

Procedure file

Basic information		
INI - Own-initiative procedure	2020/2046(INI)	Procedure completed
Implementation of EU requirements for exchange of tax information: progress, lessons learnt and obstacles to overcome		
Subject 2.70 Taxation		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 Economic and Monetary Affairs	 GIEGOLD Sven	22/01/2020
		Shadow rapporteur	
		 PEREIRA Lídia	
		 REGNER Evelyn	
		 SEMEDO Monica	
		 BECK Gunnar	
		 JURZYCA Eugen	
	Committee for opinion	Rapporteur for opinion	Appointed
	 Civil Liberties, Justice and Home Affairs	The committee decided not to give an opinion.	
European Commission	Commission DG Taxation and Customs Union	Commissioner GENTILONI Paolo	

Key events			
16/04/2020	Committee referral announced in Parliament		
27/05/2021	Vote in committee		
03/06/2021	Committee report tabled for plenary	A9-0193/2021	Summary
15/09/2021	Debate in Parliament		
16/09/2021	Results of vote in Parliament		

16/09/2021	Decision by Parliament	T9-0392/2021	Summary
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Technical information

Procedure reference	2020/2046(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Implementation
Legal basis	Rules of Procedure EP 54
Stage reached in procedure	Procedure completed
Committee dossier	ECON/9/02644

Documentation gateway

Committee draft report	PE663.101	12/03/2021	EP	
Amendments tabled in committee	PE689.824	19/04/2021	EP	
Committee report tabled for plenary, single reading	A9-0193/2021	03/06/2021	EP	Summary
Text adopted by Parliament, single reading	T9-0392/2021	16/09/2021	EP	Summary
Commission response to text adopted in plenary	SP(2021)709	20/01/2022	EC	

Implementation of EU requirements for exchange of tax information: progress, lessons learnt and obstacles to overcome

The Committee on Economic and Monetary Affairs adopted the report by Sven GIEGOLD (Greens/EFA, DE) on the implementation of the EU requirements for exchange of tax information: progress, lessons learnt and obstacles to overcome.

Scope of the report

The Directive on Administrative Cooperation (DAC) 2011/16/EU was introduced to lay down the rules and procedures for cooperation between Member States on the exchange of information that is foreseeable relevant to the tax administration of the Member States.

In line with its responsibilities under Article 14 TFEU, the European Parliament sought to assess the enforcement and implementation of the DAC and its first three revisions (DAC 2-4).

However, Members expressed regret 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. They deplored the fact that the Commission did not grant Parliament access to the relevant data in its possession and considered that Parliament is thereby in effect being hindered from exercising its political scrutiny function over the Commission. Therefore, this implementation report therefore has significant shortcomings.

This report assesses the implementation of the obligations of information exchange under Directive on Administrative Cooperation (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).

Coverage and reporting requirements

Members welcomed the fact that the EU institutions have been continuously improving and widening the scope of the exchange of information in order to curb tax fraud, tax evasion and tax avoidance, including the recent proposal on DAC7, as well as the plans for DAC8. While the scope of the DAC framework has been steadily increased, too little attention was paid to improving data quality and completeness.

The report highlights that the exchange of information between tax administrations has significantly improved at both global and EU level.

Members noted, however, that certain types of income and assets remain excluded from the scope of application, which represent a risk of circumvention of tax obligations. Better implementation and enforcement of the rules by tax authorities is therefore needed to minimise the risk of non-declaration of income.

The Commission is therefore invited to assess the need to include information on the following beneficiaries, items of income and non-financial assets in the automatic exchange of information:

- the beneficial owners of immovable property and companies;
- 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, customs warehouses or safe deposit boxes;
- ownership of yachts and private jets;
- accounts at larger peer-to-peer lending, crowdfunding and similar platforms.

Legal and practical challenges

Members noted that the Commission monitors the transposition of the DAC legislation in the Member States. However, they pointed out 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. The Commission is urged 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.

Members also noted 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.

Information exchanged on request

The report noted that information exchanged on request (EOIR) has often been found to be incomplete and required further clarifications. Regretting that there is no defined time limit for follow-up exchanges, Members called on the Commission to revise this provision, including for follow-up requests, to set a maximum time limit of three months. It is proposed that the Commission be granted the mandate to systematically assess the degree of cooperation of third countries.

Conclusions

Members called on the Member States to cease refusing to share relevant documents in line with Regulation 1049/200138 which applies directly, and to respect the principle of sincere cooperation in Article 13(2) of the TEU. They called on 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.

The Commission is urged to come forward with a comprehensive revision of the DAC framework as soon as possible, based on Parliaments proposals and a wide public consultation.

Members regretted the Councils repeated adoption of decisions weakening the Commissions proposals to strengthen the DAC framework.

Members deplored the Councils position on consecutive DAC revisions, based on the repeated mitigation of Commission proposals and disregard of Parliaments positions. The Council should review its attitude towards the Parliament on tax matters and, specifically, on DAC revisions.

Implementation of EU requirements for exchange of tax information: progress, lessons learnt and obstacles to overcome

The European Parliament adopted by 561 votes to 12, with 116 abstentions, a resolution on the implementation of the EU requirements for exchange of tax information: progress, lessons learnt and obstacles to overcome.

Legal background

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 as a result of tax evasion and profit shifting by multinationals.

The Administrative Cooperation Directive (DAC) 2011/16/EU was introduced to lay down rules and procedures for cooperation between Member States on the exchange of information relevant to Member States' tax administrations. The DAC has been amended on five occasions to:

- extend the scope of the automatic exchange of information on financial accounts and related income (DAC2), to advance tax rulings in cross-border cases and advance pricing agreements (DAC3) and to country-by-country reports filed by multinational enterprises (DAC4);
- provide access by tax authorities to beneficial ownership information as collected under Anti-Money Laundering (AML) rules (DAC5);
- extend the scope of automatic exchange of information on tax planning cross-border arrangements and introduce mandatory disclosure rules for intermediaries (DAC6).

Coverage and reporting requirements

Members welcomed the fact that the EU institutions have been continuously improving and widening the scope of the exchange of information in order to curb tax fraud, tax evasion and tax avoidance, including the recent proposal on DAC7, as well as the plans for DAC8. While the scope of the DAC framework has been steadily increased, too little attention was paid to improving data quality and completeness.

Certain types of income and assets remain excluded from the scope of application, which represent a risk of circumvention of tax obligations. Better implementation and enforcement of the rules by tax authorities is therefore needed to minimise the risk of non-declaration of income.

The Commission is therefore invited to assess the need to include information on the following beneficiaries, items of income and non-financial assets in the automatic exchange of information:

- the beneficial owners of immovable property and companies;
- 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, customs warehouses or safe deposit boxes;
- ownership of yachts and private jets;

- accounts at larger peer-to-peer lending, crowdfunding and similar platforms.

Parliament called for: (i) mandatory reporting of all categories of income and assets within the scope of DAC1; (ii) a broadening of the definition of reporting financial institutions and types of accounts to be reported under DAC2; and (iii) a broadening of the scope of exchange of information under DAC3 to include informal agreements, transfer pricing agreements and not advanced cross-border tax rulings.

Deplores the practice of shadow tax rulings in Luxembourg, Parliament urged 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.

Legal and practical challenges

The Commission monitors the transposition of the DAC legislation in the Member States. However, Members pointed out 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.

On due diligence and beneficial ownership, Parliament noted that there is a lot of information exchanged, but of limited quality. It deplored the use of visas and golden passports to circumvent information exchange and reiterated its call for the phasing out of all such current schemes.

Data access and surveillance

Highlighting the lack of a common EU framework for monitoring the performance of the system, Parliament regretted that data on intelligence exchanges under the DAC Directive is insufficient to properly assess the evolution of intelligence exchanges and their effectiveness. It called on Member States to provide the Commission, on an annual basis, with statistics, increases in tax revenue and all other information necessary to properly assess the effectiveness of all such exchanges.

Conclusions

Members regretted that all Member States - with the exception of Finland and Sweden - had refused to grant Parliament access to the relevant data to evaluate the implementation of the provisions of the DAC directive. They deplored the fact that the Commission has not granted Parliament access to the relevant data in its possession, thus preventing Parliament from exercising its political scrutiny over the Commission.

The Commission is urged to come forward with a comprehensive revision of the DAC as soon as possible, based on Parliament's proposals and a broad public consultation.