange information on all categories of income under DAC1, so as to increase the effectiveness of DAC1. Furthermore, the provisions of DAC2 with regard to reporting Financial Institutions and types of accounts should be reviewed and, if necessary, expanded, in order to close loopholes. With regard to DAC3, it must be ensured that the necessary stricter rules concerning the exchange of tax rulings are designed in such a way as to prevent adverse effects, such as an increase in informal arrangements which then again go unreported. It is regrettable that earlier calls by the European Parliament to improve the DAC framework along these lines have been ignored so far.

Too often, the information exchanged is of limited quality and little monitoring of the system's effectiveness takes place. The 2019 Commission evaluation highlighted that Member States often do not go beyond the minimum requirements of the DAC in exchanging information. There is currently no common EU framework for monitoring the system's performance and achievements and only few Member States systematically carry out quality checks on the data exchanged under DAC1 and DAC2. This fact significantly increases the risk that reported data is incomplete or inaccurate, particularly considering that only a few Member States have and apply procedures to audit information submitted by Financial

Institutions under DAC2. This report therefore calls on the Commission to issue further guidelines to help Member States analyse the information received and to use it effectively. Moreover, the Commission and the Member States should establish a common framework for measuring the impact and the cost-benefits of DAC, as well as making the DAC exchanges fully auditable. This effort should be complemented with the annual publication of a summary of the information received by Member States by the Commission.

It must be noted that the effectiveness of the DAC relies heavily on AML rules in place at Member State level. Therefore, the insufficient transposition and implementation of AMLD4 and 5 across a very significant number of Member States is highly worrying as are loopholes of the regime. It is also alarming that no Member State attained a 'high' level of effectiveness rating during the most recent assessment carried out by FATF. Without strong due diligence obligations and consistent reporting of beneficial ownership information mandated by AML rules, the effectiveness of the DAC will remain severely limited.

Lastly, in the international context, the peer review carried out under the auspices of the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) continues to reveal worrying shortcomings regarding both the Common Reporting Standard (CRS) as well as Information Exchanged on Request (EOIR). According to the review carried out by the Global Forum, 10 Member States are not fully compliant with the CRS. With regard to the EOIR standard, the peer review identified material deficiencies in 18 Member States and deemed Malta to be only 'partially compliant' with the standard.

In order to effectively curb tax fraud, tax evasion and tax avoidance, both internationally and within European borders, the EU must lead by example. While new legislation to strengthen and further improve the DAC is very welcome and needed, a strong focus must be on ensuring the thorough implementation of existing rules and standards, also in the field of AML.

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the implementation of the EU requirements for exchange of tax information: progress, lessons learnt and obstacles to overcome (2020/2046(INI))

The European Parliament,

- having regard to Articles 4 and 14 of the Treaty on European Union (TEU),
- having regards to Articles 113 and 115 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC¹ (hereinafter DAC),
- having regard to Regulation (EU) No 1286/2013 of the European Parliament and of the Council of 11 December 2013 establishing an action programme to improve the operation of taxation systems in the European Union for the period 2014-2020 (Fiscalis 2020) and repealing Decision No 1482/2007/EC²,
- having regard to Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation³,
- having regard to Council Directive (EU) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation⁴,
- having regard to Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation⁵,
- having regard to Council Directive (EU) 2016/2258 of 6 December 2016 amending Directive 2011/16/EU as regards access to anti-money-laundering information by tax authorities⁶,
- having regard to Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements⁷,
- having regard to the Commission proposal of 15 July 2020 for a Council Directive

¹ OJ L 64, 11.3.2011, p. 1.

² OJ L 347, 20.12.2013, p. 25.

³ OJ L 359, 16.12.2014, p. 1.

⁴ OJ L 332, 18.12.2015, p. 1.

⁵ OJ L 146, 3.6.2016, p. 8.

⁶ OJ L 342, 16.12.2016, p. 1.

⁷ OJ L 139, 5.6.2018, p. 1.

amending Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC7) (COM(2020)0314),

- having regard to the Council conclusions of 2 June 2020 on the future of administrative cooperation in the field of taxation in the EU,
- having regard to the European Parliament legislative resolution of 10 March 2021 on the proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation⁸,
- having regard to the Commission inception impact assessment of 23 November 2020 on the proposal for a Council Directive amending Directive 2011/16/EU as regards measures to strengthen existing rules and expand the exchange of information framework in the field of taxation to include crypto-assets and e-money,
- having regard to the Commission report of 18 December 2017 on the application of Council Directive (EU) 2011/16/EU on administrative cooperation in the field of direct taxation (COM(2017)0781),
- having regard to the Commission report of 17 December 2018 on overview and assessment of the statistics and information on the automatic exchanges in the field of direct taxation (COM(2018)0844),
- having regard to the Commission Staff Working Document of 12 September 2019 on the evaluation of the Council Directive 2011/16/EU on administrative cooperation in the field of taxation repealing Directive 77/799/EEC (SWD(2019)0327),
- having regard to the European Court of Auditors Special Report No 03/2021 entitled ‘Exchanging tax information in the EU: solid foundation, cracks in the implementation’,
- having regard to its resolution of 26 March 2019 on financial crimes, tax evasion and tax avoidance⁹,
- having regard to the Commission communication of 7 May 2020 on an Action Plan for a comprehensive Union policy on preventing money laundering and terrorist financing (C(2020)2800),
- having regard to the Commission communication of 15 July 2020 on an Action Plan for fair and simple taxation supporting the recovery strategy (COM(2020)0312),
- having regard to the study entitled ‘Implementation of the EU requirements for tax information exchange’ published by its Directorate-General for Parliamentary Research Services¹⁰,
- having regard to the OECD Action Plan on Base Erosion and Profit Shifting (BEPS) of

⁸ Texts adopted, P9_TA(2021)0072.

⁹ Texts adopted, P8_TA(2019)0240.

¹⁰ Study - ‘Implementation of the EU requirements for tax information exchange’, European Parliament, Directorate-General for Parliamentary Research Services, Directorate for Impact Assessment and European Added Value, Ex-Post Evaluation Unit, 4 February 2021.

19 July 2013,

- having regard to the OECD report of 9 December 2020 entitled ‘Peer Review of the Automatic Exchange of Financial Account Information 2020’,
 - having regard to the European Economic and Social Committee opinion of 18 September 2020 entitled ‘Effective and coordinated EU measures to combat tax fraud, tax avoidance, money laundering and tax havens’¹¹,
 - having regard to Rule 54 of its Rules of Procedure, as well as Article 1(1)(e) of, and Annex 3 to, the decision of the Conference of Presidents of 12 December 2002 on the procedure for granting authorisation to draw up own-initiative reports,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0000/2021),
- A. whereas EU taxpayers held EUR 1.5 trillion offshore in 2016, resulting in an average tax revenue loss of EUR 46 billion in the EU as a result of tax evasion by individuals¹²;
- B. whereas the difficulties encountered in the Council in agreeing on the improvements put forward by the Commission demonstrates the need to move to a qualified majority in tax matters;
- C. whereas it is in the responsibility of Parliament to exercise political scrutiny over the Commission, including its enforcement and implementation policy, and whereas this requires adequate access to relevant information;
- D. whereas the DAC framework should be accompanied by equal attention to the capacity and willingness of tax administrations to facilitate compliance;

Coverage and reporting requirements

1. Welcomes the fact that the DAC has been continuously improved to widen the scope of the exchange of information (EOI) in order to curb tax fraud, tax evasion and tax avoidance, including the recent proposal on DAC7, as well as the plans for DAC8;
2. Notes, however, that some types of income and assets are still excluded from the scope, which presents a risk of circumventing tax obligations; calls on the Commission to assess the need and the most appropriate way to include the following ownership information, items of income and non-financial assets in the automatic exchange of information (AEOI): (a) the beneficial owners of immovable property and companies; (b) capital gains related to immovable property and capital gains related to financial assets, in particular to find ways for tax administrations to be better informed to identify realised capital gains; (c) non-custodial dividend income; (d) non-financial assets such as cash, art, gold or other valuables held at free ports, customs warehouses or safe deposit boxes; and (e) ownership of yachts and private jets;

¹¹ OJ C 429, 11.12.2020, p. 6.

¹² European Commission, Directorate-General for Taxation and Customs Union, Taxation Papers, Working Paper No 76, ‘Estimating International Tax Evasion by Individuals’, September 2019, https://ec.europa.eu/taxation_customs/sites/taxation/files/2019-taxation-papers-76.pdf

3. Observes that the effectiveness of DAC1 is seriously constrained by the fact that Member States are only required to report at least two categories of income; calls on the Commission to make it mandatory to report on all categories of income and assets in the scope;
4. Observes that the definition of reporting Financial Institutions (FIs) and types of accounts that need to be reported in DAC2 involves a risk of circumvention and increased bureaucracy; calls for an assessment by the Commission of the need to extend the reporting obligations to other relevant types of FIs, to review the definition of excluded accounts and to remove the thresholds applicable to pre-existing entity accounts;
5. Observes that DAC3 contains certain blind spots; therefore calls for the scope of EOI under DAC3 to be widened to include informal arrangements, post-transaction agreements, natural persons and rulings which are still valid, but which were issued, amended or renewed before 2012;

Due diligence obligations and beneficial ownership

6. Notes that the information exchanged is of limited quality; calls for stronger enforcement procedures at Member State level; calls on the Commission to include on the spot visits in Member States and to assess the effectiveness of their monitoring schemes; calls on the Member States to establish a system of quality and completeness checks of DAC data, as well as procedures for the audit of reporting obliged entities regarding the quality and completeness of data sent;
7. Points out that there are no prescribed sanctions for FIs which either do not report or which report information falsely or incorrectly, and that measures vary significantly across Member States; calls for more harmonised and effective sanctions for non-compliance, with a deterrent effect;
8. Notes that the effectiveness of the DAC relies heavily on the anti-money laundering (AML) directives in place at Member State level; observes that the incorrect implementation of these directives, the lack of effective enforcement and the remaining weaknesses in the AML framework undermine the effectiveness of the DAC;
9. Observes that increasingly complex structures are being used to conceal the ultimate beneficial owners and therefore thwart the effective implementation of AML rules; believes there should be no threshold for reporting the beneficial owners;

Legal and practical challenges

10. Notes that the Commission monitors the transposition of the DAC legislation in the Member States; points out, however, that it has so far neither taken direct and effective action to address the lack of quality of the data sent between Member States, nor carried out visits to Member States, nor has it ensured the effectiveness of sanctions imposed by Member States for breaches of the DAC reporting provisions; calls on the Commission to step up its activities in this regard and to launch infringement procedures, using,

among others, the Global Forum¹³ and Financial Action Task Force reviews;

11. Notes with concern that the Global Forum has recently assessed the legal implementation of the Common Reporting Standard (CRS)¹⁴ and deplores the fact that 10 Member States are not fully compliant;
12. Notes that the sharing of valid taxpayer identification numbers (TINs) is crucial for efficient EOI processes;
13. Calls on the Commission to create a validation tool for TINs; calls on the Member States to ensure more systematic analysis of unmatched DAC1 and DAC2 data, and to introduce procedures for the systematic risk analysis of information received;
14. Regrets the fact that information exchanged on request (EOIR) has often been found to be incomplete and required further clarifications; calls on the Commission to assess indications that EOIR is unsatisfactory with several third countries, including Switzerland;
15. Deplores the fact that one Member State, Malta, has received an overall ‘partially compliant’ score in the peer review by the Global Forum for EOIR; regrets the fact that material deficiencies have been identified in 18 Member States¹⁵;
16. Notes that the use of information under the DAC for non-tax matters requires prior authorisation from the sending Member State, which is not always granted; insists that the use of information exchanged under the DAC should always be authorised for purposes other than tax matters where this is allowed under the laws of the receiving Member State;

Access to data and monitoring

17. Notes with great concern that information is underreported, and what is being reported is underused; notes further that little monitoring of the system’s effectiveness takes place; regrets the fact that the data on EOI under DAC provisions, which is publicly available, is insufficient to adequately assess the evolution of information exchanges and their effectiveness;
18. Notes that there is no common EU framework for monitoring the system’s performance and achievements;
19. Calls on the Commission and the Member States to establish a common framework for measuring the impact and the cost-benefits of the DAC; calls on the Commission to publish annually a summary of the information received by Member States;
20. Calls on the Member States to communicate the statistics, tax revenue gains and all other relevant information to properly assess the effectiveness of all exchanges to the Commission on an annual basis, and, in the case of EOIR, requests that the information

¹³ Global Forum on Transparency and Exchange of Information for Tax Purposes.

¹⁴ <https://www.oecd-ilibrary.org/docserver/175eeff4-en.pdf?expires=1614245801&id=id&accname=ocid194994&checksum=C36736F5E5628939095D507381D7D7C5>

¹⁵ [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662603/EPRS_STU\(2021\)662603_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662603/EPRS_STU(2021)662603_EN.pdf)

provided be disaggregated on a country-by-country basis;

Consistency with other provisions

21. Deplores the lack of reciprocity under the Foreign Account Tax Compliance Act; calls on the Commission and the Member States to enter into new negotiations with the United States in the OECD framework in order to achieve full reciprocity in a commonly agreed and strengthened CRS framework;

Conclusions

22. Deeply regrets the fact that all Member States – with exception of Finland and Sweden – have refused to grant Parliament access to the relevant data to assess the implementation of DAC provisions; deplores the fact that the Commission has decided to refuse Parliament access to the respective data in its possession; considers that Parliament is thereby in effect being hindered in exercising its function of political scrutiny over the Commission; notes that this implementation report therefore has significant shortcomings; calls on the Member States and the Commission to put an end to their refusal to share the relevant documents in line with Regulation 1049/2001¹⁶ which applies directly, and the principle of sincere cooperation in Article 13(2) of the TEU; calls for Parliament to use all legal means at its disposal to ensure that it receives all documents needed for a complete assessment of the implementation of the DAC;

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23. Instructs its President to forward this resolution to the Council and the Commission, and to the governments and parliaments of the Member States.

¹⁶ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43.