



17 July 2024

## **BusinessEurope's Response to the Call for Evidence for an Evaluation / Fitness Check on the Directive on Administrative Cooperation in the field of direct taxation (Directive 2011/16/EU)**

### **Introductory Comments**

BusinessEurope welcomes the Commission's initiative to evaluate the Directive on Administrative Cooperation in the field of taxation ("DAC").

Over the years, the DAC has introduced numerous tax transparency measures to align with the EU's global commitments on taxation. However, each minimum standard directive amending the DAC has resulted in varied implementations across Member States, imposing significant compliance and administrative burdens on businesses operating in multiple EU Member States. Despite the extensive data disclosures mandated by DAC measures for companies, **taxpayers lack transparency on the actual use of this data by tax authorities.**

The recent introduction of the OECD's Pillar II rules and the new EU public country-by-country reporting requirements, which share similar transparency objectives with the DAC, have created overlaps rendering some DAC measures redundant and ineffective. Therefore, **this evaluation should prioritise the elimination of DAC provisions that no longer serve a clear purpose.**

For any necessary DAC measures that remain, it is crucial to focus on simplifying processes without introducing any modifications to the criteria for reporting as that would increase complexity, costs and resource constraints for businesses. **Simplification should remain the primary goal.**

Given the sluggish economic growth in the EU, tax policy is an important tool to improve the bloc's competitiveness compared to other major regions, such as the United States and China. Tax policies should, therefore, align with and support the broader economic objectives of the EU to maintain competitiveness on the global stage.

In this context, we encourage and support the Commission to continue assessing the necessity and effectiveness of the remaining tax transparency and anti-tax avoidance measures at the EU level with the aim of removing unnecessary or ineffective measures. It is also essential to evaluate potential new tax proposals against these criteria. This will help develop a simpler, more efficient tax framework with greater certainty for taxpayers, increased trust in the tax system, and a more attractive environment for investments, thereby enhancing the EU's competitiveness.



## Specific Comments

We highlight areas where the DAC has posed significant compliance challenges, focusing particularly on DAC 4 (country-by-country reporting – CbCR) and DAC 6 (potentially aggressive cross-border tax planning arrangements), which have imposed significant costs and resource constraints on businesses.

### i. **Lack of Certainty and Transparency in Tax Authorities' Use of Tax Disclosures**

The DAC has led to the routine exchange of substantial volumes of CbCR reports and commercial transaction disclosures, regardless of a tax benefit motive, with tax authorities. However, businesses lack transparency regarding how tax authorities genuinely use the disclosed data and the resulting revenue implications.

For instance, in 2023, the German government reported that from 1 July 2020 to 31 March 2023, the German Federal Tax Office received 26,921 disclosures of cross-border tax arrangements. Of these, only 24 were identified as potentially tax aggressive arrangements warranting legal policy action.<sup>1</sup> This example raises questions on the effectiveness and proportionality of the DAC 6 rules in deterring aggressive tax practices, given the significant compliance resources required.

In most Member States, the manner in which tax authorities use the disclosed data is not publicly available, raising questions about the accountability of public actions.

Despite the increased exchange of data, businesses have not benefited from greater predictability in tax rules. In an effort to build trust with taxpayers, **tax authorities, with the Commission's oversight, should aim to offer clearer, more predictable rules and greater transparency in return for the extensive data exchange.**

### ii. **Fragmented implementation undermines effectiveness**

#### a. **CbCR Reports**

The processes for collecting and reporting CbCR data vary significantly across Member States, leading to complexities that undermine the rules' effectiveness. Issues include:

- Manual tracking & management: compliance with CbCR requirements often requires manual tracking and management. Some Member States demand specific IT solutions and access rights, often necessitating external advisors.

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<sup>1</sup> [Drucksache 20/6734 \(bundestag.de\)](https://www.bundestag.de/Drucksache/20/6734)



- Divergent domestic requirements: some Member States maintain their own domestic notification and reporting formats in addition to DAC 4 requirements, complicating the process. Streamlining these overlapping obligations would reduce redundancy.
- Challenges in automation: different deadlines, reporting formats, and system requirements across Member States hinder automation, increasing complexity and administrative burdens.

#### **b. DAC 6 disclosures**

DAC 6 has proven overly burdensome and costly. Retrospective evaluation requirements, from the Directive's agreement date to local implementation, have strained resources. To comply, taxpayers and intermediaries have established extensive due diligence processes to assess a wide range of transactions, including routine commercial ones that are not primarily motivated by tax considerations.

For instance, transfers of functions that result in a significant drop in earnings before interest and taxes (EBIT) for the transferring company often meet the conditions outlined in Hallmark E3, rendering these transactions reportable under DAC 6. Frequently, smaller entities are acquired by larger companies due to their intellectual property (IP). These acquiring companies typically centralise IP at their headquarters. Consequently, the acquisition of smaller companies outside the headquarters' location results in a significant EBIT drop for the acquired company. Despite being a transaction driven by commercial rather than tax purposes, such legal entity structuring falls under the scope of DAC 6 and requires reporting.

Despite alignment of national laws with the Directive, broad definitions of 'intermediary' and 'arrangement' have given Member States wide discretion. Some have added extra requirements beyond the Directive's minimum standard, resulting in varied obligations such as:

- Documentation requirements (e.g., XML files and web forms, sometimes only in the local language);
- Disclosure deadlines;
- Interpretations of the hallmarks and the main benefit test;
- Multiple reporting of the same transaction by various intermediaries;
- Differences in the coverage of legal privilege and professional secrecy which can shift the reporting burden on taxpayers;
- Penalties for rule violations ranging from €3,000 to €4.7 million despite the Directive mandating penalties to be effective, proportionate and dissuasive.



## Recommendations

### i. DAC 6

The OECD's Pillar II rules, as adopted in the EU, restrict multinational companies' ability to benefit from low-tax regimes and engage in aggressive tax planning practices, reducing the need for DAC 6. **For companies in scope of Pillar II, we recommend waiving the DAC 6 rules.**

In the absence of waiving the DAC 6 rules, **no modifications other than limiting the scope of obligations should be made to the existing rules, as this would counteract simplification efforts and increase compliance costs for taxpayers to adapt their reporting systems and internal compliance processes.**

Rather, the review should focus on simplifying the process (streamlining documentation and reporting procedures) based on best practices. In particular, XML reporting should be interoperable with domestic systems, thereby accepted as an acceptable format in all Member States. Additionally, penalties should be fair and proportional.

### ii. DAC 4

The new EU Directive on public CbCR, applicable from 22 June 2024, shares similar aims with DAC 4, but differs on certain data points. Nevertheless, CbCR reporting is a welcome relief for taxpayers preparing their Pillar II compliance, meeting transitional safe harbour rules. **Thus, we recommend retaining DAC 4 rules alongside these safe harbour rules.**

As with DAC 6, reviews should focus on simplifying processes (streamlining documentation and reporting obligations) to reduce complexity for taxpayers.

### iii. Enhancing Tax Compliance and Efficiency through Digital Transformation

Recent EU tax reporting requirements have compelled businesses to adopt more sophisticated data management practices. Unlike traditional methods focused on compiling financial transactions and outcomes, these new requirements necessitate automated, precise data collection to meet heightened compliance and reporting obligations.

Businesses are increasingly leveraging automated processes to gather data in machine-readable formats, to address resource constraints and enhancing operational efficiency.



As a result, tax professionals now require a hybrid skill set of legal, tax and IT expertise to understand organisational dynamics comprehensively and foster effective cross-departmental collaboration for compliance.

Despite significant advancements in combating tax evasion and fraud over the past two decades, there remains underutilisation and inefficiencies in analysing the vast data reported to tax authorities. Moreover, pending EU policy proposals, such as ATAD III / Unshell Directive and the anticipated DAC 9 are expected to introduce additional complexities and fragmentation, posing adaptation challenges for both businesses and tax authorities.

Harmonised tax rules supported by standard EU reporting templates in an increasingly digital environment are crucial for enabling automated processes necessary to handle extensive transaction volumes. This will need to be supported by a stable tax policy framework that avoids introducing overlapping requirements.

In addition, fostering trust between taxpayers and tax authorities is a priority to establish a more efficient tax system. Under the Commission's oversight, tax authorities need to modernise and prioritise the efficient interoperability of data, ensuring their systems can communicate effectively with other tax authorities and with businesses. Regular EU level evaluations of data collection effectiveness are essential to ensure compliance burdens are minimised while serving intended purposes.

The 'Nordic Smart Government' project exemplifies how real-time company data can create value for SMEs. Additionally, the OECD's 'Tax Administration 3.0' report envisions a digital transformation for tax authorities, leading to seamless taxation processes over time. These initiatives can guide tax authorities, under the Commission's oversight, in achieving the goals set out in the tax directives while maintaining legal certainty.

#### **iv. A Reflection on the Need to Preserve Information Security and the EU's Economic Sovereignty**

The extensive data currently reported to Member States' tax authorities through the DACs, as well as through forthcoming legislation, such as e-invoicing and digital reporting requirements proposed in the VAT in the Digital Age (ViDA) package, alongside the exchange of information, will enable the mapping of EU-wide commercial flows. This development raises fundamental questions that must be addressed regarding confidentiality, business secrecy, data security, the use of data for purposes other than taxation, cross-referencing invoicing data with other economic data, economic intelligence scrutiny, cyber-security, economic competition and the management of economic policies.

For reasons of security and economic sovereignty, we advocate for an EU-level reflection on the use, security and storage of data collected from EU businesses. It is also crucial



that a monitoring process is established at the EU level to ensure the proper functioning of the rules and the security of all the data collected from businesses within in the EU.

### **Concluding remarks**

We trust these comments provide valuable context as the Commission measures the outcomes and effects of the DAC measures.

Our recommendations to enhance the effectiveness of the tax framework require improvements to data handling by tax authorities, proactive continuous guidance to tax authorities from the Commission, and balanced policy proposals that support the growth and innovation of European businesses.

BusinessEurope remains available to engage in dialogue with the European Commission to ensure this evaluation, and future ones, result in a simpler and more competitive EU tax framework.