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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 *conservative estimates of the scale of EU tax revenues lost every year due to corporate tax avoidance alone range from €50-70 billion to almost €160-190 billion (when including special tax arrangements and tax collection inefficiencies)*¹² and 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 individuals¹³;
- Aa. *whereas cooperation between tax administrations has significantly improved at EU level as well as global level over the last years with the aim to better curb against tax evasion, tax avoidance and tax fraud, in particular owing to the G20/OECD Common Reporting Standard approved in 2014;*
- Ab. *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 of the scale and impact of tax avoidance, tax evasion and tax fraud;*
- Ac. *whereas the Directive 2011/16/EU on Administrative Cooperation (DAC), which entered into application in January 2013 and replaced the 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;*
- Ad. *whereas DAC was subsequently amended five times to gradually extend the scope of AEOI to information on financial account and related income (DAC2), advance cross-border rulings (ACBR) and advance price arrangements (APA) (DAC3), Country-by-Country Reports (CbCR) filed by multinational enterprises (DAC4), to provide access by tax authorities to beneficial ownership information as collected*

¹¹ OJ C 429, 11.12.2020, p. 6.

¹² Dover et al: ‘Bringing transparency, coordination and convergence to corporate tax policies in the European Union’, Part I of a study for the European Parliamentary Research Service, September 2015 (PE 558.773).

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/sites/taxation/files/2019-taxation-papers-76.pdf

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);

- Ae. whereas the provisions for AEOI under DAC1 to DAC4 entered into application between January 2015 and June 2017 and its first impact can be evaluated, while it is too early to assess the impact of the provisions of DAC5 and DAC6 which have only entered into force respectively in January 2018 and July 2020;*
- Af. 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 announced a further amendment to provide access to information on crypto-assets (DAC8);*
- Ag. whereas the Council has concluded its negotiation on the DAC7 proposal without taking the opinion of the European Parliament into account against the principles of sincere cooperation, and the European Parliament's role in a consultative process as stated in article 115 TFEU;*
- Ah. whereas a European common market needs common tax rules;*
- 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;*
- Ba. 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 quantitative information on the implementation of DAC at Member State level is rare;*
- Bb. whereas available information shows that the EOI under DAC1 and DAC2 provisions for AEOI have increased significantly since the entry into application and that Member States exchanged about 11,000 messages referring to nearly 16 million taxpayers and to income/assets worth over €120 billion under DAC1 provisions between 2015 to mid-2017 and about 4,000 messages covering some 8.3 million accounts with a total value of almost €2,9 trillion under DAC2 as of 2018;*
- Bc. whereas the AEOI provisions under DAC3 have led to a significant increase of reported ACBR and APA compared to the period before where they were only shared at rare occasions on a spontaneous basis despite of a legally binding requirement of sharing 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;*
- 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;*
- Ca. whereas the Commission in total opened 73 infringement procedures related mainly to delays in the transposition of DAC by Member States and two infringement procedures are still ongoing as of January 2021;*

- Cb. 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;***
- D. whereas the DAC framework should be accompanied by equal attention to the capacity and willingness of tax administrations to facilitate compliance;
- Da. whereas the exchange of information on income and capital gains from immovable property is undermined by shell companies;***
- Db. whereas beneficial owners of shares in companies are not being automatically exchanged under the current framework;***
- Dc. whereas a well-functioning and effective EOI framework can alleviate budgetary pressures in all Member States;***

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; (e) ownership of yachts and private jets; and ***(f) accounts at larger peer-to-peer lending, crowdfunding and similar platforms;***
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; ***calls on Member States to develop effective and accessible registries for the purposes of EOI; notes that such efforts will also benefit domestic tax collection;***
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; ***reminds 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 introduce the obligation for FIs, where there is no information to report, to file nil returns;***
5. Observes that DAC3 contains certain blind spots ***and might have perverse effects such***

as tax administrations not disclosing ACRBs if these are too favourable or tax administrations resorting to informal arrangements to avoid exchange; therefore calls for the scope of EOI under DAC3 to be widened to include informal arrangements, not “advance” (e.g. post-transaction agreements or after filing the returns) APAs and ACRBs, 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;

- 5a. 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 Member States to renegotiate existing and not agree to any future international tax agreement which do not permit the disclosure of APAs;*
- 5b. Regrets that the summary information in the central directory for ACRBs 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;*
- 5c. Recommends to extend the scope of information provided by MNE that own several entities within the same jurisdiction beyond providing only aggregate-level information;*

Due diligence obligations and beneficial ownership

- 6. Notes that the information exchanged is of limited quality; *observes that joint accounts pose certain difficulties to FIs, is concerned that inaccurate or outdated information on tax residency held by FIs and the abuse through multiple residencies may lead to failure to EOI where this would be required; deplores the use of golden visa and passports to circumvent EOI and reiterates its call to phase out all existing 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; 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;
- 7a. Recommends to include a marker to signal joint ownership of different account holder to avoid duplicate reporting and to facilitate accurate identification of account balances, in addition, entities could record the ownership share of each account holder and flag when an account is held by owners from different jurisdictions;*
- 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;

- 8a. *Regrets the current state of the transposition for AMLD4 across Member States¹⁴ with the Commission launching infringement procedures against 8 Member States in December 2020 and 3 Member States in February 2021,¹⁵ notes that the transposition deadline for these provisions was 27 June 2017; further regrets that for AMLD5¹⁶, with a transposition deadline of 10 January 2020, infringement procedures have been launched against 16 Member States¹⁷;*
- 8b. *Observes with concern that in the most recent assessment of countries' AML measures carried out by FATF, the 18 Member States included in the assessment¹⁸, did not perform well across key effectiveness indicators, for example, when being ranked on adequately applying AML measures, most Member States in 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 effectiveness¹⁹;*
- 8c. *Points out that in particular the lack of minimum standards or a common approach for the supervision of AML activities, and the lack of common definitions for beneficial ownership, due diligence and tax crime, have led to significant divergence across Member States;*
- 8d. *Stresses that in addition to beneficial owners of companies and trusts under AMLD5 there is a need to have information for beneficial owners of real estate properties and life insurance contracts; notes that national registers need to be inter-connected and high-quality data needs to be ensured, in particular real estate registers should be linked with beneficial ownership registries;*
- 8e. *Notes that beneficial ownership is not determined for individual accounts held through active non-financial entities (NFE), for which only residence of the entity must be reported but not the controlling person; is concerned that this can be misused to conceal real ownership and calls for extending the requirement to establish*

¹⁴ 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.

¹⁵ Information as of 22 December 2020: Czechia, Denmark, Estonia, Ireland, Italy, Luxembourg, Romania and Slovakia (see European Commission website: https://ec.europa.eu/atwork/applying-eu-law/infringementsproceedings/infringement_decisions/index.cfm?lang_code=EN&typeOfSearch=false&active_only=1&noncom=0&r_dossier=&decision_date_from=&decision_date_to=&title=Directive+2015%2F849&submit=Search). 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

¹⁶ 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.

¹⁷ 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/atwork/applying-eu-law/infringementsproceedings/infringement_decisions/index.cfm?lang_code=EN&typeOfSearch=false&active_only=1&noncom=0&r_dossier=&decision_date_from=&decision_date_to=&title=Directive+2015%2F849&submit=Search.

¹⁸ Belgium, Cyprus, Greece, Ireland, Italy, Spain Austria, Czechia, Denmark, Latvia, Lithuania, Malta, Slovakia, Slovenia, Finland, Sweden, Portugal and Hungary.

¹⁹ 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.

ownership for active as well as passive NFEs as such a distinguishing line cannot be drawn reliably;

- 8f. *Welcomes that the Commission's Action Plan on AML and terrorist financing of May 2020; calls for the creation of an EU AML supervisor; calls for key requirements of the AML Directives to be anchored in a binding regulation;*
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; *recalls its view that beneficial ownership of trusts should have the same level of transparency as companies under AMLD5, while ensuring appropriate safeguards;*

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 Forum²⁰ and Financial Action Task Force reviews;
- 10a. *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;*
11. Notes with concern that the Global Forum has recently assessed the legal implementation of the Common Reporting Standard (CRS)²¹ *referred to as DAC2 in the EU*, and deplores the fact that 10 Member States are not fully compliant *according to the Global Forum peer review, stresses that Romania does not have the domestic legal framework in place; calls 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;*
12. *Notes that only Lithuania and Ireland appear to include a TIN, as recognised by the receiving country;* Notes *further* that the sharing of valid taxpayer identification numbers (TINs) is crucial for efficient EOI processes;

²⁰ Global Forum on Transparency and Exchange of Information for Tax Purposes.

²¹ <https://www.oecd-ilibrary.org/docserver/175eef4-en.pdf?expires=1614245801&id=id&accname=ocid194994&checksum=C36736F5E5628939095D507381D7D7C5>

- 12a. *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;*
13. Calls on the Commission *in close collaboration with Member States* to create a validation tool for TINs; *notes that such a validation tool would increase the reporting effectiveness of FIs significantly and as such decrease the compliance costs for these institutions; calls on the Commission to re-explore 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;
14. Regrets 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 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 3 months; suggests to grant the Commission the mandate to systematically assess the degree of cooperation from third countries;* 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, *meaning the EOIR standard is only partly implemented leading to significant practical effects; notes that 19 Member States are not fully compliant on ‘ownership and identity information’²²; notes that 6 Member States are not fully compliant on ‘accounting information’²³; notes that 5 Member States are not fully compliant on ‘banking information’²⁴; notes that 7 Member States are not fully compliant on ‘access to information’²⁵; notes that 3 Member States are not fully compliant on ‘rights and safeguards’²⁶; notes that 5 Member States are not fully compliant on ‘EOI mechanisms’²⁷; notes that 3 Member States are not fully compliant on ‘confidentiality’²⁸; notes that 3 Member States are not fully compliant on ‘rights and safeguards’²⁹; notes that 9 Member States are not fully compliant on ‘quality and timeliness of responses’³⁰; notes that in summary only 8 Member States no material deficiencies were identified³¹;* regrets the fact that material deficiencies have been identified in 18 Member States³²; *deeply regrets that*

²² Estonia, Austria, Hungary, Belgium, Luxembourg, Bulgaria, Croatia, Netherlands, Cyprus, Poland, Czechia, Portugal, Denmark, Romania, Slovakia, Greece, Germany, Malta and Spain.

²³ Croatia, Cyprus, Greece, Slovakia, Spain and Malta.

²⁴ Hungary, Malta, Netherlands, Denmark and Slovakia.

²⁵ Austria, Hungary, Belgium, Latvia, Czechia, Portugal and Slovakia.

²⁶ Hungary, Belgium and Luxembourg.

²⁷ Austria, Latvia, Cyprus, Czechia and Portugal.

²⁸ Belgium, Latvia and Hungary.

²⁹ Hungary, Latvia and Czechia.

³⁰ Italy, Malta, France, Luxembourg, Bulgaria; Portugal, Romania, Greece and Germany.

³¹ Estonia, Italy, Finland, Lithuania, France, Slovenia, Sweden and Ireland.

³² [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)

certain Member States score a low rating on particular issues such as ownership and identity information; calls on Member States to achieve a compliant rating at the next peer review; notes that the underperforming of Member States seriously undermines the EU's credibility in fighting tax evasion and avoidance internationally; calls the Commission to launch infringement procedures until all Member States are fully compliant;

15a. Welcomes the Commission's proposal in DAC7 to clarify the standard of "foreseeable relevance" which needs to be met 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;

15b. Welcomes that the Commission has made available various tools for Member States to develop and 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;

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 *although this information could be useful to increase the efficiency of criminal and other investigations*; 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;

16a. Deplores the weakening by the Council of 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, only five Member States sent one or more group requests in 2017; calls the Commission to prepare a standard group request form and include it in the appropriate implementing regulation³³;

Access to data and monitoring

17. *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 only 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;

18. 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 few Member States have set up and apply*

³³ 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;

procedures to audit information submitted by Financial Institutions under DAC2;

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 and make the DAC exchanges fully auditable and traceable from origin to use of the data, by including an identifier in every dataset; calls on the Commission to publish annually a summary of the information received by Member States, taking into account taxpayers rights and confidentially; 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 an anonymised manner, so as to take into account the taxpayers' right to confidentiality and in compliance with Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents;*
- 19a. *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 received country-by-country reports to the competent services of the Commission;*
20. *Stresses that the 2019 evaluation carried out by the Commission demonstrated the need for consistent monitoring of the effectiveness the DAC framework; 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 provided be disaggregated on a country-by-country basis; calls on the Commission to continue to properly monitor and evaluate the effectiveness of EOI, therefore request a new comprehensive evaluation by January 2023;*
- 20a. *Stresses that tax administrations should fully embrace the digital transformation and its potential to lead to a more efficient allocation of information and reduce compliance costs and unnecessary bureaucracy; emphasises that this needs to be accompanied by an increase of financial, human and IT resources for tax administrations;*

Consistency with other provisions

- 20b. *Acknowledges that DAC provisions are largely coherent with, the OECD CRS and have strong overlap but also important differences the US Foreign Account Tax Compliance Act (FATCA);*
21. *Deplores the lack of reciprocity under the Foreign Account Tax Compliance Act; observes that the United States is becoming a significant enabler of financial secrecy for non-US citizens; observes two main loopholes, only information from US assets is shared and no beneficial ownership information is being 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 in 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 reduced bureaucratic burdens; calls on the European Commission and the Member States to enter into negotiations for a UN Tax Convention;*

- 21a. Observes the possible frictions between the DAC framework and Regulations (EU) 2016/679 and (EU) 2018/1725; 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, namely, curbing tax fraud, tax avoidance and tax evasion, safeguarding tax revenues, and promoting fair taxation, in the Member States;**
- 21b. Support 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 specific provisions of Council Regulation (EU) No 904/2010;**

Conclusions

- 21c. Urges the Commission to come forward with a comprehensive revision of the DAC framework as soon as possible, based on the European Parliament's proposals; strongly invites the Commission and the Council to exchange views with the Parliament on the matter; regrets the repeated occurrence of Council decisions weakening the Commission's proposals to strengthen the DAC framework;**
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 1049/2001³⁴ 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.

³⁴ 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.