Thursday 16 September 2021

P9_TA(2021)0392

Implementation of EU requirements for exchange of tax information

European Parliament resolution of 16 September 2021 on the implementation of the EU requirements for exchange of tax information: progress, lessons learnt and obstacles to overcome (2020/2046(INI))

(2022/C 117/13)

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/EEC ([1]) (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/EC ([2]),

— 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 taxation ([3]),

— 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 taxation ([4]),

— 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 taxation ([5]),

— 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 authorities ([6]),

— 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 arrangements ([7]),

— having regard to the Commission proposal of 15 July 2020 for a Council Directive 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,

([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.

— having regard to its position of 10 March 2021 on the proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation ([8]),

— 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 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 avoidance ([9]),

— 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 Services ([10]),

— having regard to the OECD Action Plan on Base Erosion and Profit Shifting (BEPS) of 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 (A9-0193/2021),

---

([8]) Texts adopted, P9_TA(2021)0072.
([9]) OJ C 108, 26.3.2021, p. 8.
([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.
([11]) OJ C 429, 11.12.2020, p. 6.

Thursday 16 September 2021

A. whereas the EU is confronted with unfair or aggressive tax practices, such as the fact that European Union Member States lose between EUR 160 and 190 billion per year ([12]) as a result of tax evasion and profit shifting by multinationals; whereas this loss is of a significant magnitude given the health, social and economic crisis the Union is currently facing and struggling with; 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 individuals ([13]); whereas these amounts are only a segment of the general problem of tax avoidance by individuals and companies and this value is illegitimately subtracted from national budgets and, therefore, represents an additional burden on compliant taxpayers;

B. whereas cooperation between tax administrations has significantly improved at EU, as well as at global, level over recent years with the aim of curbing tax evasion, tax avoidance and tax fraud more effectively, in particular as a result of the G20/OECD Common Reporting Standard approved in 2014;

C. whereas repeated revelations by investigative journalists, such as the LuxLeaks, the Panama Papers, the Paradise Papers, the cum-ex/cum-cum scandals and, most recently, the OpenLux have contributed to an increased awareness and pushed the EU to further develop its set of tools against tax avoidance, tax evasion and tax fraud; whereas the OpenLux revelations have demonstrated the necessity for the exchange of tax information to be more qualitative and to deliver results;

D. whereas the DAC, which entered into force in January 2013 and replaced Council Directive 77/799/EEC concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, laid down the rules and procedures for cooperation between Member States on the exchange of information (EOI) between tax administrations of the Member States, notably the automatic exchange of information (AEOI) on income and assets;

E. whereas the DAC was subsequently amended five times to gradually extend the scope of AEOI to information on financial accounts and related income (DAC2), advance cross-border rulings (ACBRs) and advance price arrangements (APAs) (DAC3), Country-by-Country Reports (CbCR) filed by multinational enterprises (DAC4), to provide access by tax authorities to beneficial ownership information as collected under Anti-Money Laundering (AML) rules (DAC5), and finally to extend the scope of AEOI to tax planning cross-border arrangements and introduce mandatory disclosure rules for intermediaries (DAC6);

F. whereas the provisions for AEOI under DAC1 to DAC4 entered into force between January 2015 and June 2017 and its initial impact can be evaluated, while it is too early to assess the impact of the provisions of DAC5 and DAC6, which only entered into force in January 2018 and July 2020 respectively;

G. whereas the Commission proposed a further amendment in July 2020 to extend the scope of AEOI to, inter alia, income earned via digital platforms (DAC7) and has announced a further amendment to provide access to information on crypto-assets (DAC8); whereas such a revision could be an opportunity to improve the framework for information exchange as a whole;

H. whereas the Council has concluded its negotiation on several DAC revisions, including the recent DAC7 proposal, without taking the opinion of the European Parliament into account, acting against the principles of sincere cooperation and the European Parliament's role in a consultative process as stated in Article 115 TFEU;

I. whereas the difficulties encountered in the Council in agreeing on the improvements put forward by the Commission do not provide sufficient answers to global tax issues;

([12]) Dover, R. et al: 'Bringing transparency, coordination and convergence to corporate tax policies in the European Union, Part I: Assessment of the magnitude of aggressive corporate tax planning', European Parliament, Directorate-General for Parliamentary Research Services, European Added Value Unit, September 2015.

([13]) 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/system/files/2019-10/2019-taxation-papers-76.pdf.

J. whereas some inconsistencies between the international and European standards remain, notably on the deadline for communicating tax information; whereas a majority of Member States release aggregated CbCR information under Action 13 of the BEPS Action Plan;

K. whereas the Union has signed agreements with third countries, including Andorra, Liechtenstein, Monaco, San Marino and Switzerland to ensure that DAC2 equivalent information is shared with the Member States; whereas later versions of the DAC have not been subject to similar agreements;

L. whereas only very limited information is publicly available on the implementation of DAC1 to DAC4, with almost no quantitative information on the exchange of information concerning CbCRs under DAC4, and whereas quantitative information on the implementation of the DAC at Member State level is rare;

M. whereas Parliament fully respects the principle of national tax sovereignty;

N. whereas the available information shows that the EOI under DAC1 and DAC2 provisions for AEOI have increased significantly since the entry into force, and that Member States exchanged about 11 000 messages referring to nearly 16 million taxpayers and to income and/or assets worth over EUR 120 billion under DAC1 provisions between 2015 and mid-2017, and about 4 000 messages covering some 8,3 million accounts with a total value of almost EUR 2,9 trillion under DAC2 as of 2018;

O. whereas the AEOI provisions under DAC3 have led to a significant increase in reported ACBRs and APAs compared to the period before, when they were only shared on rare occasions and on a spontaneous basis, in spite of a legally binding requirement to share many ACBRs and APAs since 1977, as 17 652 ACBRs/APAs were reported in 2017 compared to only 2 529 in 2016, 113 in 2015 and 11 in 2014; whereas success cannot be measured solely by a total increase in reported ACBRs and APAs, as demonstrated by the LuxLetters revelations;

P. whereas it is in the responsibility of Parliament, along with the Council, to exercise political scrutiny over the Commission, as laid down in the Treaties according to Article 14 TEU, including its enforcement and implementation policy, and whereas this requires adequate access to relevant information; whereas the Commission must be responsible to the European Parliament according to Article 17(8) TEU;

Q. whereas the Commission opened 73 infringement procedures in total, related mainly to delays in the transposition of the DAC by Member States, and two infringement procedures are still ongoing as of January 2021; whereas the delayed or deficient transposition of the DAC by Member States justified several infringement procedures and this scenario justifies Parliament in its stance for a strict control by the Commission on the transposition of European legislation on tax matters and, specifically, on DAC provisions;

R. whereas the OECD created a global standard for the AEOI with its Common Reporting Standard (CRS) in 2014 and more than 100 jurisdictions worldwide have committed to AEOI of financial accounts as of 2021;

S. whereas Parliament acknowledges it has no legislative power in the area of direct taxation and has only a limited legislative power over indirect taxation;

T. whereas the DAC framework should be accompanied by equal attention to the capacity and willingness of tax administrations to facilitate compliance and serve the interests of taxpayers;

U. whereas the Directive on Administrative Cooperation in the Field of Taxation must be an instrument to enhance the coordinated work of national tax administrations, but must consider dimensions such as: i) the reinforcement of tax administrations' resources (in human, financial and infrastructure — mainly digital infrastructure); ii) the protection of taxpayers' rights, such as data protection; iii) the safeguarding of professional and industrial secrets, with high standards of cybersecurity in the exchange of information process; iv) the reduction of administrative and bureaucratic burdens on taxpayers and companies; v) the promotion of higher performance standards for tax administrations, with tighter deadlines to comply with European rules; and vi) the safeguarding of the competitiveness of our companies, with simpler and faster ways to guarantee compliance with administrative requirements;

Thursday 16 September 2021

V. whereas the economic crisis triggered by the COVID-19 pandemic required enormous fiscal and budgetary efforts by governments, including in the form of aid to companies; whereas the beneficiaries of such support must fulfil their social responsibilities, such as cooperating adequately with tax authorities, in order to guarantee a comprehensive exchange of tax information;

W. whereas the effectiveness of the exchange of tax information depends less on the quantity of data exchanged, but on its quality; whereas data quality and completeness are therefore essential in order to reap the greatest benefits from the DAC framework; whereas the lack of information publicly available on the quantitative data of the EOI performed under DAC1 to DAC4 makes democratic scrutiny by national parliaments and the European Parliament significantly more difficult;

X. whereas the progressively digitalised and globalised economy possesses complex and challenging dimensions, such as digital assets and crypto-assets, it is nevertheless important to increase cooperation between national tax administrations in this field; whereas a clear definition of crypto-assets, in line with the ongoing work within the OECD and the Financial Action Task Force (FATF), would be important to enhance the fight against tax evasion and to promote fair taxation; whereas the proliferation of crypto-currencies is a topical issue and should be considered in any effort to increase administrative cooperation, based on the principles of subsidiarity and proportionality;

Y. whereas tax policies are at the core of national fiscal and tax sovereignty, and represent national competences; whereas any major decision at European level must be based on strict respect for the intergovernmental logic that governs this field of European integration; whereas important decisions on further integration on this matter must always be taken so as to respect the treaties, national competences and fiscal and tax national sovereignty; whereas Parliament agrees with the ambition to find innovative solutions on tax matters, bearing in mind the institutional framework that we wish to preserve;

Z. whereas administrative cooperation in the field of taxation must be an instrument to enhance the fight against tax fraud and evasion by individuals and enterprises, through improved communication channels and effective EOI practices;

AA. whereas the consecutive revisions of the Directive on Administrative Cooperation in the Field of Taxation prove that this is a dimension of ongoing interest for Member States and European policy makers, that the European instruments are gradually and progressively evolving according to a logic of closer cooperation, and that citizens are aware of the European solutions' added value in terms of tackling issues linked to taxation, mainly in combating tax avoidance, tax evasion and tax fraud;

AB. whereas the EOI on income and capital gains from individuals, in particular on immovable property, is undermined by shell companies;

AC. whereas the beneficial owners of shares in companies are not being automatically exchanged under the current framework;

AD. whereas family offices often hold large cross-border assets through the direct ownership of companies or through closely held investment entities [14]; whereas such financial institutions may suffer from conflicting interests, contributing to the unreliable reporting of tax information; whereas unrealised capital gains of individuals held abroad in low-taxed companies are hardly covered by national tax systems at all; whereas this both enables high net worth individuals to accumulate wealth, building on low-taxed income while the middle classes can only accumulate wealth based on fully taxed income;

---

[14] Final Report, Ecorys, 'Monitoring the amount of wealth hidden by individuals in international financial centres and impact of recent internationally agreed standards on tax transparency on the fight against tax evasion'.

AE. whereas a properly functioning and effective EOI framework can alleviate budgetary pressures in all Member States;

Coverage and reporting requirements

1. Welcomes the fact that the EU institutions have been continuously improving and widening the scope of the 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; notes, however, that while the scope of the DAC framework has been steadily increased, too little attention was paid to improving data quality and completeness equally;

2. Highlights that the EOI between tax administrations has significantly improved at both global and EU level; recalls that DAC2, DAC3, DAC4, DAC6 and DAC7 are directly connected to the work undertaken at OECD level; considers that the measures agreed on the global stage constitute a minimum standard for the EU;

3. Notes that the better implementation and application of the rules by tax authorities are necessary in order to minimise the risk of the non-declaration of income and therefore calls on the Commission to guarantee better enforcement of the rules; 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, and to present concrete proposals, to include the following ownership information, items of income and non-financial assets in the AEOI: (a) the beneficial owners of immovable property and companies; (b) capital gains related to immovable property and capital gains related to financial assets, including currency trading, 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; (e) ownership of yachts and private jets; and (f) accounts at larger peer-to-peer lending, crowdfunding and similar platforms;

4. 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; takes note of the recent amendment that obliges the Member States to exchange all information that is available, on at least four categories of income with respect to taxable periods as of 2024; calls on the Commission, after an impact assessment, to make it mandatory to report on all categories of income and assets in the scope; calls on the Member States to develop effective and accessible registries for the purposes of EOI; notes that such efforts will also benefit domestic tax collection;

5. Observes the challenge posed by gathering information about e-money and/or crypto assets, and the difficulty of including them in AEOI because of their independence from intermediaries; calls for the establishment of a comprehensive framework for collecting information about e-money and crypto assets;

6. 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 and, if appropriate, a proposal by the Commission to extend the reporting obligations to other relevant types of FIs, while avoiding further red tape, but to reconsider the qualification of closely held managed Investment Entities as FIs, to review the definition of excluded accounts and to remove the thresholds applicable to pre-existing entity accounts; recalls that with adequate IT systems in place, a practice of zero exemptions and zero thresholds can contribute to less bureaucracy; calls on the Commission to assess the obligation for FIs, where there is no information to report, to file nil returns with the objective of decreasing bureaucracy;

7. Observes that DAC3 contains certain blind spots and might have unintended negative effects such as tax administrations not exchanging ACBRs if these are too favourable, or tax administrations resorting to informal arrangements in order to avoid exchanges, as revealed by the practice of shadow tax rulings through 'information letters' in Luxembourg; deplores the preferential treatment of high net worth individuals; therefore calls for the scope of EOI under DAC3 to be widened to include informal arrangements, not 'advance' (for example post-transaction agreements or after filing the returns) APAs and ACBRs, natural persons and rulings which are still valid, but which were issued, amended or renewed before 2012; regrets that earlier calls by the European Parliament in this regard have been ignored so far; regrets that DAC 3 data entries lack quality and are not yet widely used or exploited by the tax administrations of Member States; advises that a specific notification should be sent to the tax administrations where a company benefiting from a tax ruling in the scope of DAC 3 has a taxable presence;

Thursday 16 September 2021

8. Regrets that bilateral and multilateral APAs are excluded from the EOI under DAC3 where a related international tax agreement does not allow for their disclosure; calls on the Member States to renegotiate existing, and not agree to any future, international tax agreements which do not permit the disclosure of APAs;

9. Regrets that the summary information in the central directory for ACBRs and APAs is often too brief to be used without having to request additional information; calls on the Commission to develop guidelines on what tax administrations should provide as a summary, which should include all relevant direct and indirect tax implications such as the effective tax rates;

10. Deplores the practice of shadow tax rulings in Luxembourg, as exposed by the LuxLetters revelations, which leads to informal arrangements not being reported as required by DAC3; urges the Commission to urgently assess a potential breach of the DAC3 requirements by Luxembourg and other Member States with similar practices and to launch infringement proceedings if necessary;

11. Welcomes the fact that a large number of countries, including many Member States, are releasing anonymised and aggregated information, extracted from the CbCRs as required under DAC4 or Action 13 of the BEPS Action Plan; regrets that a minority of Member States are not publishing this information in international databases; calls for a harmonised approach in this regard and insists that the Commission integrate this requirement into the future revision of the DAC;

12. Recommends revising the scope of information provided by multinational enterprises (MNEs) that own several entities within the same jurisdiction in order to improve the quality of the information while avoiding excessive compliance costs;

13. Observes that the consistency of mandatory disclosers under DAC6 is negatively affected by the ambiguity of individual Member States' interpretation of hallmarks; therefore, calls for greater clarity in the formulation of the main benefit test for hallmarks in categories A and B;

14. Recalls that the DAC provisions are applicable to every enterprise that is obliged by the reporting duties; however, recalls that MNEs and SMEs have significant differences in terms of their compliance policies and that this must be taken into account in future DAC revisions; understands, therefore, that SMEs' compliance costs and administrative burden must be reduced;

15. Recalls that the European rules on administrative cooperation do not replace national rules but rather provide minimum standards for information exchange and cooperative actions;

16. Acknowledges that in order to improve the objectives of the DAC, the emphasis will have to be placed on closing existing gaps in implementation and monitoring rather than on creating new legislative rules;

Due diligence obligations and beneficial ownership

17. Notes that the information exchanged is large in volume but of limited quality; welcomes the recommendations of the European Court of Auditors (ECA); observes that joint accounts pose certain difficulties to FIs; is concerned that inaccurate or outdated information on tax residency held by FIs and abuse through multiple residencies may lead to failure to exchange information where this would be required; deplores the use of golden visa and passports to circumvent EOI and reiterates its call to phase out all these current schemes; calls on the Commission to extend its infringement proceedings to all Member States offering golden visas; calls for stronger enforcement procedures at Member State level and to set up domestic systems of penalties for incorrect or incomplete reporting with an effective deterrent effect; 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, the regular provision of feedback for the information received and reports on the usefulness of interventions to the Commission in order to improve future decision-making, as well as procedures for the audit of reporting obliged entities regarding the quality and completeness of data sent; recognises that the information exchanged between Member States via DAC and the underlying systems are confidential;

18. 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; recalls that according to Article 25a of DAC2, Member States should implement effective, proportionate and dissuasive penalties for reporting entities; regrets that the Commission does not assess the size or the deterrent effect of the penalties in each Member State, and that the Commission has not offered any benchmarks for comparison or guidance in this respect; calls for more harmonised and effective sanctions with a deterrent effect on non-compliance;

19. Recommends the inclusion of a marker to indicate joint ownership of different account holders in order to avoid duplicate reporting and to facilitate accurate identification of account balances; suggest in addition that entities could record the ownership share of each account holder, and flag when an account is held by owners from different jurisdictions;

20. Notes that DAC5 provided access by tax authorities to beneficial ownership information as collected under anti-money-laundering (AML) rules; observes that the fifth AML Directive (AMLD5) widened the scope for interaction between AML and DAC, and that the AMLD5 should have been transposed by Member States by 10 January 2020; notes further that the effectiveness of the DAC therefore relies heavily on the AML directives in place at Member State level; observes that the effectiveness of the DAC is undermined by the incorrect implementation of these directives, the lack of effective enforcement and the remaining weaknesses in the AML framework such as (i) the fact that beneficial ownership is not determined for individual accounts held through active non-financial entities (NFE), (ii) the lack of beneficial ownership information for real estate properties and life insurance contracts, (iii) the lack of inter-connected national registries in particular real estate with beneficial ownership registries, and (iv) the lack of common definitions for beneficial ownership, due diligence and tax crime;

21. Regrets the current state of the transposition for AMLD4 across Member States ([15]), with the Commission launching infringement procedures against eight Member States in December 2020 and three Member States in February 2021 ([16]), notes that the transposition deadline for these provisions was 27 June 2017; further regrets that for AMLD5 ([17]), with a transposition deadline of 10 January 2020, infringement procedures have been launched against 16 Member States ([18]);

22. Observes with concern that in the most recent assessment of countries' AML measures carried out by FATF, the 18 Member States included in the assessment ([19]) did not perform well across key effectiveness indicators, for example, when being ranked on adequately applying AML measures, most Member States in the scope were rated as displaying a 'moderate' or 'low' level of effectiveness, with only Spain being rated as having a 'substantial' level of effectiveness, and no Member State attaining a 'high' level of effectiveness ([20]);

23. Observes that increasingly complex structures are being used to conceal the ultimate beneficial owners, and therefore thwart the effective implementation of AML rules; observes further the weaknesses exposed by the OpenLux revelations; believes there should be no threshold for reporting the beneficial owners; recalls its view that beneficial ownership of trusts should have the same level of transparency as companies under AMLD5, while ensuring appropriate safeguards;

([15]) As of 25 November 2020. See European Commission website Anti-money laundering Directive IV (AMLD IV) — transposition status at: https://ec.europa.eu/info/publications/anti-money-laundering-directive-4-transposition-status_en

([16]) Information as of 22 December 2020: Czechia, Denmark, Estonia, Ireland, Italy, Luxembourg, Romania and Slovakia (see European Commission website: https://ec.europa.eu/info/strategy/decision-making-process_en. In February 2021 three additional infringement procedures were launched against Germany, Portugal and Romania https://ec.europa.eu/commission/presscorner/detail/en/inf_21_441

([17]) As of 25 November 2020. See European Commission website Anti-money laundering Directive V (AMLD V) — transposition status at: https://ec.europa.eu/info/publications/anti-money-laundering-directive-5-transposition-status_en

([18]) Information as of 22 December 2020: Austria, Belgium, Cyprus, Czechia, Estonia, Greece, Hungary, Ireland, Italy, Luxembourg, Netherlands, Portugal, Romania, Slovakia, Slovenia and Spain. See European Commission website: https://ec.europa.eu/info/strategy/decision-making-process_en

([19]) Belgium, Cyprus, Greece, Ireland, Italy, Spain Austria, Czechia, Denmark, Latvia, Lithuania, Malta, Slovakia, Slovenia, Finland, Sweden, Portugal and Hungary.

([20]) Financial Action Task Force, 4th Round Ratings, November 2020, Austria, Belgium, Cyprus, Czechia, Denmark, Finland, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Portugal, Slovakia, Slovenia, Spain and Sweden.

24. Calls on the European Commission to present, in due time, an evaluation of the interaction between AML and DAC;

Legal and practical challenges

25. 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, and neither has it ensured the effectiveness of sanctions imposed by Member States for breaches of the DAC reporting provisions; urges the Commission to step up its activities in this regard and to take direct and effective actions to address the lack of quality of data sent by Member States, further develop its guidance for Member States on implementing the DAC legislation, performing risk analysis and using tax information received, and to launch infringement procedures, using, among others, the Global Forum ([21]) and Financial Action Task Force reviews; calls on the European Commission to prioritise the issue of improving data quality in upcoming reviews of the DAC framework;

26. Observes with concern that the 2019 Commission evaluation highlighted that Member States often do not go beyond the minimum requirements of the DAC in exchanging information, and this contributed to the cum-ex/cum-cum tax fraud scandal; observes in particular that Member States did not sufficiently cooperate through appropriate mechanisms such as spontaneous exchange in order to alert other relevant Member States of such schemes; observes further that only a small minority of Member States has complete information across all six DAC1 income and capital categories available; stresses the need for more effective, complete and frequent exchanges;

27. Notes with concern that the Global Forum has recently assessed the legal implementation of the Common Reporting Standard (CRS) ([22]) referred to as DAC2 in the EU, and notes the fact that not all Member States are fully compliant according to the Global Forum peer review; calls on the Commission to closely monitor Member States and launch infringement procedures until all Member States are fully compliant; looks forward to the Global Forum peer review of the practical enforcement of the CRS and calls on the Commission and Member States to prepare diligently for this process;

28. Regrets that Member States rarely link the information they send to a TIN issued by the taxpayer's country of residence; notes that only Lithuania and Ireland appear to include a TIN, as recognised by the receiving country ([23]); notes further that the sharing of valid taxpayer identification numbers (TINs) is crucial for efficient EOI processes; notes that the TINs of corporations should be reported as well, in order to further facilitate the matching of tax relevant information; recalls that every measure to facilitate taxpayers identification must respect fundamental rights, especially the right to privacy and data protection;

29. Welcomes the requirement in DAC7 to include the TIN of the Member State of residence for DAC1 and DAC2 to improve data matching and identification across Member States, as proper identification of taxpayers is essential to effective EOI between tax administrations; is concerned that large quantities of information are not matched against relevant taxpayers and under-used, leading to shortfalls in taxation;

30. Calls on the Commission in close collaboration with Member States to create a validation tool for TINs; notes that this validation tool would increase the reporting effectiveness of FIs significantly, and thus decrease the compliance costs for these institutions; calls on the Commission to, after a proper analysis and impact assessment, re-examine the creation of a European TIN; 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;

31. Takes note of the fact that information exchanged on request (EOIR) has often been found to be incomplete and required further clarifications; regrets that in the framework of the EOIR authorities often take up to six months and longer to provide information from the date of receipt of the request; notes with regret that there are no time limits for any

([21]) Global Forum on Transparency and Exchange of Information for Tax Purposes.
([22]) https://www.oecd-ilibrary.org/docserver/175eeff4-en.pdf?expires=1614245801&id=id&accname=ocid194994&checksum=C36736F5E5628939095D507381D7D7C5
([23]) https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662603/EPRS_STU(2021)662603_EN.pdf

follow-up exchanges, which creates the potential for further delay; calls on the Commission to revise this provision, including for follow-up requests, to no later than three months; suggests that the Commission is granted the mandate to systematically assess the degree of cooperation of third countries; calls on the Commission to assess indications that EOIR with several third countries is unsatisfactory, including Switzerland;

32. 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, meaning the EOIR standard is only partly implemented, leading to significant practical effects ([24]); notes that 19 Member States are not fully compliant on 'ownership and identity information' ([25]); notes that six Member States are not fully compliant on 'accounting information' ([26]); notes that five Member States are not fully compliant on 'banking information' ([27]); notes that seven Member States are not fully compliant on 'access to information' ([28]); notes that three Member States are not fully compliant on 'rights and safeguards' ([29]); notes that five Member States are not fully compliant on 'EOI mechanisms' ([30]); notes that three Member States are not fully compliant on 'confidentiality' ([31]); notes that three Member States are not fully compliant on 'rights and safeguards' ([32]); notes that nine Member States are not fully compliant on 'quality and timeliness of responses' ([33]); notes that in summary no material deficiencies were identified in only eight Member States ([34]); regrets the fact that material deficiencies have been identified in 18 Member States ([35]); deeply regrets that certain Member States obtain a low rating on specific issues such as ownership and identity information; calls on Member States to achieve a compliant rating at the next peer review; notes that the Member States' underperformance seriously undermines the EU's credibility in fighting tax evasion and avoidance internationally; expects the Commission to deploy with no further delay all legal and non-legal tools to ensure legislation is being properly implemented; calls on the Commission to launch infringement procedures until all Member States are fully compliant; calls, therefore, on the Member States to fully commit to the DAC's objectives and the implementation of EOI best practices;

33. Welcomes the Commission's proposal in DAC7 to clarify the standard of 'foreseeable relevance' which needs to be applied in the context of EOIR, and calls on the Commission to produce guidelines to ensure a standardised approach and a more effective use of EOIR provisions;

34. Welcomes that the Commission has made available various tools for Member States to develop an EOI and best practices, as well as IT support, mainly through the Fiscalis 2020 programme; stresses the need to further promote the exchange of best practices and develop guidance on the use of information, in particular regarding DAC3 and DAC4;

35. 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, even though this information could be useful in increasing the efficiency of criminal and other investigations, and the request is commonly based on justified terms; 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 for law enforcement; urges, in this context, the Member States to fully commit to high standards of respect for citizens' fundamental rights as taxpayers;

([24]) https://www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-malta-2020-second-round_d92a4f90-en

([25]) Estonia, Austria, Hungary, Belgium, Luxembourg, Bulgaria, Croatia, Netherlands, Cyprus, Poland, Czechia, Portugal, Denmark, Romania, Slovakia, Greece, Germany, Malta and Spain. Source: footnotes 25-34: https://www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-peer-reviews_2219469x?_ga=2.61374444.131706240.1621422687-1265388792.1602508229

([26]) Croatia, Cyprus, Greece, Slovakia, Spain and Malta.

([27]) Hungary, Malta, Netherlands, Denmark and Slovakia.

([28]) Austria, Hungary, Belgium, Latvia, Czechia, Portugal and Slovakia.

([29]) Hungary, Belgium and Luxembourg.

([30]) Austria, Latvia, Cyprus, Czechia and Portugal.

([31]) Belgium, Latvia and Hungary.

([32]) Hungary, Latvia and Czechia.

([33]) Italy, Malta, France, Luxembourg, Bulgaria; Portugal, Romania, Greece and Germany.

([34]) Estonia, Italy, Finland, Lithuania, France, Slovenia, Sweden and Ireland.

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

Thursday 16 September 2021

36. Deplores the fact that Council has weakened the Commission's proposed changes to DAC7, in particular regarding joint audits and group requests; calls on the Council to revise its current position and adopt the Commission's suggested changes as proposed; notes that the number of group requests is very limited, as only five Member States were sent one or more group requests in 2017; calls on the Commission to prepare a standard group request form and include it in the relevant implementing regulation ([36]); recalls that for this opportunity, as well as for simultaneous checks, to deliver results, essential training is necessary for tax authority employees in foreign tax legislation, languages, specialisation and interpersonal skills;

37. Acknowledges the added value of sharing best practices and permanent support from the Commission on the empowerment of national tax administrations; underlines the special role of the Fiscalis 2020 programme in this regard; recalls that, nevertheless, national tax administrations need significant reinforcement on their human, financial and infrastructure resources; calls on Member States, therefore, to commit to sufficient levels of investment in national tax administrations; looks forward to the findings of the new Fiscalis project group on the use of advanced analytics to measure data quality within a common framework;

38. Takes note of the ECA's findings ([37]) that more can be done in terms of monitoring, ensuring data quality and using the information received in order to make the exchange of tax information more effective; invites the Commission and Member States to take into account the ECA's findings in future work on the DAC framework;

Access to data and monitoring

39. Notes with great concern that there is not enough evidence to assess the quality of reporting under DAC1 and DAC2 provisions, due to the fact that only a few Member States systematically carry out quality checks on the data exchanged under DAC1 and DAC2; 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;

40. Notes that there is no common EU framework for monitoring the system's performance and achievements, which increases the risk that reported data is incomplete or inaccurate; notes moreover that only a few Member States have set up and apply procedures to audit information submitted by FIs under DAC2;

41. Regrets that according to the ECA, the Commission is not proactively monitoring the implementation of this legislation, providing sufficient guidance or measuring the outcomes and impact of the system; is deeply concerned about the fact that only one of the five Member States examined by the ECA carried out checks of data quality, which took only the form of manual checks on a limited data sample and were not implemented as a systematic process;

42. Points out that matching rates show that large quantities of information are not used, since they are not matched against relevant taxpayers, and that Member States are not performing further checks of unmatched data; calls on the Commission and the Member States to establish a common framework for measuring the impact and the cost-benefits of the DAC and to make the DAC exchanges fully auditable and traceable from origin to use of the data by including an origin identifier in every data set; calls on the Commission to publish an annual summary of the information received by Member States, taking into account taxpayers' rights and confidentially; points out, however, that this report must have aggregated and detailed data to allow proper democratic scrutiny by Parliament; notes that the information communicated to the Commission should not be seen as strictly confidential if the information cannot be attributed to single taxpayers; reiterates that the Commission should be entitled to produce and publish reports and documents using the information exchanged in

([36]) Commission Implementing Regulation (EU) 2015/2378 of 15 December 2015 laying down detailed rules for implementing certain provisions of Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Implementing Regulation (EU) No 1156/2012 (OJ L 332, 18.12.2015, p. 19).

([37]) https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=57680

an anonymised manner, so as to take into account the taxpayers' right to confidentiality and in compliance with Regulation (EC) No 1049/2001 ([38]) regarding public access to European Parliament, Council and Commission documents;

43. Calls on the Commission to publish anonymised and aggregated country-by-country report statistics on an annual basis for all Member States; calls on Member States to communicate country-by-country reports received to the relevant Commission services;

44. Stresses that the 2019 evaluation carried out by the Commission demonstrated the need for consistent monitoring of the effectiveness of the DAC framework; calls on the Member States to communicate statistics, tax revenue gains and all other relevant information needed to properly assess the effectiveness of all exchanges to the Commission on an annual basis; requests, in the case of EOIR, that the information provided be disaggregated on a country-by-country basis while respecting data protection rules; calls on the Commission to continue to properly monitor and evaluate the effectiveness of EOI, and therefore requests a new comprehensive evaluation by January 2023;

45. Stresses that tax administrations should fully embrace the digital transformation and its potential to lead to a more efficient allocation of information, reductions in compliance costs and unnecessary bureaucracy; emphasises that this needs to be accompanied by an appropriate increase in financial, human and IT resources for tax administrations;

Consistency with other provisions

46. Acknowledges that DAC provisions are largely coherent with the OECD CRS, and that they substantially overlap with the US Foreign Account Tax Compliance Act (FATCA), while also containing important differences with it;

47. Deplores the lack of reciprocity under the FATCA; observes that the United States is becoming a significant enabler of financial secrecy for non-US citizens; observes that there are two main loopholes: only information on US assets is shared, and no beneficial ownership information is shared; 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 within a commonly agreed and strengthened CRS framework; stresses that this would lead to significant progress and lead to lower compliance costs for FIs and significantly reduce bureaucratic burdens; calls on the Commission and the Member States to enter into negotiations for a UN Tax Convention;

48. Deplores the side effects the FATCA still has on so-called accidental Americans; regrets that, to date, no lasting solution has been found at the European level;

49. Observes the possible frictions between the DAC framework and Regulations (EU) 2016/679 ([39]) and (EU) 2018/1725 ([40]); stresses that the data processing provided for in DAC provisions has the sole objective of serving the general public interest in the field of taxation in the Member States, namely curbing tax fraud, tax avoidance and tax evasion, safeguarding tax revenues, and promoting fair taxation;

50. Supports the Council's invitation to the Commission to analyse to what extent it would be feasible to further align the scope of tools available for tax authorities under Council Directive 2011/16/EU with the specific provisions of Council Regulation (EU) No 904/2010 ([41]);

([38]) 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).

([39]) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 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 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

([40]) Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

([41]) Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (OJ L 268, 12.10.2010, p. 1).

51. Welcomes the agreements similar to Directive 2014/107/EU on automatic exchange of financial account information with third countries such as Andorra, Liechtenstein, Monaco, San Marino and Switzerland; calls for an evaluation of the implementation of such an agreement, and calls therefore for an evaluation, in the light of the current CRS agreement; calls, further, for similar agreements for DACs 3, 5, 6 and 7;

Conclusions

52. Urges the Commission to come forward with a comprehensive revision of the DAC framework as soon as possible, based on Parliament's proposals and a wide public consultation; strongly invites the Commission and the Council to exchange views with the Parliament on the matter; regrets the Council's repeated adoption of decisions weakening the Commission's proposals to strengthen the DAC framework;

53. Deeply regrets the fact that all Member States — with the 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 did not grant Parliament access to the relevant data in its possession; considers that Parliament is thereby in effect being hindered from exercising its political scrutiny function over the Commission under both Articles 14 and 17(8) TEU; notes that this implementation report therefore has significant shortcomings; calls on the Member States and the Commission to cease refusing to share relevant documents in line with Regulation (EC) No 1049/2001 which applies directly, and to respect the principle of sincere cooperation in Article 13(2) 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;

54. Understands that the DAC, as it concerns tax matters, is an intergovernmental dimension of European integration; recalls, however, that tax policies are structural for the fulfilment of strategic EU objectives, mainly related to AML, terrorist financing, combating tax fraud and evasion, etc.; deplores the Council's position on consecutive DAC revisions, based on the repeated mitigation of Commission proposals and disregard of Parliament's positions; calls on the Council to review its attitude towards the Parliament on tax matters and, specifically, on DAC revisions; urges the Council to grant access to relevant information on DAC implementation in order to guarantee proper democratic scrutiny by the Parliament;

55. Understands that the DAC has a dual effect: detecting fraud through information sharing and deterring it by making fraudsters more likely to be identified while not letting them go unpunished; recognises that it is more difficult to quantify such deterrent effect, but invites the Commission to further consider this aspect of the DAC in its future evaluations;

o

o o

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