MASTER THESIS | MASTER'S THESIS

Titel | Title

„The EU Directive on Administrative Cooperation as a Tool Against Tax Avoidance Schemes” (With a Focus on the Automatic Exchange of Non-Financial Information in the EU)

verfasst von | submitted by

Elena Croitoru

angestrebter akademischer Grad | in partial fulfilment of the requirements for the degree of

Master of Laws (LL.M.)

Wien | Vienna, 2025

Studienkennzahl lt. Studienblatt | Degree programme code as it appears on the student record sheet:	UA 999 082
Universitätslehrgang lt. Studienblatt | Postgraduate programme as it appears on the student record sheet:	Europäisches und Internationales Wirtschaftsrecht [Vollzeit Englisch]
Betreut von | Supervisor:	Dr. Dimitar Hristov

Zusammenfassung

Diese Masterarbeit untersucht die Wirksamkeit der EU-Richtlinie über die Verwaltungszusammenarbeit im Bereich der Besteuerung (DAC) als zentrales Rechtsinstrument im Kampf gegen Steuervermeidung, mit besonderem Fokus auf den automatischen Austausch nichtfinanzieller Informationen. Steuervermeidung, obwohl rechtlich in ihrer Natur, untergräbt dennoch die Fairness und Effizienz der nationalen Steuersysteme sowie das Vertrauen der Öffentlichkeit in die Steuerpolitik. Aufgrund des Phänomens der Globalisierung und Digitalisierung und der Mobilität der Steuerpflichtigen ist es für ein Land schwieriger geworden, Steuervermeidungs und Steuerumgehungspraktiken einseitig zu bekämpfen.

Diese Arbeit untersucht in Kapitel 1, inwieweit Steuervermeidung zu einem globalen Problem geworden ist und hebt die Bedeutung der Verwaltungszusammenarbeit zur Bekämpfung dieser Praktiken hervor. Außerdem werden die Unterschiede zwischen Steuervermeidung und Steuerhinterziehung diskutiert. Kapitel 2 bewertet die rechtliche Entwicklung der DAC von DAC1 bis DAC8 und deren Bestimmungen, mit besonderem Augenmerk auf den Mechanismus des automatischen Informationsaustauschs. Kapitel 3 behandelt die praktischen Herausforderungen bei der Umsetzung der DAC-Bestimmungen, insbesondere DAC1, DAC3, DAC5, DAC6 und DAC7, die sich auf nichtfinanzielle Informationen beziehen, sowie die generelle Wirksamkeit der DAC. Darüber hinaus wird die praktische Umsetzung von DAC6 durch einige Mitgliedstaaten (Österreich, Deutschland, Luxemburg, Finnland usw.) reflektiert.

Die Arbeit kommt in Kapitel 4 zu dem Schluss, dass sich die EU trotz der steuerlichen Autonomie der Mitgliedstaaten und der Tatsache, dass die Umsetzung in der EU weiterhin uneinheitlich und inkohärent ist, dem Kampf gegen Steuervermeidungspraktiken verpflichtet fühlt. Dennoch leistet die DAC einen bedeutenden Beitrag zur Bekämpfung grenzüberschreitender Steuervermeidung, indem sie die Steuereinnahmen sichert, die Integrität des EU-Binnenmarkts stärkt und auf eine größere Steuergerechtigkeit abzielt. Es besteht kein Zweifel, dass in naher Zukunft das volle Potenzial realisiert werden kann, wenn sich die Mitgliedstaaten verpflichten, die DAC einheitlich umzusetzen und rechtliche Schlupflöcher in ihrem Rahmen geschlossen werden. Abschließend werden Empfehlungen gegeben, um die rechtliche und technische Umsetzung zu verstärken und

den Rahmen an zukünftige Herausforderungen im digitalen und internationalen Steuerumfeld anzupassen.

Table of Contents

Introduction

In recent decades, tax avoidance has become one of the biggest challenges not only in the European Union but also globally. Even if it is legal in nature, still, tax avoidance by exploiting loopholes, mismatches, and weaknesses in the domestic and international tax rules, allows individuals and multinational enterprises (MNEs) to significantly reduce their tax liabilities. Consequently, this harms the public trust, distorts competition and weakens the integrity of national systems.[1]

Globalization and digitalization have made it easier for people to work, invest and operate across the borders, but at the same time, it has become harder for the tax authorities to track foreign income, especially when there is lack of cooperation between countries and no transparency. If the national authorities are able to control domestic taxes via tools like withholding taxes or national reporting, then the foreign income often is undeclared.[2]

The 2008 financial crisis and some well-known scandals such as Panama Papers, Lux Leaks whistleblowers[3], acted as a catalyst by pushing the governments more toward transparency. Therefore, the EU reacted to this by strengthening tax cooperation among Member States.[4] Since EU-level tax law cannot be absolutely harmonized, and each Member State maintains its competence on setting its own national tax law, it happens that some countries offer very low taxes to attract businesses and investors, resulting in unfair tax competition and huge lost in revenue up to 68.2 billion EUR for other Member States.[5]

The EU, following global efforts like OECD's BEPS plan, in 2011 adopted the Directive on Administrative Cooperation (DAC), which allows EU Member States to exchange tax information

---

[1]OECD, Base Erosion and Profit shifting (BEPS), https://www.oecd.org/en/topics/policy-issues/base-erosion-and-profit-shifting-beps.html Accessed 11 April 2025

[2]European Commission, Directive on Administrative Co-operation (DAC), https://taxation-customs.ec.europa.eu/taxation/tax-transparency-cooperation/administrative-co-operation-and-mutual-assistance/directive-administrative-cooperation-dac_en, Accessed 11 April 2025

[3] Patrick Wanhoudt, *LuxLeaks: The Big Deal Behind the Reveal* (2024) https://luxsb.lu/wp-content/uploads/2024/10/LuxLeaks-the-Big-Deal-Behind-the-Reveal.pdf, Accessed 11 April 2025

[4] European Parliamentary Research Service (2022), Rules to prevent the misuse of shell entities for tax purposes. https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733648/EPRS_BRI%282022%29733648_EN.pdf Accessed 11 April 2025

[5]European Court of Auditors, Combatting harmful tax regimes and corporate tax avoidance, p.5-12 https://www.eca.europa.eu/ECAPublications/SR-2024-27/SR-2024-27_EN.pdf Accessed 17 April 2025

automatically, on request and spontaneously. Since 2013, the DAC has been amended several times from DAC1 to DAC8 that is the latest one, (and DAC9 in progress). All these amendments expanded the scope by covering natural persons and legal entities, with the focus on direct taxes.[6]

This thesis explores the DAC's legal and practical effectiveness as the main tool against tax avoidance schemes with the main focus on the automatic exchange of non-financial information. It examines how DAC was implemented across Member States and what challenges were encountered, also considers how administrative cooperation supports fair taxation across the internal market and highlights the importance of transparency and cooperation.

Research Aim

This study intends to critically analyze the effectiveness of the EU Directive on Administrative Cooperation (DAC) with a specific focus on the automatic exchange of non-financial information. DAC is considered one of the most important legal and practical tools in the fight against tax avoidance schemes.

Research Objectives

Pursuing the goal, this research will strive for the following key objectives:

1. To analyze the legal framework and historical development of the DAC, bringing in light its evolution through successive amendments to which it was subjected (DAC1 – DAC8)

2. To assess the role and procedure of the automatic exchange of non-financial information under selected DAC amendments, in detecting and preventing tax avoidance strategies.

3. To evaluate the practical effectiveness and challenges in implementation of the DAC mechanisms, across the Member States.

4. To establish and study the interaction between the DAC and other international instruments such as the OECD's BEPS framework and the Common Reporting Standard.

---

[6] European Commission, Administrative Co-operation and Mutual assistance, https://taxation-customs.ec.europa.eu/taxation/tax-transparency-cooperation/administrative-co-operation-and-mutual-assistance_en Accessed 27 April 2025

5. To explore the legal and political implications of expanding administrative cooperation, in particular concerns of taxpayer's rights, data protection and legal certainty.

6. To offer recommendations for improving the DAC framework and ensuring its alignment with emerging tax risks and technological developments.

Research Questions

1. How does the automatic exchange of non-financial information help to reduce tax avoidance?

2. What challenges exist in its implementation across the EU Member States ?

3. How can the exchange of non-financial data be improved to strengthen tax transparency?

Methodology

The thesis relies on qualitative legal analysis combining doctrinal and policy-based approaches. The methods are listed below:

- Legal analysis of primary and secondary EU law, including DAC Directive and its amendments, Commission communications and articles, also some relevant cases form the Court of Justice of the European Union (CJEU).

- Review of academic literature such as legal commentaries, policy papers, and reports by institutions like the European Commission, European Parliament, OECD and others, that focus on tax justice.

- Comparative analysis of Member States 'implementation practices, using available evaluations, national reports to highlight the divergences and common challenges.

- Critical evaluation of the directive's impact, using selected example of Member States case and theoretical framework on tax avoidance, administrative cooperation and regulatory effectiveness.

Chapter 1: Understanding Tax Avoidance and Administrative Cooperation

1.1 Background: Tax Avoidance as a Global Challenge

The global financial crisis from 2008 and some notorious tax scandals such as Panama Papers, LuxLeaks[7] marked a decisive moment in the global economy and public awareness. The continuous process of globalization has brought and still brings lots of benefits in the world like the right of the people and to move and work freely within the EU etc., but the governments and people have realized that this stimulates tax avoidance and evasion, resulting in a strong unfair tax reality.[8]

As Benjamin Franklin famously observed, „in this world nothing is certain except death and taxes"[9], while this assertion reflects a cruel truth, still, it appears idealistic in the light of the real modern economy, where everything evolves at a fast pace. For sure some taxpayers may have not achieved eternal life, nobody did, but absolutely they became more skillful at avoiding the taxman.

The famous scandal from April 2016, known as the Panama Papers, revealed how a single law firm, Mossack Fonseca in Panama helped hundreds of thousands of clients worldwide, such as celebrities, business elites and politicians to hide their money in secret offshore companies. This exposure shocked the entire world. The phenomenon of tax avoidance and tax evasion was not new, but alarming was the dimension, potential and simplicity with which these schemes operated, mostly legally. Around $7.6 trillion of financial wealth was hidden in tax havens. But it was not only about infringing the law but was also about the unfairness of how rich people and large corporations exploit legal loopholes to escape the law, by not paying taxes. And this is the real problem for the governments, and possesses an enormous impact on the economy, that results in a huge loss in revenue by the governments, around $190 billion a year. At the end, the tax burden

---

[7] Patrick Wanhoudt (n 3): The Big Deal Behind the Reveal, LuxLeaks was an investigation in 2004 that disclosed how over 300 multinational corporations secured tax rulings from the authorities of Luxembourg, enabling to shift profits and reduce their tax liability across EU. The important of this case reflects the disclosed schemes that raised serious ethical concerns about tax fairness and corporate responsibility, proving the consequence of legal tax planning on public trust and countries revenue … this event triggered actions at the international and EU-level to rebuild tax fairness, public trust and to reform tax transparency and prevent all kind of tax avoidance schemes via creating a regulatory framework and increasing the standards for corporate tax governance.

[8] OECD,Video: *Building fairer societies through tax co-operation*, https://www.oecd.org/en/topics/base-erosion-and-profit-shifting-beps.html Accessed 4 May 2025

[9] Adam Smith Institute *'Death and Taxes'. https://www.adamsmith.org/blog/death-and-taxes Accessed 4 May 2025*

falls on the ordinary people's shoulders. Only in the EU alone, tax avoidance and evasion could be costing 1 trillion EUR annually.[10]

Therefore, the lack of transparency and bank secrecy helped wealthy individuals to hide their assets offshore. These loopholes in the international tax rules, artificially, but still legally, allowed multinationals to shift their profits in the tax heavens. Tax evasion and tax avoidance in its broadened spectrum, has been a rooted systematic problem. The 2008 financial crisis emphasized and brought into the light how deeply broken the global financial system had become. Tax heavens and shady banking practices were guilty in a big part for the crisis. From the government's side, decisions have been made on cutting public spendings. Consequently, the middle and lower class was inequitably hurt. As a consequence, the public became unhappy, and they began to manifest their concern, demanding changes, and searching for an answer to the question: why should average citizens pay more while the richest find ways to pay almost nothing?[11]

A crucial step had to be taken by the governments because the non-cooperation and unwillingness of the offshore companies to provide information on offshore accounts to foreign authorities have always been a big problem. Thus, the EU, conflicting its own fiscal pressure and fairness concerns, stepped up and joined the global effort to fight against tax avoidance and evasion and to deter all the schemes. So, the EU opened the road on Automatic exchange of Information AEOI with the Savings Directive. But the leading role in the fight against tax avoidance and evasion was taken by the USA. The US government introduced Foreign Account Tax Compliance Act (hereinafter "FATCA") in 2010[12]. This Act represented a big success by forcing foreign financial institutions to provide information about accounts possessed by the US citizens. Indeed, since bank secrecy and lack of transparency was on the table and gave the offshore companies the option not to

---

[10]Mattias Vermeiren and Wouter Lips, 'The Panama Papers and the International Battle Against Tax Heavens: Lessons for the EU'(Heinrich-Böll-Stiftung, 11 April 2016) https://www.boell.de/en/2016/04/11/panama-papers-and-international-battle-against-tax-havens-lessons-eu Accessed 5 May 2025

[11] Ibid.

[12] Ibid. FATCA was a response to the UBS offshore banking scandal, which dropped the curtain of many offshore banks account held by the US citizens or by the foreign entities in Switzerland, in which US citizens are involved and have interest. FATCA is a piece of art in the tax legal system because it unilaterally demands compliance of financial institutions, also force US citizens to report information on certain foreign accounts and offshore assets.

comply, the Act was the solution, it covered this problem by introducing an extreme withholding tax of 30 % on the US-based financial activity.[13]

Further, the OECD being supported by the G20 took the US example and created the Common Reporting Standard (hereinafter “CRS”). CRS represents a global framework for the automatic exchange of tax information (hereinafter “AEOI”), this ensures that the tax authorities receive on a regular basis, in detail, information about the foreign accounts. It is an opposite system to the older one, where the information was shared only by request[14]. More than that, the countries cooperated internationally and worked together to build robust international standards, to organize tax cooperation and to restore the trust in the tax system. In this way the EU had to update its own tax laws in matters of cooperation. So, the European Union adopted the Directive on Administrative Cooperation (hereinafter “DAC”) in 2011 and repealing the Directive 77/799/EEC,[15] which in 2014 was amended to enforce the AEOI within the EU, meaning that EU Member States would automatically share information about financial accounts.[16]

One interesting aspect about the success of AEOI in the EU was partially due to the pressure under FATCA, meaning that EU Member States had to share information with the USA but also, the USA was obligated to do the same within the Union. Even after AEOI was established, challenges didn’t hesitate to appear from the US side. The US has not fully committed to the EU to sharing information in return, because FATCA represents a unilateral instrument, not like DAC. So, concerns were raised that the USA could become the biggest tax heaven in the world.[17]

---

[13] Ibid (n 10). This penalty of 30% tax was a game changer, even secretive tax heaven had to comply. FATCA legislation clearly destroyed the bank privacy and secrecy. The Foreign Financial Institutions didn’t have another choice but to violate domestic laws and provide the requested information. Because facing 30% withholding taxes was worse. US Dollar was a dominant financial currency. Therefore, the international banks were dependent on dollar financial system.

[14] Ibid.

[15] European Commission (n 2).

[16] OECD (n 1), The ex-prime minister of the UK, Gordon Brown mentioned that: „ The people were extremely concerned about the loss of revenue during the financial crisis. The biggest worry of G20 was the issue of tax. A compromise between G20 and OECD was needed. G20 asked the OECD to act and so started the 10 years of hard work on achieving greater transparency.“ Successfully, the Global Forum on Transparency and exchange of Information for Tax Purposes was established. In the process of implementing the global tax transparency standards, 84 million overseas bank accounts have been exposed, worth 10 trillion euros, with more than 100 billion euros in additional revenues identified so far. Thus, the system of multilateral exchange is a game changer.

[17] Vermeiren and Lips (n 10). Within Europe, Austria and Luxembourg expressed a long resistance to transparency, trying to protect their banking sector.

With tax evasion and avoidance becoming harder in the EU. The EU was in the position to use its economic power and push back against the jurisdictions that refused to cooperate, exactly how the US did with FATCA. But, in the EU it is extremely difficult to reach unanimity.[18]

Tackling tax avoidance, evasion and fraud are on the tops of EU and global level agendas. But at the EU level, reaching any decision in the tax field is extremely difficult because the EU has limited competence in taxation. Therefore, adopting tax legislation within the EU requires unanimity from the Member States.[19]

As it can be observed, international cooperation in the fight against all types of tax avoidance schemes is crucial. Administrative cooperation can be victorious only if the Member States commit reciprocally to exchange information.

1.2 Defining Tax Avoidance and tax evasion and the Role of Administrative Cooperation

1.2.1 The role of administrative cooperation

The European Union's economies are challenged by the major global shifts such as demographic change, globalization and digitalization, not forgetting the effect of climate change, the post-Covid recovery and the consequences of Russia's invasion of Ukraine. All these issues affect the durability of the tax systems. Thus, made it increasingly necessary for the EU to take actions in adapting with the future economic developments.[20]

One crucial responsibility that lies on the Member states is to fight and combat tax avoidance schemes. The only way to do so, when the problem crosses the border of one state is cooperation within the EU via the rules on tax matter that has been accepted at the EU level and in this way,

[18] Vermeiren and Lips(n 10).
[19] European Parliament , General tax policy, https://www.europarl.europa.eu/factsheets/en/sheet/92/general-tax-policy Accessed 6 May 2025. The European Commission submitted proposals for a more to qualified majority voting in some specific tax areas. These proposals ended up being rejected by the Member States. So, the power to decide on taxes is on the Member States hands. Each state is free to choose its tax system it deems most appropriate.
[20] European Council, How EU tax policy works, https://www.consilium.europa.eu/en/policies/eu-tax-policy/ Accessed 20 June.2025

the information exchanged between the Member States, will help to manage cross-border issues, and the functioning of the EU single market can be ensured. [21]

At the first glance it is hard to understand the real scale of the problem but, in reality, tax fraud and tax evasion compromises the functioning of democratic societies, manipulates economic decision-making and more than that, diminishes the trust between citizens and governments. As a result, on a yearly basis, billions of euros are lost when companies, wealthy individuals and other taxpayers fail to fulfill their tax contribution. All these losses not only cut the resources available for public sector services, such as the health services, educational institutions and infrastructure, but also destabilizes economic fairness and stability across the EU.[22]

Considering the above, Member States must combat these issues together via cooperation to maintain public trust, to ensure the functioning of the single market and to strengthen economic stability.[23]

An important aspect to mention is that at the EU level, the Council is the sole tax legislator as it is set out in the EU Treaties. But the EU cannot and does not impose taxes on citizens or companies. So, the amount of taxes that Europeans pay is determined solely by their own national governments.[24]

Then why is an EU tax policy needed if the European Union has no responsibility in imposing taxes ?! This is one of the questions which the European Council answered, stating that: to maintain and ensure that tax rules and policies are compatible with the functioning of the EU single market, the European Union involvement is necessary. Taxes are extremely important in an economic society; they influence the prices of goods and services and the behavior of investors and

[21] European Council, Combatting tax avoidance in the EU, https://www.consilium.europa.eu/en/policies/combatting-tax-avoidance-in-the-eu/ Accessed 20 June 2025

[22] European Council (n 20). Public revenues are the main source for financing essential public functions. Due to these resources, countries can take decisions to finance projects that both the economy and society benefit. Around 90% of the public revenue comes from taxes. This underscores the importance of ensuring that tax systems within the MS are capable to generate the necessary money. In case the revenue is not sufficient, the country may have to borrow from another state, and this could lead to future debt obligations.

[23] Ibid.

[24] Ibid. special legislative procedure – the legislation is adopted through unanimous votes in the Council. No vote „against" may be cast if the legislation in the area is to be adopted by the Council. The legislative process begins with the European Commission's proposal for new legislation or modification.

consumers. So, having robust tax policy, the productivity can be stimulated and trigger investment and innovation.[25]

1.2.2 Tax avoidance vs. Tax Evasion

In order to combat tax avoidance schemes and tax fraud, it is very important to understand when exactly tax avoidance occurs and how it differs from tax evasion.

The phenomenon of tax evasion (or tax fraud) and tax avoidance happens when a taxpayer or a legal entity, with intent files an incomplete or incorrect tax return to or hides relevant information by not declaring everything to the national tax authorities, in order to avoid paying taxes. These kinds of activities can take many forms, each with different characteristics and consequences.[26]

On the first hand, **tax evasion** or **tax fraud** are illegal activities intended to avoid paying taxes altogether. This may include not declaring all the profits, under-reporting income or taking part in complex schemes or, for example, to avoid paying value-added tax (VAT). Additionally, tax evasion can also involve actions of falsifying records or using other deceitful methods to escape tax obligations.[27]

Moreover, tax evasion not only operates as an illegal conduct, involving willful misrepresentation, concealment or falsification of information to avoid taxes, as mentioned in the previous paragraph but also manifests a clear breach of law, because it operates outside both the spirit and the letter of tax legislation. And all these activities are qualified as criminal acts that can be punished with fines, penalties and even imprisonment.[28]

On the other hand, **tax avoidance** refers to a variety of actions from the taxpayer's side, such as arrangements or strategies that aim to reduce or eliminate tax liability, while technically staying within the bounds of law. Even if it is often wrongly classified as tax evasion, tax avoidance actually operates in a gray zone. This means that, tax avoidance by its nature is lawful but questionable from an ethical or public-policy perspective, because it undermines public trust and

---

[25] European Council (n 20).
[26] European Council (n 21).
[27] Ibid (n 21).
[28] ITAXA blog, International taxation in simple words, https://www.itaxa.it/blog/en/dizionario/tax-avoidance/#:~:text=Tax%20avoidance%20refers%20to%20a,the%20bounds%20of%20the%20law. Accessed 20 June 2025

shifts the tax burden on the shoulders of those who cannot think or afford such sophisticated planning. Whereas others consider this as a legitimate exercise of individuals or corporate opportunity to navigate the tax code, in a way that legally maintains wealth. Tax avoidance schemes, generally exploits legal loopholes or financial transactions structured in an artificially manner to achieve outcomes allowed by the law, but contrary to the ethical spirit.[29]

Especially, **aggressive tax planning** which represents a particular type of international tax avoidance, that exploits cross-border tax disparities to the advantage of taxpayers and might shift profits out of the country of value creation, often towards low-tax jurisdictions, also achieving a non-intended double non-taxation.[30] Aggressive tax planning happens in situations when large enterprises and wealthy individuals exploit the limits of the law to diminish as much as possible the amount of taxes paid. Technically they are considered legal, but again, ethically are questionable because they have an impact on loss of tax revenue.[31]

Tax heavens, also called "offshore" jurisdictions, play a relevant role in the tax avoidance phenomenon. These are countries or jurisdictions that offer favorable tax conditions, for example very low or even zero tax rates to foreign companies and individuals. Moreover, tax heavens often ensure secrecy by not revealing the identities of individuals or to the real owners of companies registered there. Due to tax heavens, money could be easily stored in these jurisdictions, and this could lead to huge losses in tax revenues for other countries.[32]

Opinions are separated, regarding the legality and ethics of tax avoidance. Politically, governments often attempt to restrict tax avoidance by adopting broad rules, in some jurisdictions known as General Anti-Avoidance Rules (GAAR). These rules deal with artificial transactions and try to differentiate aggressive planning from legitimate tax planning, but the line between these two categories can be vague and legally ambiguous.[33]

---

[29] Ibid (n 28).
[30] Pasquale Pistone and Kristof Boel in Lang et al (Eds), *Introduction to European Tax Law on Direct Taxation* (8th Ed. Linde 2024) p 43 para 124.
[31] European Council (n 21).
[32] ITAXA (n 28).
[33] Ibid.

As stated above, perspectives are various regarding the legality of tax avoidance. Some governments may consider some aggressive tax avoidance strategies as legitimate because they do not directly violate any legal provisions. While other countries and authorities consider these actions approaching a critical point to tax evasion. On the contrary, the public sentiment often reacts absolutely against large corporations or wealthy individuals who diminish their tax liability because they also benefit from public services, especially infrastructure. And from the judicial perspective, courts in different jurisdictions manifest a different tolerance toward tax avoidance.[34]

Drawing a conclusion from the above mentioned, it seems necessary to have a common definition of "tax avoidance", so uncertainties and different interpretation could be avoided.

1.3 Common Tax Avoidance Strategies

Within the EU, the CJEU treats tax avoidance as an autonomous concept under EU law. This means that the Member States, when assessing an abuse, cannot apply their national definitions in cross-border situations. The Court defines abuse as being a creation of an artificial arrangement that does not reflect the reality, and its aim is to gain an unintended tax advantage. Thus, abuse under EU law must meet two cumulative elements: objective and subjective.[35]

The objective element of abuse is about verifying if the tax arrangement reflects real-world transactions or is only strategically designed only to gain tax benefits.[36] And the subjective element focuses on the taxpayer's intent, whether the structure created by the taxpayer was primarily to obtain an unintended tax advantage.[37]

Nowadays, the methods and the strategies used to avoid paying taxes are widely diverse. They reflect the complexity of modern finance and tax codes. Some of the most frequent tactics are:[38]

---

[34] Ibid (n 28).
[35] Ivan Lazarov in Lang et al (eds), *Introduction to European Tax Law on Direct Taxation* (8th Ed. Linde 2024) p 87, para 240.
[36] Ibid, para 241. In order to satisfy the objective test, the transaction must be economically artificial, and the following can indicate this: there is no actual economic activity or any marginal activity; there is a lack of substance, for example no staff or premises; the transactions are only paper-based or fictious; and the non-arm's length pricing that suggests manipulation.
[37] Ibid, para 242. The Court looks if this benefit was foreseen and an intended outcome of the action taken by the taxpayer. In general, this test focuses on the purpose, not just the form and content.
[38] ITAXA (n 28).

1. Offshore Jurisdictions. As mentioned previously, by shifting assets or income to such jurisdictions where the tax rates are lower or even zero, the taxpayer benefits from a minimized tax liability. Indeed, may not always be illegal but in case such action serves no commercial purpose other than to reduce tax, it becomes suspect.

2. Income Conversion. This represents an often-occurring strategy, when the income is converted that originally would be subject to a higher rate into a less heavily taxed category, such as capital gains. So, the taxpayer exploits the preferential treatment and reduces their effective taxation rate.

3. Income Splitting or „Income Spreading", represents a method when the taxpayer disperses the income among family members or related entities which are subject to lower marginal tax rate.

4. Splitting Business Activities. This could happen in some VAT systems, especially when a business earns more than a certain amount, it must register for VAT. In order to avoid this, some businesses strategically split into smaller companies, each earning below the registration threshold. In practice, authorities could target such artificial separations and investigate if they are or not truly independent.

5. Lease and Lease-Back Arrangements. This tactic happens in situations when some businesses lease deals to artificially create extra tax deductions by renting and then renting back, often in different countries.

6. Hybrid Instruments. Are considered tactics used by sophisticated entities, making use of financial instruments that look like debt and shares, which are treated differently in many countries, and this approach can lead to a double non-taxation, where no country taxes the income at all.

As a result, governments from all over the world try to combat tax avoidance via policy tools and legal instruments such as: General Anti-Avoidance Rules (GAAR); Specific Anti-Avoidance

Rules (SAAR); Disclosure requirements; Exchange of Information and Public Shaming and Transparency Measures.[39]

At the EU level, some Member States agreed on rules to increase transparency on tax matters, to promote information sharing, to adopt legislation, to close loopholes and enforce tax compliance across borders. Some of the main activities as legal instruments against tax avoidance schemes that perform right now within the EU are the: Directive on administrative cooperation (DAC), Cooperation on VAT, EU list of non-cooperative jurisdictions for tax purposes, Code of Conduct Group, Anti-tax avoidance measures.[40]

This thesis focuses on the DAC, as a legal instrument in the EU against tax avoidance schemes, with a focus on the automatic exchange of non-financial information (see Chapter III).

---

[39] ITAXA (n 28).
[40] European Council, (n 21).

Chapter 2: Development of the EU Directive on Administrative Cooperation (DAC)

2.1. Background and History of the DAC

The field of direct taxation is not directly governed by the EU rules[41] and the EU does not have much power over the taxation of income and companies, because originally when the Treaty of Rome was signed, these taxes were not considered crucial for the EU's economic market. This has not been changed even under the TFEU because the Member States do not want to hand over power to the EU in this area, since direct taxes provide a lot of revenue and the national budget and politics depend on them. As a result, the main control over the direct taxes has remained mostly with the Member States. Still, the EU has influenced the area of direct taxation in many ways.[42] Under some directives and cases of the CJEU are found harmonized standards for taxation of companies and private individuals. Also, actions have been taken to prevent tax avoidance and evasion.[43]

The EU can only adopt laws in areas where the Member States have agreed to give it power, this reflects the so-called, principle of conferral". The competences of the European Union are divided into three categories: exclusive competence (where only the EU can act), shared (both the EU and Member States can act) and supporting competences (only allows the EU to support, coordinate or complement the actions of Member States). Because direct taxation affects the internal market, it falls under the "shared competence" category, which means that the EU can act but only if the Member States do not act first. Furthermore, the EU must follow two main rules when exercising its competences, according to Article 5 TEU: proportionality and subsidiarity. According to these principles, the EU should act only when and if the Member States cannot sufficiently achieve their objectives, and that the EU's actions must not go further than necessary to achieve the EU objectives.[44]

---

[41] European Parliament, Direct taxation: personal and company taxation, https://www.europarl.europa.eu/factsheets/en/sheet/80/direct-taxation-personal-and-company-taxation Accessed 24 June 2025

[42] Severin Schragl in Lang et al (eds), *Introduction to European Tax Law on Direct Taxation* (8th Ed. Linde 2024) p 10 para 24.

[43] Ibid (n 21).

[44] Ibid (n 42) p 10 para 25-26.

One important consideration regarding the legal basis for tax harmonization is that tax rules in the EU are created by making use of special legal rules. The article 113 TFEU offers to the Council powers for indirect taxes (like TVA etc.), acting unanimously in accordance with the special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, to adopt provisions for the harmonization of the EU's rules. On the other hand, for direct taxes there is no direct legal basis, but **Article 115 TFEU** even if it does not refer to the direct taxation *expressis verbis,* it constitutes the only legal provision and basis for harmonizing the laws on direct taxation and legal framework that affects the internal market. Still, it represents a big challenge to push toward European tax harmonization because the Council only based on **unanimity** may adopt laws, directives, regulations and provisions that affect the internal market; therefore, it is difficult to satisfy all the Member States when all have differences in their tax policies.[45]

In the event that not all EU Member States agree on a tax rule, a smaller group of at least nine countries can move forward together using the so-called "enhanced cooperation" which constitutes a procedure that can be used to fully harmonize an area covered by the EU Treaties but not falling within the EU's exclusive competence. The rest of Member States that refused to join are not involved in the procedure and do not have to harmonize their laws. Even so, the enhanced cooperation procedure hasn't been used much in tax law, yet.[46]

Owing to the limited competences, so far, positive integration has not played a dominant role, only a few directives on direct taxes have been passed using Article 115 TFEU and most of the changes in the EU tax law have come through negative integration (like CJEU rulings that stop Member States from using discriminatory or restrictive tax laws), not through actual EU legislation.[47]

---

[45] Ibid, p 11 para 27.
[46] Ibid (n 42), p 11 para 28.
[47] Severin Schragl (n 42), p 11 para 29.

The first Directive on mutual assistance on determining the direct taxes started in 1977 and it was drafted for the purpose to provide a productive exchange of information between the Member States exclusively on request and was a few times.[48]

Due to the globalized era that grows at a fast pace, the massive development of the mobility of taxpayers, of the number of cross-border transactions and of the internationalization of financial instruments, it became quite challenging for the Member States to accurately assess taxes, and this affected the functioning of the taxation system. As a result, it led to double taxation and also encouraged tax avoidance and evasion. This jeopardized the functioning of the internal market since the powers of controls remained at the national level. Therefore, it would have been almost impossible for one Member State to manage its domestic taxation system, in particular the direct taxation, without receiving information from other Member States. [49]

In 2011, also triggered by consecutive financial crises from 2008 and some notorious scandals, concerns over tax avoidance, evasion and lack of transparency were raised. With the purpose to defeat the unfavorable effects of this phenomenon.[50]The Council of the EU on February 15, has adopted the Directive 2011/16/EU on administrative cooperation in the field of taxation (hereinafter: "DAC") and repealed the Directive 77/199/EEC from 1977. This new legal instrument was built on the achievements of the first one but grants clearer and more precise rules governing administrative cooperation between Member States.[51] Also, it represents a key legal instrument that established a framework for mandatory administrative cooperation in the field of direct taxation between Member States. Its main aim was to enable automatic exchange of information (AEOI) between national tax authorities to close the loopholes and to improve tax compliance across the EU. The DAC underwent multiple revisions to reflect the evolving tax standards.[52]

---

[48] Karoline Spies and Viktoria Wohrer in Lang et al (eds), *Introduction to European Tax Law on Direct Taxation* (8th Ed. Linde 2024)p 251 para 635.
[49] Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, recital (1-2).
[50] Ibid, recital (2-3).
[51] Ibid (n 49), recital (7).
[52] Jost Angerer and Vasiliki Papouliakou, European Parliament, Direct taxation: Personal and Company taxation, https://www.europarl.europa.eu/factsheets/en/sheet/80/direct-taxation-personal-and-company-taxation%20Accessed Accessed 24.06.2025

2.2 Evolution from DAC1 to DAC8

2.2.1 Directive on Administrative Cooperation (Council Directive 2011/16/EU, also known as DAC1)

The DAC, in general, establishes a harmonized framework for administrative cooperation between EU countries, offering mutual assistance in the field of taxation. It represents the main legal instrument that governs the rules and procedures for exchanging information between the Member States. The Directive aims to combat tax avoidance schemes and tax evasion, so tax fairness could be ensured.[53]

In contrast to the previous version, DAC improved functional efficiency in many areas, such as mandatory automatic exchange was introduced for new categories of income and bank secrecy was no longer a valid reason for refusing the information requests. Since then, DAC has been amended seven times, through (DAC2-DAC8) in response to new tax challenges and global developments, so aligning with the global transparency standards.[54]

Additionally, the DAC introduced structured mechanisms for the exchange of information, which comes in three forms:[55]

1. Automatic exchange of information "AEOI" of five categories of income and assets, such as: employment income, pension, director fees; life insurance products and income from the ownership of immovable property. According to Arts. 8 to 8b, automatic exchange of information means a regular and systematic sharing of pre-defined tax data between the tax authorities of EU's Member States. Each amendment gradually broadens the scope of information exchanged.
2. Exchange of information on request (hereinafter "EOIR"). According to the Arts. 5 and 5a, this mechanism is used when an EU Member States asks another for additional specific tax-related information of one or more taxpayers. The requested data must be relevant to the tax affairs and is provided in response to that specific request.

[53]European Commission, Directive on Administrative Cooperation (n 6).
[54] Spies and Wohrer (n 48) p 251, para 636.
[55] European Commission (n 6).

3. Spontaneous exchange of information (hereinafter "SEOI") is provided under Art.9 and occurs when an EU Member State discovers any information that is or could be relevant and useful, shares it with other Member States. This exchange of information happens at any moment and without any request.

Furthermore, DAC enables other forms of administrative cooperation such as the presence of officials abroad[56], also covers joint audits.[57]

DAC represents a turning point toward institutionalized cooperation and establishes the foundation for upcoming challenges. Via DAC, the EU countries can ensure "an economy that works for people".[58]

According to the Art.8(1) of the DAC which establishes a systematic, regular exchange of information between Member States on seven types of income and capital (initially were 5, with the amendments became 7), such as: employment income, director's fees, life insurance (not covered by the EU law), ownership of immovable property; pensions, royalties (since DAC7), and non-custodial dividends (since DAC8). Since 2024, Member States, when exchanging the information, are obliged to include the tax identification number (TIN) of the residents issued by the Member State of residence. Only the information that is "available" (i.e., retrievable based on national law and systems) must be exchanged. This may create imbalances of exchange of data between Member States. However, DAC7 added reporting obligations for the Member States to report annually, at least two categories of the exchanged information to the Commission, rising to four categories from 2025 and five categories from 2026 under DAC8. Also, the Member States have the right to opt-out receiving information on specific categories of income and capital, so, other Member States are not under the obligation to provide this information automatically to this specific Member State.[59]

---

[56] European Commission (n 6). Officials of one Member State (MS) can be present in the offices of the tax authorities of another Eu country or during enquiries performed there.

[57] Ibid (n 6). Under DAC, is allowed to two or more EU countries to conduct simultaneous controls of individuals of common or complementary interest. The latest update for joint audits was included under DAC7.

[58] Ibid.

[59] Spies and Wohrer (n 48) p 262-263 para 669-670.

2.2.2 DAC2 (Council Directive 2014/107/EU)

DAC2 is the first amendment of the Directive on Administrative Cooperation in Direct Taxation.[60] The catalyst of this development was the international pressure by the OECD and US, for more robust exchange of information to deter tax avoidance and evasion. According to the Foreign Account Tax Compliance Act (FATCA) from 2010, the US is requiring foreign financial institutions worldwide to share the data regarding US clients with the US tax authorities. OECD took the example of the US and in 2014 developed a Standard for Automatic Exchange of Financial Account information, Common Reporting Standard (CRS). As of May 2024, 123 jurisdictions including all EU Member States have signed the Multilateral Competent Authority Agreement Automatic Exchange of Financial Account Information (CRS MCAA). To avoid simultaneous and disorganization between Member States, at the EU level, DAC2 was implemented to harmonize the automatic exchange of financial information. Indeed, this was a threat of capital flight from the EU to a few financial markets which are territorial close to the EU, such as: Andorra, Lichtenstein, Monaco, San-Marino and Switzerland. But the EU agreed with these countries to adopt a comparable and reciprocal automatic exchange of financial account information, inspired by the international standards.[61][62]

Under the Directive, the Member States are required to collect information from their national financial institutions about the financial bank accounts held by the non-resident's individuals and legal entities (for tax purposes), such as information about account balances and income credited to the account, interest, dividends, income from certain insurance products and automatically, annually to exchange the data. The reporting applies to both accounts held directly by an individual and indirectly through an investment entity (called "passive non-fiduciary entity").[63]

The information is collected and exchanged to help fight against tax avoidance and evasion and to protect the integrity of the tax system. The EU Member States started to collect the information on the other Member States' residents for the first time in 2016 and reported in September 2017. Since,

[60] European Commission, DAC2, https://taxation-customs.ec.europa.eu/taxation/tax-transparency-cooperation/administrative-co-operation-and-mutual-assistance/directive-administrative-cooperation-dac/dac2_en Accessed 24 June 2025

[61] Ibid (n 48) p 252, para 637-638.

[62] 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* [2021] P9_TA(2021)0392, para-K.

[63] European Commission, DAC2 (n 60).

on an annually basis the Member States must do so,[64]Austria was the only country that started to collect the data at the beginning of 2017.[65]

According to DAC2'CRS requirements, the EU financial institutions collect the following information about the customer: name, address, place of birth and date of birth (for individual and controlling persons), country of tax residence, taxpayer's identification number, place of registration/incorporation and entity type (for entities) and controlling persons for certain Entity types.[66]

DAC 2 introduced mandatory automatic exchange of financial account information, that covers income provided under (Art.8(3a))[67]The system based on the OECD/s Common Reporting Standard (CRS), in 2022 was updated to cover electronic money products and integrated under DAC8, which will be into force from 1 January 2026. According to the Art. 8(3a) in conjunction with Art.3(9)(b), every Member State is obliged to automatically and regularly share information on reportable accounts with other Member States, without a prior request. A "reportable account|" is a financial account that is held by one or more reportable persons but managed by a reporting financial institution of a Member State, these include custodial and depository institutions. "Reportable persons "are all individuals and entities resident in another Member State (than the financial institutions), unless they fall under the exhaustive list of exemptions (e.g. government entities or listed companies). Passive entities are reportable if they have controlling persons in another Member State.[68]

In order to determine who really controls accounts behind complex structures, Art. 22(1a) introduced by DAC5 ensures that the tax authorities can access beneficial ownership data in line with Anti-Money Laundering (AML) rules. The information must be exchanged annually within nine months after the end of the relevant tax year. Each Member State must oblige its financial institutions to follow reporting and due diligence rules which are detailed in the DAC. Under the General Reporting Requirement, the data is transmitted to another State. The DAC also sets out due diligence rules

[64]Ibid.

[65]European Commission, Directive 2014/107/EU. https://taxation-customs.ec.europa.eu/system/files/2024-12/directive_2014_107_eu_en.pdf Accessed 23 June 2025

[66] Ibid, p 2. Controlling person-means a natural person who exercises a controlling interest over the Entity. Additionally, under the Anti-money Laundering Directive, the term controlling person is consistent with the definition ," beneficial owner". (settlor, trustee, beneficiary).

[67] See Art.8 (3a) of Directive Council 2011/16/EU.

[68] Spies and Wohrer (n 48) p 263-265 para 672-678.

aiming to identify reportable accounts. This means that when a new bank account is opened, the financial institutions are obliged to collect a self-certification from the client that allows them to determine tax residence, controlling persons and whether an entity qualifies as passive.[69]

It can be denoted that the main aim of the DAC2 is to prevent offshore tax evasion and avoidance, because obliging financial authorities from the EU to collect and report annually the information on financial accounts especially targeting the undeclared accounts, and related to this, boosts transparency in the financial sector.

2.2.3 DAC 3 (Council Directive 2015/2376/EU)

The second amendment of the DAC (DAC3 was triggered by the Lux Leaks scandal and introduced provisions on the automatic exchange on advance cross border rulings (hereinafter "Rulings")) and advance price arrangements (hereinafter "APAs").The directive's aim is to mitigate risks of tax avoidance, aggressive tax planning and to combat harmful competition.[70]

The scope of cross-border Rulings and APAs exchanged between member states is very broad because it covers a wide range of situations. To perform the sharing of information on rulings, one mandatory requirement is that the ruling must qualify as cross-border under DAC3 and is not relevant what the ruling is about or whether the companies involved are or not established in the EU. Under Art.8a, the information that must be shared includes details about who benefits from the ruling and a summary of its content (including business activities and transactions relevant for tax risk) as well as the issuance or renewal date, the duration and value of the transaction.[71]

The information exchanged covers taxpayers of all business types, such as legal persons (as companies) and legal arrangements (as trusts and foundations) but excludes rulings that are exclusively related to natural persons. The exchange is carried out using a central directory database, and all the Member States have access. Differently from other types of AEOI, shared via the Common

[69] Spies and Wohrer (n 48) p 263-265 para 672-678.
[70] European Commission, DAC3, https://taxation-customs.ec.europa.eu/taxation/tax-transparency-cooperation/administrative-co-operation-and-mutual-assistance/directive-administrative-cooperation-dac/dac3_en Accessed 24 June 2025
[71] Ibid (n 70).

Communication Network (CNN), the European Commission can access the information under DAC3 in the central directory database only for observation.[72]

So, DAC3 was introduced in 2015, which introduced mandatory exchange of information on tax rulings (Art.8a). Additionally, under the Art.9(1)(a) the Member States are obliged to spontaneously exchange such data without a prior request, especially in cases when loss of revenue in another State can occur. Under the Art. 8a(1), when a competent authority of a Member State issues "advance cross-border rulings" and "advance pricing arrangement" it is obliged to communicate automatically to other Member States. Both terms are broadly defined, and cover any agreement, communication and any other binding legal decision that involves tax matters related to a specific group or person. The obligation will apply if the ruling concerns natural persons and was issued, amended and renewed after 1 January 2026 and meets specific threshold (e.g. transaction value above EUR 1.5 million or the ruling determines the tax residency of individuals in the given Member State, Art.8a(4)).[73]

Moreover, the DAC sets up three other general criteria in Art.3(14) and (15), which apply to both definitions mentioned above. Both terms require that: 1) the person relies on the ruling, so it must be legally binding; 2) the ruling must be issued before the relevant transaction takes place, and 3) the ruling relates to a cross-border transaction or the tax residence status of a person or a permanent establishment (for legal entities). In addition to these criteria, to qualify as an "advance cross-border ruling" , the ruling must relate to how legal or administrative tax provisions are interpreted or applied. An "advance pricing arrangement" refers to rulings on transactions between associated enterprises and focuses on transfer pricing and profit allocation.[74]

Automatic exchange does not cover the full original text of the rulings, instead Member States must exchange specific details: the person affected, a summary of the content, the transaction amount. The Information is shared with other Member States and the Commission (in a limited way, see Art.8a(8)) via a secure central directory. Tax rulings must be exchanged no later than three months following

[72] European Parliamentary Research Service, *Implementation of the EU Requirements for Tax Information Exchange: European Implementation Assessment*, PE 662.603 (European Parliament 2021) 14-15.
[73] Spies and Wohrer (n 48) p 265-266 para 679-680.
[74] Ibid, p 266-267 para 681-682.

the end of the half of the calendar year during which the ruling has been issued, amended or renewed. Regarding the "old" rulings, the exchange had to take place before 1 January 2018 (Art.8a(5)).[75]

2.2.4 DAC4 (2016): Country-by-Country Reporting (CbCR)

DAC4 is the third amendment to DAC and in 2016 introduced a mandatory country-by-country reporting obligation for multinational enterprises (MNE) groups that operate within the EU or are established in the EU with a total consolidated revenue equal or higher than EUR 750 million. The reporting must be filed not later than 12 months (after the last day of the reporting fiscal year of the MNE group). Under this framework, the competent authority that receives the CbCR is obligated to automatically transmit it to the Member State where the entities or the MNE group are registered as tax resident or operate via a permanent establishment (PE), this exchange must be done within three months after getting the report. The report includes the following information: the total revenue generated, the profit reported before taxation, the amount of income tax both paid and accrued, the number of employees, the group's stated capital, retained earnings, and the value of tangible assets but excluding cash or cash equivalents.[76][77]

DAC4 has its roots in global developments, especially the BEPS project (Base Erosion and Profits Shifting) by the OECD. This helps authorities to check if the MNE are paying fair share of taxes in each country and not shifting profits to low-law countries.[78]

So, Country-by-Country(CbC) reports are aiming to help Member States to detect harmful tax strategies by MNEs, to improve tax audits and risk assessments and to identify if companies are shifting income artificially to low-tax jurisdictions.[79]

In this way, the tax authorities of the EU Member States could perform a real assessment of transfer pricing risks and base erosion strategies. Due to the CbCR, MNE Groups must provide early and specific information for reporting in each Member States they operate. An MNE group is defined as

---

[75] Spies and Wohrer (n 48) p 267 para 683-684; Art.8a DAC

[76] European Parliamentary (n 72)p 14-15.

[77] European Commission, DAC4, https://taxation-customs.ec.europa.eu/taxation/tax-transparency-cooperation/administrative-co-operation-and-mutual-assistance/directive-administrative-cooperation-dac/dac4_en Accessed 25 June 2025

[78] Ibid.

[79] Ibid (48) p 267 para 265-266.

a collection of enterprises related through control or ownership, including entities with operations in at least two jurisdictions or a permanent establishment in another State. Therefore, EU-based and non-EU-based MNEs with established entities in the EU are obliged to file CbC reports. If the ultimate parent is in the EU, it must submit the report (Art. 8aa(1)); if it resides outside the EU, the obligation shifts to another EU-based entity in case the Member States do not receive the report from the third country. The report must include tax data like profits and paid taxes, and business-related information like number of employees, assets etc. Using standardized forms, the groups must describe their business activities in each jurisdiction. The reporting entity has 12 months after the fiscal year ends to file the report. So, the receiving Member State must automatically share the report with other Member States where the group operates, within 15 months after the fiscal year. Due to amendments to the Accounting Directive, from 2021, both EU-based and non-EU-based MNEs doing business in the EU through a branch or subsidiary must publish their CbC reports. Additionally, DAC4 in Art. 16(6) includes a safeguard clause: transfer pricing (TP) adjustments by receiving States cannot be based on CbC information.[80]

2.2.5 DAC5 (2016): Fiscal Access to beneficial Owner Information

Unlike the previous amendments, the Directive 2016/2258/EU of 6 December 2016 (DAC5) did not expand the scope of automatic exchange of information, instead provides access to the tax authorities to data on the beneficial owner collected in accordance with anti-money laundering legislation.[81]

To help tax authorities detect who really owns or controls companies with complex structures such as shell companies or trusts, under the Article 22(1) DAC5, the Member States are obligated to offer tax authorities access to data that reveals the real beneficial owner of such arrangements. This requirement is consistent with the AML standards. So, tax authorities must be able check different mechanisms and records that reveal who is behind these legal structures. To do so, the tax authorities must have access to mechanisms, procedures, documents and information referred to the following articles of the Anti-Money Laundering Directive (AMLD): customer due diligence procedures under the Article 13 (AMLD), beneficial ownership register for corporate and other legal entities as well as

[80] Spies and Wohrer (n 48) p 268 para 687-690.; Art.16 of DAC 2011/16/EU.

[81] Federal Ministry Finance, Republic of Austria, Automatic and international information exchange, DAC5, https://www.bmf.gv.at/en/topics/combating-fraud/Automatic-and-International-Information-Exchange.html Accessed 25 June 2025

trusts under Articles 30-31, centralized automated mechanism which make possible the identification of individuals who own or control the payment accounts, bank accounts and safe deposit boxes (introduced by DAC7, Art.32a), and documents needed to comply with the customer due diligence requirements, under Art.40.[82]

2.2.6 DAC6 (2018): Mandatory Disclosure of Cross-Border Arrangements

In 2018, following the OECD's BEPS Action 12, the EU adopted the fifth amendment on Directive 2011/16/EU (DAC) which introduced mandatory disclosure rules for cross-border tax planning arrangements. The purpose is to increase transparency by requiring any intermediaries,[83] as defined by the Directive „any person that designs, markets, organizes or makes available for implementation or manages the implementation of a reportable cross-border arrangement"[84][85]that pose a risk of aggressive tax planning, to report the information to the competent tax authority. An Intermediaries can be either a physical person or a company, such as tax advisors, accountants, lawyers, banks, tax authorities, etc. Additionally, could be "any person that, having regard to the relevant facts and circumstances required to provide such services, knows or could be reasonably expected to know that they have undertaken to provide, directly by means or other persons, aid, assistance or advice with respect to designing, marketing, organizing, making available for implementation of a reportable cross-border arrangement".[86][87]

These reporting obligations have been criticized as conflicting with the EU primary law, particularly the fundamental rights guaranteed by the CFR, in particular Art.7.[88]The CJEU has been asked in several preliminary rulings to assess whether the obligations imposed under DAC6's on

[82]Spies and Wohrer (n 48) p 253 para 641, p 264 para 674.
[83] Ibid.
[84] See Directive 2018/822/EU (DAC6) added point (21) of art.3
[85] See DAC6, added point (19) of the art.3. Definition of "reportable cross-border arrangement" which means any cross-border arrangement that contains at least one of the hallmarks set out in Annex IV.
[86] Irene Schiefer, Interplay Between Anti-Money Laundering Provisions and Exchange of Information for Tax Transparency Purposes at EU Level, Stanford-Vienna European Union Law Working Paper No. 56. P 62 http://ttlf.stanford.edu. Accessed 25 June 2025
[87]Ibid (n 48) p 268-269 para 691-692.
[88] Spies and Wohrer (n 48) p 269 para 691.

intermediaries and relevant taxpayers, are justified, proportionate, and respectful to the Charter of Fundamental Rights.[89]

In one of the Cases, where CJEU ruled is the Case-432/23. The case is about a Luxembourg lawyer (F) who was obliged by his national tax authorities to disclose information and documents regarding the legal advice given to a client in a cross-border situation. The tax authorities invoked the Directive 2011/16/EU. The lawyer refused, arguing that the information between a professional and client is protected by legal professional privilege. The Luxembourg court asked the CJEU whether forcing a lawyer to disclose such information violates the Charter of Fundamental Rights of the EU, in particular Art.7 (privacy and confidentiality) and Article 52(1) limitations on fundamental rights. The Court ruled that: Article 7 of the Charter covers all legal advice offered by lawyers in matters of tax and company law. Therefore, a domestic rule, under which competent authorities can require disclosure of such advice interferes with lawyer-client confidentiality and violates Article 7. But, in case there is a criminal risk, disclosure under national law complies with the Charter. The Directive 2011/16/EU must be interpreted in line with the Charter, because Art 7 CFR is broad and must be respected even in the context of administrative tax investigations.[90]

Another important CJEU preliminary ruling that challenged not only Article 7 (privacy and confidentiality), but also Article 47 (right to a fair trial) of CFR is relevant in this context is the Case-694/20. The case was initiated by the Flemish Bar Association and other parties that challenged the implementation of DAC6 in Belgium. Under the Belgian law, lawyers performing as intermediaries were obliged to file report on cross-border arrangements unless restricted by legal professional privilege. More than that, the lawyers were required to notify other intermediaries that a reportable arrangement existed under DAC6. The claimants argued that the obligation to notify violated the CFR, in particular Article 7 and Article 47. The legal issue lied on the aspects if a lawyer who is bound by legal professional privilege being also obliged to notify another intermediary about a reportable arrangement breaches the article 7 CFR and, the second issue was if DAC6 can be interpreted in a manner that guarantees the professional legal privilege. The Court augmented that even if the purpose of DAC6 is to combat tax avoidance and evasion, still, the fundamental rights

[89] Ibid (n 48).

[90] See Case C-432/23 *F and Ordre des avocats du Barreau de Luxembourg v Administration des contributions directes* EU:C:2024:746.

must be respected. Therefore, the obligation for lawyers to inform other intermediaries interferes with the confidentiality of a lawyer-client communication and violates Article 7 CFR. Article 8ab(5) of DAC6 regarding the notification is invalid only as long as the lawyer bound by professional legal privilege applies. As a result, the DAC6 must be interpreted in line with the Charter.[91]

In connection with the Cases from the above, Member States have the option to grant intermediaries a waiver from the obligation to file information on reportable cross-border arrangements in case the reporting would breach legal professional privilege under the domestic law. But this doesn't mean that if there is no intermediary then is no reporting. The obligation to report lies with the taxpayer under Article 8ab(5) and (6) DAC6[92]. Also, Member States shall provide penalties if these filling obligations are not fulfilled.(Art. 25a)[93]

Originally, Art.8ab(5) stipulated that an intermediary covered by a waiver for a legal professional privilege shall inform any other intermediary involved in the arrangement. But as mentioned above, the CJEU ruled that this obligation is in conflict with the right to respect communication between lawyer-client under Art.7.With DAC8, the legislator has fixed this rule, that intermediaries who are bound by a legal professional privilege shall notify other intermediaries about the applicable waiver to them, but only if these intermediaries are their clients and are aware of the arrangement and the professional relationship anyway. [94]

A cross-border arrangement involves at least two countries from which at least one is a Member State of the EU, that means that third countries can also be part and must be assessed for its reportability under Art.3(18). The Directive does not provide a definition for „aggressive tax planning" but it sets

[91] See Case C-694/20 *Orde van Vlaamse Balies and Others v Vlaamse Regering* EU:C:2022:963.

[92] See DAC6, art 8ab(5) „Each Member State may take the necessary measures to give intermediaries the right to a waiver from filing information on a reportable cross-border arrangement where the reporting obligation would breach the legal professional privilege under the national law of that Member State. In such circumstances, each Member State shall take the necessary measures to require intermediaries to notify, without delay, any other intermediary or, if there is no such intermediary, the relevant taxpayer of their reporting obligations under paragraph 6. Intermediaries may only be entitled to a waiver under the first subparagraph to the extent that they operate within the limits of the relevant national laws that define their professions."(6) "Each Member State shall take the necessary measures to require that, where there is no intermediary or the intermediary notifies the relevant taxpayer or another intermediary of the application of a waiver under paragraph 5, the obligation to file information on a reportable cross-border arrangement lie with the other notified intermediary, or, if there is no such intermediary, with the relevant taxpayer."
[93] Spies and Wohrer (n 48) p 269 para 692.
[94] Ibid p 269-270 para 693.

reporting duties based on a detailed exhaustive list of hallmarks, that are provided in Annex IV and cover the „main benefit test” and both generic and specific indicators.[95]

Regarding the „main benefit test” is satisfied if one of the key purposes of an arrangement is to obtain a tax advantage. This test has similarities with GAAR principles[96] and Art.6 ATAD, but it is broader and is criticized for creating legal uncertainty.[97]

According to the Directive, “hallmark” means a characteristic or feature of a cross-border arrangement that presents an indication of a potential risk of tax avoidance, as listed in Annex IV.”[98]So, generic hallmarks (Category A) include three exhaustive situations, like fee-based advice that the intermediaries receive. While specific hallmarks occur in four categories (B,C,D,E)[99]. An arrangement must be reported if cumulatively fulfills the main benefit test and at least one of the hallmarks, either general or specific (from the B or C categories). However, some arrangements, those that fall under categories C,D or E must be reported even without fulfilling the main benefit test.[100]

In relation to reporting deadlines, reportable arrangements must be disclosed within 30 days from the time when the reportable cross-border arrangement is made available for the implementation by the intermediary, after it is ready to be implemented or whenever the first step toward implementation occurred. In the Case-632/22, the Belgian Court challenged the 30-days period, whatever respects the principle of legality under Art.49 CFR and if its starting point is clear and precise. The Court argued that the 30-days rule is sufficiently clear and precise.[101]

If a Member State receives reportable information specified in Art8ab(14), it must automatically communicate it with all Member States via a secure central directory. The information includes

[95] Spies and Wohrer (n 48) p 270 para 694.

[96] Thomson Reuters Tax & Accounting, what are GAAR. General Anti-Abuse Rules (GAAR) are a set of rules, based on principle provisions within a country’s tax code that aims to eliminate unacceptable tax evasion practices. This is done by essentially giving that country’s tax authority the power to deny a particular tax benefit that would lead to tax avoidance or to increase the tax liability against the taxpayer. https://tax.thomsonreuters.com/blog/what-are-general-anti-avoidance-rules/ Accessed 26.06.2025

[97] Ibid (n 48) p 270 para 695.

[98] See DAC6 art.3 (20).

[99] See Anex IV of DAC6.

[100] Ibid (n 48) p 270 -271 para 696-697.

[101] Ibid, para 698.

details about all taxpayers and intermediaries that are not covered by waiver, the hallmarks type, the content and value of the arrangement and the Member State concerned by this.[102]

DAC6 entered into force on 1 July 2020, but due to the COVID-19 pandemic, some Member States used an optional deferral mechanism. Important to mention is that DAC6 applies **retroactively** to arrangements where the first step was implemented on or after 25 June 2018, which has been criticized for conflicting with legal certainty and legitimate expectations of the taxpayers. The Member States exchange reports every quarter via a central directory.[103]

As a final thought, the automatic exchange of information under DAC6 ensures an "early alert" to Member states tax authorities with data on cross-border arrangements, which can be used by the competent tax authorities to verify if there is a risk of tax abuse, tax evasion, avoidance and aggressive tax planning. Based on the information received regarding the arrangements, under DAC6, Member States are allowed to take actions in amending the domestic legislation or administrative practices and be considered justified. One of the reasons why DAC6 targets the intermediaries in obliging them to report to their tax authorities about cross-border arrangements that fulfill specific criteria (geographic scope and hallmarks related to the potential risk) is that, in the past, some intermediaries and other tax advisors have actively assisted clients in hiding money offshore.[104]Also, that they are in the first line of knowing about the arrangements.

2.2.7 DAC7 (Directive 2001/514/EU): Digital Platform Reporting

The Council Directive (EU) 2021/514, known as DAC7, entered into force on 1 January 2023 . DAC7 extends the scope of AEIO between Member States by placing the reporting obligations on platform operators. The logic of this decision is that the platform operators are in a better position to collect and check the essential data about all sellers that use and operate digital platforms.[105]Additionally, the VAT Directive imposes certain due diligence and tax obligations on online marketplaces.[106]This

---

[102] Spies and Wohrer (n 48), para 699.
[103] Ibid, p 271-272 para 700.
[104] European Commission, DAC6, https://taxation-customs.ec.europa.eu/taxation/tax-transparency-cooperation/administrative-co-operation-and-mutual-assistance/directive-administrative-cooperation-dac/dac6_en Accessed 26.06.2025.
[105] European Commission, DAC7, https://taxation-customs.ec.europa.eu/taxation/tax-transparency-cooperation/administrative-co-operation-and-mutual-assistance/dac7_en Accessed 26 June 2025
[106]Spies and Wohrer (n 48) p 272 para 702.

amending Directive was also inspired by the OECD, in special the Model Rules for Reporting Platform Operators with respect to sellers in the Sharing and Gig economy[107](Model Rules).

The "platform operators" are defined as entities that contract with sellers to make available all or part of the platform available to them. They are obliged to carry out due diligence procedures and to fulfill reporting requirements (detailed in Annex V of DAC7). And "platforms" means any software, website or application that is accessible by the users and allows sellers to connect with other users for carrying out a relevant activity (Annex V, Section I.A.1). To enforce compliance, Member States, within their jurisdiction must apply sanctions. As a last option, Member States can limit the platform operators to activate within the Union, if they do not comply with the requirement under DAC7.[108]

Due to the flexibility of digital platforms, the reporting obligation covers platform operators that are resident for tax purposes in an EU country and those that are incorporated, managed or have a permanent establishment in an EU Member State (union platform operators). For reducing the costs and simplify the procedure, under the Directive are established specific criteria which enable platform operators to report in only one EU Member State. In case that the platform operators do not meet the criteria mentioned previously, but they still perform commercial activity in the Union (about non-EU platform operators) they are still obligated to report. The first thing to do is to register and report in one single EU Member State. Moreover, to ensure equitable standards, the reporting obligations cover both cross-border and non-cross-border activities. Activities that fall under the scope of the reporting obligations are rental of immovable property, personal services, sale of goods and rental of any mode of transport.[109]reporting obligations does not cover the intermediation of certain services by online platforms (e.g. financial services). It does not matter if the activity has a cross-border link or is purely domestically.[110]

Under the Art. 8ac(2) is listed the information that must be reported by the platform operators and then exchanged between Member States, this includes: data identifying the seller (including a tax or VAT identification number), the total amount of money the seller made from transactions, and any fees charged by the platform to the seller for using the platform. The information must be reported

[107] Ibid (n 48), p 253 para 643.
[108] Ibid, p 272 para 703.
[109] European Commission, DAC7 (n 105).
[110] Ibid (n 48) p 273 para 705.

annually, till 31 January of the year following the calendar year in which the seller was active. The communication of the information must be done once a year, within 2 months after the end of the reporting period. These rules apply starting from 1 January 2023.[111]

An important aspect to mention is that DAC7 does not introduce any new taxes, but it simply requires the platform operators to report information about the income that the sellers earn using digital platforms. Therefore, each Member State applies its own tax law when deciding how the seller's income is taxed.[112]

Under Article 8ac(7) of DAC7 is prescribed the process by which equivalence mechanism functions. This mechanism allows the EU to exchange and collaborate with non-EU countries (UK, Canada, New Zealand) if the non-EU country has similar rules to those under the DAC7, then the Commission can decide that they are equivalent. This means that the platform operators in the third countries don't have to follow the EU rules exactly, as long as they are already collecting and sharing the same type of information. The responsibility for carrying out determinations of equivalence is on the Commission. The Commission checks the non-EU country's legislation and agreements to ensure that the same level of reporting is guaranteed. If the Committee on Administrative Cooperation for Taxation (CACT) approves the Commission's determinations, the decision is formally approved and published in a Commission implementing Regulation. After being approved and formally adopted it enters into force in the non-EU jurisdiction. Therefore, the reporting relationship between EU and the third countries is activated.[113]

2.2.8 DAC 8 (Council Directive 2023/2226/EU): Reporting Crypto-Assets and E-money

DAC8 constitutes the seventh amendment of the Directive 2011/16/EU and broadens the scope of it, especially introducing the mandatory automatic exchange on information on crypto assets transactions, thus strengthening tax transparency and combating tax fraud, avoidance and aggressive tax planning within the EU internal market.[114]

---

[111] Spies and Wohrer (n 48), p 273-274 para 706-707.
[112] European Commission, DAC7 (n 105).
[113] Ibid.
[114] European Commission, DAC8, https://taxation-customs.ec.europa.eu/taxation/tax-transparency-cooperation/administrative-co-operation-and-mutual-assistance/directive-administrative-cooperation-dac/dac8_en Accessed 28 June 2025.

By implementing DAC8, the EU acknowledges the fast evolution and cross-border nature of crypto-assets, which previously under DAC1-DAC7 were not covered.[115]Whereas DAC2, already provided for automatic exchange of financial account information, most crypto-assets fell outside of its scope because they do not constitute money held in depository accounts nor in financial assets.[116]

Due to the decentralized nature of crypto-assets and cross-border trade, has made it extremely difficult for the EU countries' tax administrations to track and tax them under the traditional system. As a result, proper compliance was hard to ensure.[117]

To deal with these problems, DAC8 is consistent with the OECD Crypto-Asset Reporting Framework (CARF), which was welcomed by the G20 and supported by the Global Forum on Transparency and Exchange of Information for Tax Purposes. As of mid-2024, over 58 jurisdictions (still growing) have committed to implement CARF starting in 2027. This means that the automatic exchange of information on crypto assets, on a global level will tackle the problem of tax avoidance and tax evasion.[118]

The Directive covers a broad scope of crypto-assets, building on the definition in the Markets Crypto-Assets Regulation (MiCAR). This includes: 1. Decentralized tokens, 2. Stablecoins (including e-money tokens), 3. Certain non-fungible tokens (NFTs).[119]

For explaining the term "crypto-asset", DAC8 refers to the Regulation on Markets in Crypto-Assets, which widely defines it as "a digital representation of a value or of a right that is able to be transferred and stored electronically using blockchain or similar technology". Central Bank Digital Currencies[120], certain e-money products and crypto-assets that cannot be used for payments or investment purposes are excluded from the reporting requirements.[121][122]

---

[115] Ibid (n 114).
[116] Spies and Wohrer (n 48) p 274 para 708.
[117] Ibid (n 114).
[118] Ibid.
[119] Ibid.
[120] See DAC8, Section IV(2), defines "Central Bank Digital Currency" which means any digital Fiat Currency issued by a Central Bank or other monetary authority.
[121] See DAC8, Section IV(4) defines "Reportable Crypto-Asset" which means any Crypto-Asset other than a Central Bank Digital Currency, Electronic Money, or any Crypto-Asset for which the Reporting Crypto-Asset Service Provider has adequately determined that it cannot be used for payment or investment purposes.
[122]Spies and Wohrer (n 48) p 274 para 709.

EU Member States are now required to introduce reporting and due diligence obligations for crypto-assets service providers[123] that have a nexus (link) to their jurisdictions. Reportable crypto-assets service providers include both authorized under MiCAR and unauthorized crypto-asset operators who provide crypto-asset services.[124]

Crypto-asset service providers are required to identify and report specific predefined users, which are all individuals and entities resident in a Member State unless they fall into an exhaustive list of excluded categories like public authorities or listed corporations on securities markets. Additionally, legal entities with EU-based controlling persons are also reportable.[125]

Like DAC2, DAC8 establishes specific due diligence requirements to determine if users and their controlling persons are reportable. The service providers are obliged to obtain self-certifications that permit them to determine the crypto-asset user's residency as well as any controlling person's residency for tax purposes, also they must assess the reasonableness of the self-certification.[126]

The information that must be reported contains user's name, address, tax ID number of each reportable user and controlling person as well as aggregated transaction data about the total amount paid or received, the number of reportable transactions which are crypto-to-fiat, crypto-to-crypto trades, large retail payments and payment transactions that exceed the threshold of USD 50.000 from and to non-reporting wallets.[127]

Member States are obliged to automatically communicate the collected data via a secure central directory to the competent authority of the Member States concerned. The communication of information must occur annually, not later than nine months after the end of the calendar year in which the data relates. The first exchange of crypto-asset data is scheduled for September 2027, covering the year 2026.[128]

[123] See DAC8, Section IV (B.3) defines "Reporting Crypto-Asset Service Provider" as any Crypto-Asset Service Provider and any Crypto-Asset Operator that conducts one or more Crypto-Asset Services effectuating Exchange Transactions for or on behalf of a Reportable User.
[124] Ibid (n 48) p 274 para 710.
[125] Ibid, p 275 para 711.
[126] Ibid, p 275 para 712.
[127] Ibid, p 275 para 713.
[128] Spies and Wohrer (n 48) p 275 para 714.

Important to mention is that DAC8 extends the Article 8a by explicitly including advance cross-border rulings (ACRRs) involving high-net-worth individuals (HNWIs) within the scope of mandatory automatic exchange of information between the Member States of the EU. This constitutes a major change in the treatment of wealthy individuals in the context of tax transparency and international cooperation.[129]

Concluding, DAC8 represents a significant development in the EU tax cooperation system. Broadening the scope of automatic exchange of information on crypto-assets and e-money, advances the objectives of the EU, in particular adapting the legal framework to the new era of innovation and economic activity in digital form. This enhances the legal harmonization and reflects the EU's ambition to ensure the functionality of the internal market. However, practical implementation of DAC8 could be challenging regarding the classification of crypto-assets and understanding all the terminology in the field, also the procedure of reporting.[130]

2.3 Legal Scope and Objectives of the DAC

2.3.1 Objective Scope

The DAC has a wide scope: According to Art. 1(1) any information that is "foreseeable relevant" to the administration and enforcement of the domestic laws of the Member States concerning taxes is covered by the Directive and must be exchanged. The cooperation is not limited to information that is relevant to determine the tax liability but also includes information relevant for tax recovery, sending documents and penalties related to the taxes involved. However, the Member States cannot request information randomly, known as "fishing expeditions" or to ask for data that is clearly not relevant to a taxpayer's situation. The phrase "foreseeable relevance" was taken from the Article 26 of the OECD MC and in the Case *Berlioz,* the CJEU has affirmed that the OECD Commentary is important for interpreting these terms. Even so, the meaning of "foreseeable relevance" has been unclear and debated by the Court's case law. DAC 7 offers guidance and clarity in the Article 5a in cases of exchange on request. The term "foreseeable relevance" is important especially for: exchange on request (Art.5), Spontaneous exchange (Art.9), and Participation in administrative

[129] See Oana Popa and Carla Valerio,"The (Most Recent) Proposal for an EU Directive to Amend the Rules on Administrative Cooperation in the Field of Taxation (DAC8)", 117 (point 5).
[130] European Commission, DAC8 (n 118).

enquiries abroad (Art.11(1)). In fact, the automatic exchange of information under Articles 8 and 8a does not need to prove that the data is foreseeably relevant in advance.[131]

2.3.2 Substantive Scope

According to Art.2(1), the DAC applies **to all taxes of any kind** levied by, or on behalf of, a Member State or its territorial or administrative subdivisions and local authorities. However, Art.2(2) and (3) exclude specific taxes, in an exhaustive list: VAT, customs and excise duties (covered by other Union legislation), compulsory social security contributions, fees for public documents or contractual duties. Despite these exclusions, Art.16(1) states that exchanged information can still be used for these taxes in some specific cases. Therefore, all the taxes that are not listed in the Art.2(2) and (3) are covered by DAC. This negative list offers legal clarity. Thus, the Directive covers taxes on income on capital, inheritance, gift and wealth taxes, real estate, car taxes, wage taxes, insurance and taxes on capital appreciation.[132]

2.3.3 Personal and Territorial Scope

In general, the residence or nationality of taxpayers is not relevant. Member States can exchange information even for people who are not residents and nationals of any EU Member State. The residence is relevant only for the automatic exchange of information listed in Art.8(1) (income from employment; director's fees; life insurance products not covered by other Union legal instruments on exchange of information and other similar measures; pensions; ownership of and income from immovable property), of financial account information, of information reported by the platform operators and by Reporting Crypto-Asset Service Providers. Moreover, the legal status of the persons affected: individuals, corporations and hybrid entities, is not relevant. This may be derived from the Art. 3(11) which defines the term "person" very widely. (including partnerships, trusts). The Directive applies to all EU Member States, but not to EEA countries like Iceland, Liechtenstein and Norway.[133]

[131] Spies and Wohrer (n 48) p 255 para 647-648; Art 2 DAC.
[132] Ibid, p 255-256 para 649-650.
[133] Spies and Wohrer (n 48) p 256 para 651-652.

2.3.4 Temporal Scope

DAC regulates only the time periods to which the automatic exchange of information applies. These rules differ depending on the category of data:[134]

- Financial Accounts (Art.8(3a)): mandatory automatic exchange of information takes place from 1 January 2016.
- Tax rulings (Art.8a): in general, all rulings that do not exclusively concern natural persons issued, amended or renewed after 31 December 2016 are covered. Moreover, Member States are also obliged to communicate information on certain "old" rulings issued, amended or renewed after 31 December 2011. Additionally, certain tax rulings concerning individuals issued, amended or renewed after 1 January 2026 will be covered.
- CbC reports (Art.8aa): covers any fiscal year of an MNE group commencing on or after 1 January 2016.
- Reportable Cross-Border arrangements (Art. 8ab(12)): Arrangements must be reported and automatically exchanged if the first step of the arrangement was implemented after 25 June 2018.
- Platforms (Art. 8ac(3)): from 1 January 2023.
- Crypto-Assets (Art. 8ad): from 1 January 2026.

Generally, there are no limitations on which taxable periods are covered, even if the tax comes before the Directive's entry into force. The CJEU confirmed this in *Tsalapos and Diamantakis* case, stating that the old Tax Collection Directive is to be interpreted as applying to customs claims that arose in one Member State before the Directive entered into force in the other Member State.[135]

---

[134] Ibid, p 256-257 para 653.
[135] Spies and Wohrer (n 48) p 257 para 654.

2.4 Other Relevant Legal Provisions in the DAC Framework

2.4.1 Organization (Art.4)

According to Art.4, each Member State must set up four types of entities for cooperation proceedings: the competent authority, the single central liaison office (CLO), liaison departments and competent officials. The competent authority is responsible for the application of the Directive and must be made publicly by the Commission. Then, the competent authority must designate the CLO, which is responsible for the contact with other member States. Additionally, the competent authority has the option to set up liaison departments and appoint any number of competent officials.[136]

The DAC provides a legal basis for direct communication between the tax authorities (or internal revenue services) of two Member States, particularly when liaison departments or competent officials are appointed. The recitals to the Directive also highlight that direct communication between national officials should become the default rule. Under the reporting obligations established by DAC, requires Member States to shift certain duties to private persons and entities, to collect data that is automatically exchanged, such as: financial institutions (for account information); multinational enterprises (MNE) groups (for CbC reports); intermediaries; platform operators (for digital platform data) and crypto-asset service providers. In case the private entities mentioned above fail to comply, Member States are obliged to impose penalties. The challenge is that the Directive does not provide specific criteria and severity of such penalties, but it merely states that they should be "effective, proportionate and dissuasive".[137]

2.4.2 Exchange of Information

The Directive distinguishes three types of exchange of information: exchange on request (Art.5), mandatory automatic exchange (Arts. 8, 8a, 8aa, 8ab and 8ad), and spontaneous exchange (Art9). They can be characterized as active and passive types of exchange, so, exchange on request depends on the initiate of another Member State; in the Spontaneous exchange, a State must decide on its own if the information obtained may be relevant to another State and regarding mandatory automatic exchange, is executed on a pre-defined regular intervals without the need for the

[136] Ibid, p 257-258 para 655; Art.4 DAC
[137] Ibid, p 258 para 656-657.

investigation as if the data may be useful to the receiving Member State. Due to its automatic character, automatic exchange is seen as the most efficient type, although could lead to big data issues, including analysis burdens and concerns about taxpayer's rights and confidentiality.[138]

A. Exchange on request (Art.5)

A country's tax authority can request any information specified in Art.1(1) from another Member State, but the request must be specific and relevant to a case, so called "foreseeably relevant", which means that broad or random request is not allowed under the Directive(Fishing expeditions). To prove that a request is relevant, the country that asks must explain why the data is needed, its tax purpose and a clear description of what exact information is needed. If these conditions are met, the other Member State is obliged to respond, unless limited exceptions apply. In two Cases (*Berlioz, Etat Luxemburgeois v B and Others*) the CJEU ruled that the requesting authority has a broad discretion in deciding whether information is "foreseeably relevant", but it still must explain the reason clearly. The responding Member State can reject it only if the request is clearly not relevant. Additionally, the request must include at least the identity of the person under investigation. Group requested information were allowed but disputed under DAC, but DAC7 increased its legal certainty. The CJEU held in *Etat Luxembourg v L* that group requests are permitted if sufficient information about the group is provided and the reason for the request. Full individual details are not always needed, but some basic data must be shared to the extent known and in line with international developments.[139]

According to Art.6, the country that receives the request must carry out all necessary tax enquiries, using the same rules and methods as it would for its own tax cases. This includes how it normally collects information. The fact that the Member State that must submit the information might not need the data for its own tax matter is not relevant, it still must cooperate with the requesting Member State, and the officers from the requesting country can take part in investigations in the other country (joint investigations). Moreover, the information must be sent as fast as possible, but not later than three months after receiving the request. If the requested authority already possesses the data, it must send it within two months. Strict deadline applies for: confirming the

[138]Spies and Wohrer (n 48), p 258-259 para 658. Art. 5, Art. 8, 8a, 8aa, 8ab, 8ad DAC and Art.9 DAC.
[139] Ibid, p 259-260 para 659-663.

receipt of the request within 7 working days, within 1 month to inform about the missing or unclear information and within 3 months must be explained the delays or refusals and give a new date.[140]

B. Mandatory Automatic Exchange of Information (Art.8)

Automatic exchange of information is considered the most robust way to ensure correct tax assessment and prevent fraud. Under the DAC it is mandatory for certain categories including:[141]

A. Types of income and capital (see Subchapter 2.2, Subsection 2.2.1)

B. Financial account information (introduced by DAC2) (see Subsection 2.2.2)

C. Advance cross-border tax rulings (under DAC3)(see Subsection 2.2.3)

D. Country by Country (CbCR) reports (DAC4)(see Subsection 2.2.4)

E. Cross border arrangements (DAC6)(see Subsection 2.2.6)

F. Sales via platforms (DAC7)(see Subsection 2.2.7)

G. Information related to Crypto-Asset.(see Subsection 2.2.8)

C. Spontaneous Exchange of Information (Art.9)

In addition to the exchange of Information on request and automatic exchange, the DAC also regulates spontaneous exchange, which means unscheduled sharing of information without a prior request. This system is partly mandatory (Art.9(1)) and partly voluntary (Art.9(2)).[142]

In the Art.9(1) are mentioned the cases when the EU Member States "shall" inform the other State without a prior request. These provisions reflect the ones from the previous Directive. Thus, the CJEU has clarified that this represents an obligation and not an option, meaning that tax authorities of a Member State, on its own, must forward information in five cases: (See Art. 9 (1))[143] In case

[140] Spies and Wohrer (n 48), p 260-261 para 663-664.; See Art.7 Council Directive 2011/16/EU.
[141] Ibid, p 262 para 668.
[142] Ibid, p 275 para 715-716.
[143] See Art.9(1) of DAC: (a) the competent authority of one Member State has grounds for supposing that there may be a loss of tax in the other Member State; (b) a person liable to tax obtains a reduction in, or an exemption from, tax in one Member State which would give rise to an increase in tax or to liability to tax in the other Member State;(c) business dealings between a person liable to tax in one Member State and a person liable to tax in the other Member State are conducted through one or more countries in such a way that a saving in tax may result in one or the

the information on foreign residents is obtained unlawfully (e.g., data stolen by an insider), it must still be forwarded if it falls under the mandatory spontaneous exchange rules. But, using this information in legal procedures may be limited due to the limitation under the CFR, in the receiving country. If one of the circumstances under Art. 9(1) is at hand, the tax authority of the Member State must send the information to the other Member State's competent authority as soon as possible but not later than one month after obtaining the information. Moreover, under the Art. 9(2), the Member State may also share the data voluntarily if it believes that it "may be useful" to the other Member State. In addition, the Tax Collection Directive allows similar spontaneous exchange of information in specific situations.[144]

2.4.3 Other forms of Cooperation

DAC provides other forms of cooperation between Member States:

A. Presence in administrative offices and administrative enquiries (Art.11).

Under International public law, tax officials from one country cannot carry out investigations in another country on their own. But DAC, under the Art.11 allows Member States of EU to authorize its tax officials to be present during enquiries in another Member State. DAC7 provides rules for remote participation, via electronic communication, but they must prove their identity and authorization in writing.[145]

B. Simultaneous Controls (Art.12)

According to Art.12, simultaneous audits are allowed in cases when two or more Member States need to check taxpayers connected across borders. But the Member States remain sovereign, as they conduct these coordinated audits only in their own territory, so only the information obtained will be shared between Member States. This procedure is useful for complex cross-border situations, in particular regarding MNEs (transfer pricing). [146]

---

other Member State or in both;(d) the competent authority of a Member State has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;(e) information forwarded to one Member State by the competent authority of the other Member State has enabled information to be obtained which may be relevant in assessing liability to tax in the latter Member State.

[144] Spies and Wohrer (n 48) p 275-276 para 716-719.

[145] Ibid, p 277 para 720.; Art.11 Council Directive 2011/16/EU (DAC).

[146] Spies and Wohrer (n 48) p 277 para 721.; Art 12 DAC.

C. Joint Audits (Art. 12a)

DAC7 introduced a legal basis for joint audits in Art.12a. Joint audits are an admirative enquiry jointly conducted by the tax authorities of two or more Member States. The aim is to examine one or more persons that are relevant for both or all Member States that conduct the joint audits, especially in cross-border contexts. Unlike regular exchange of information, joint audits actively involve the participation of foreign officials in the audit process. This proves to be very efficient, targeted, and runs a deeper investigation. Tax officials from different Member States can cooperate directly, making more fact the process of finding information and improving the quality of it. Via joint audits, early issues regarding facts and the legality of information can be clarified and these bring good outcomes in reducing the risk of international double taxation. Joint audits can be initiated only by one competent tax authority; taxpayers cannot request this. All procedures must be conducted in a pre-agreed and coordinated manner. The rules for joint audits apply from 1 January 2024 and have a retroactive effect, which means that the member States may carry out joint audits for tax periods prior to this date.[147]

D. Request for Notification (Art.13)

According to Art.13, a Member State can ask another Member State to help notify individuals or legal entities about tax-related acts or decisions. The requested State must treat the notification as if it were its own, unless it faces legal or practical barriers. The requested Member State can refuse the notifications if they are not in line with the national rules or if they cause disproportionate difficulties. Moreover, the competent authority of a Member State can send documents directly to individuals in another Member State electronically or by post.(Art.13(4)).[148]

2.4.4 Grounds for Refusal of Assistance

A. Invalid and Valid Grounds

The DAC imposes a strong obligation on the Member States to exchange tax information. This obligation is not only imposed by the Directive but also from the EU law principle of mutual loyalty (Art.4(3)TEU). Under the Directive, only two important invalid reasons for refusal are

[147] Ibid, p 277-278 para 723-725.
[148] Ibid p 278-279 para 726.; Art.13 DAC.

explicitly provided: lack of domestic interest under Art.18(1) and bank secrecy under Art.18(2). Even so, Art.17 provides five reasons for rejecting cooperation but are mainly related to spontaneous exchange of information and on request. Regarding automatic exchange of information, Art.17(1),(2) and (3) do not apply. Only under Art.17(4)commercial secret, as a reason might be a valid reason.[149]

B. Subsidiary Principle (Art.17(1))

Under Art. 17(1), a Member State may reject a request if the requesting Member State's authority did not exhaust its own "usual sources" to obtain the needed data. However, this rule causes uncertainty because in practice it is extremely hard to check if the local sources were really exhausted. It also could lead to increased procedural burden on taxpayers in cross-border cases than in purely domestic situations.[150]

C. National Treatment (Art.17(2))

According to Art.17(2), a Member State is not obliged to carry out investigations or to provide information to another member State if doing so would contradict its domestic law (except for domestic bank secrecy provisions). However, if the requested information is already available and no enquiry is needed, Art.17(2) does not justify a refusal to communicate the information requested, even if collecting that data would still breach the national rules.[151]

D. Reciprocity (Art.17(3))

Under Art. 17(3), a Member State may refuse to provide information if the requesting State is legally unable (but not practically) to offer similar information on request. The provision applies only in legal limitations not to the insufficiency of administrative resources. For example, this provision has been used to justify refusals to share banking information to Austria and Luxembourg related to tax years prior 2011.[152]

E. Commercial Secrets (Art.17(4))

---

[149]Spies and Wohrer (n 48) p279 para 727-728.; Art. 17 DAC.
[150] Ibid, p 279 para 729.; Art.17(1) of DAC.
[151] Ibid, p 279-280 para 730.; Art.17(2) DAC.
[152]Spies and Wohrer (n 48), p 280 para 731.; Art.17(3) DAC.

According to Art.17(4), a Member State can refuse to share information if this would lead to revealing commercial, industrial or professional secrets. This legal provision aims to protect businesses from competitive harm or industrial espionage. However, Art.18(2) clarifies that banking and ownership secrecy are not covered by this protection. This ground for refusal is relevant also for tax rulings and cross-border arrangements. According to Articles 8a(6)(b) and 8ab(14)(c) DAC, Member States must share only an abstract description of underlying facts, in order to avoid the disclosure of commercial, industrial or professional secrets.[153]

F. Ordre Public (Art.17(4))

Member States may refuse to exchange tax information if it would violate their public policy. This exception applies when sharing the requested data could harm a fundamental national interest. Some scholars also argue that refusal could be justified if the information was illegally obtained by the requesting State.[154]

2.4.5 Standard Forms and Language (Articles 20 and 21)

To ensure efficient exchange of information, Art.20 sets up standard forms and computerized formats, which must be used for all types of exchange. These are transmitted through the Common Communication Network (CNN).[155] Rules for form templates and data structure are provided by the Commission Implementing Regulation (EU) 2015/2378 and its Annex I-XVI to ensure uniformity. Moreover, the Commission has created a secure central directory for mandatory automatic exchange of tax rulings, cross-border arrangements and now crypto-asset data. The information is recorded in this system and all the tax authorities have access to it. The Commission has limited access to the information recorder there.[156]

The request of information can be made in any language agreed by the operating authorities. Translations into the official language of the requested State is permitted only in special cases.(Art. 21(4)). Regarding the automatic exchange of tax rulings, CbC reports and cross-border

[153] Ibid, p 280-281 para 732-733.; Art.17(4) DAC.
[154] Ibid, p 281 para 734.
[155] Art.21 DAC. CNN represents an electronic data exchange system.
[156] Spies and Wohrer (n 48) p 281 para 735-736.

arrangements, Member States are allowed to make use of any of the official language of the EU.(Art. 20(5) an (6)). However, key elements of the information must be provided in English.[157]

2.4.6 Use of Information Received

Under Art. 16 DAC, Member States must treat received information under the Directive with the same confidentiality as domestic data under the "national treatment" principle. Moreover, under Art.16(5), the information received may be used as evidence in the same way as if it were collected nationally.[158]The information received from another State can be used for the assessment, administration and enforcement covered by the Directive, VAT, other indirect taxes, customs duties, and anti-money laundering and countering the financing of terrorism (since DAC8). The information also can be used in court cases against tax offenders but only if the defense rights are respected. If the intended use of such data is not already allowed, the member State that uses the information needs consent from the providing State.[159]

The Directive includes more specific rules on CbC reports: Art. 16(6) stipulates that CbC reports shall be used for identifying transfer pricing and BEPS risks or for statistical purposes. As a safeguard for the taxpayer, the Directive explicitly states that transfer-pricing adjustments shall not be based directly on the data included in CbC reports. However, CbC reports may serve as a basis for further investigations (e.g. audits), that in the end lead to appropriate adjustments.[160]

It was disputable whether information obtained illegally (stolen or unlawful intercepted) could be used by the Member State in its tax or criminal proceedings. Limits using such information depend on the domestic law and EU fundamental rights laid down in the ECHR of the CFR. Therefore, the CJEU has ruled in one case that Art.47 CFR prohibits domestic tax authorities from using evidence in VAT proceedings that have been obtained by breaching the rights guaranteed by the Charter. Therefore, it is advisable that the evidence provided by the requested State should be accompanied by details about how the evidence was gathered.[161]

[157] Ibid, p 281-282 para 737.
[158] Ibid, p 282 para 738.
[159] Ibid, p 282 para 739.
[160] Ibid, p 282 para 740.
[161] Spies and Wohrer (n 48)p 282-283 para 741.

Sharing information to other Member States is allowed if the data is likely to be useful for the assessment, administration and enforcement of taxes. But before the information is forwarded, the Member State of origin must be notified about the intention to forward information and has 15 days to object.[162]

2.4.7 Exchange of Information and Third Countries

According to Art. 24(1) of the DAC, Member States may also forward information received from a third country to other Member States, upon request, spontaneously if this information is “foreseeably relevant” for tax purposes and if the third country permits. Still, based on the OECD standard, the received information from a third country can only be requested for the receiving State’s own tax purposes and sharing such information with other states is not allowed unless a treaty permits it. On the other hand, under Art.24(2) the forwarding information received from a Member State to third countries is permitted, but only if the original Member State consents and the third country is willing to exchange tax data in return (reciprocity) to fight tax avoidance and tax fraud. [163]

Moreover, Art.19 sets up a most-favored-nation clause, which means that if a Member State signs a wider cooperation agreement with a third country than what the DAC provides, the member State must extend this cooperation to any other Member State of the EU that asks for it. Important to memorize is that the most-favored-nation-clause does not apply for treaties signed within the EU Member States. In general, Member States negotiate bilateral agreements with third countries to exchange information. Only for the special field of automatic exchange of financial account information the European Commission signs agreements on behalf of all EU member States.[164]

2.4.8 Data Protection (Art.25)

One of the questions that this thesis must answer regarding the exchange of Information under the DAC framework is: If DAC complies with the data protection under the General Data Protection Regulation (GDPR)?!

---

[162] Ibid, p 283 para 742.
[163] Ibid, p 285-286 para 748-749.; Art.24 DAC.
[164] Spies and Wohrer (n 48) p 286 para 750-751.

Therefore, the exchange of information of any type (on request, automatic or spontaneous) under DAC, **must** follow the GDPR, which protects personal data, guaranteed by Art.8 CFR. Whereas GDPR guarantees people strong data rights, Art.25(1) of the DAC allows Member States to limit these rights in tax matters, especially if it's needed to protect an important financial or economic interest such as collecting taxes. As a result, the Member State is not obliged to inform the taxpayer when their personal data is used or shared.[165]

Still, according to Art.25(4), Member States must ensure that financial institutions, intermediaries, report platform operators and reporting crypto-asset service providers inform everyone concerned by the data collecting and sharing. The Individuals must be informed early enough, so they could exercise their data protection rights before the data is reported. Additionally, under Art.25(5), it is stated that any information processed should not be retained longer than necessary to achieve the purpose of the Directive and the domestic rules must be followed on how long the data can be stored. And Art. 25(6) provides rules that must be followed by the Member State and Commission if there is a data breach, in a Member State, as well as in the case when the breach occurs to the CNN (introduced by DAC7).[166]

165 Ibid p 283-284 para 743.; Art.25 DAC.
166 Ibid.

Chapter 3: Automatic Exchange of Non-Financial Information

3.1 Types of Non-Financial Information under DAC

The EU Directive on Administrative Cooperation (DAC) does not expressly provide a definition for "non-financial information", but it can be understood from the categories of information under the multiple amendments of DAC. On the other hand, "financial information" under DAC2 refers to bank account related information such as dividends, interest, gross proceeds from the sale or redemption of financial assets and cash-value insurance contracts and account balances.[167]

Considering the above, this thesis will qualify non-financial information, the information that does not refer to financial accounts. With this being clarified, considering the broad scope of DAC through all the amendments, automatic exchange of non-financial information is covered by the following:

A. DAC1 (Directive 2011/16/EU). Under DAC1 was introduced the AEOI According to Art. 8(1), automatic exchange of non-financial information includes: income from employment, director's fees, life insurance products not covered by EU Law, pensions, ownership of and from immovable property.[168] Since 1 January 2024, Royalties are included in the automatic exchange of non-financial information (by DAC7). Non-custodial dividends, also are added to these categories from 2026. (by DAC8).[169]

B. DAC3 (Directive 2015/2376/EU), expanded the mandatory automatic exchange of advance-cross-border tax rulings and advance pricing arrangements. This information include: identification of the taxpayer (the name and identification of the legal person who beneficiates of the ruling or APA); general description of (business activities, transactions etc., that are covered by the ruling or APA); timeline (start and end of validity, issuance,

[167] European Commission, The Explanation on the main aspects of DAC, Directive 2014/107/EU. https://taxation-customs.ec.europa.eu/system/files/2024-12/directive_2014_107_eu_en.pdf Accessed 30 June 2025
[168] See Art.8(1) DAC.
[169] European Commission, DAC1 (n 169).

amendment or renewal dates); type and purpose (of ruling or APA); jurisdictional impact etc.[170]

C. DAC5 (Directive 2016/2258/EU). This amendment does not extend the AEOI of the DAC, *per se*, but grants automatic access to tax authorities to information on the beneficial owner collected in line with anti-money laundering legislation (AML).[171]This amendment was critical in making sure that the tax authorities can effectively monitor how financial institutions are applying the due diligence procedure set out in the DAC1, and to combat tax evasion and tax fraud.[172]

D. DAC6 (Directive 2018/822/EU), applicable from July 2020, introduces the AEOI on the reportable cross-border tax planning agreements. It creates reporting obligations for the EU-based intermediaries of cross-border tax arrangements that fulfill specific criteria (geographic scope and so-called "hallmarks" related to potential tax risk) within 30 days.[173]

E. DAC7 (Directive 2021/514/EU). Introduces reporting obligation on platform operators that are: EU-based (resident in EU or those that operate via a permanent establishment within the EU) and not EU-based (they must register and report in one single EU country). Covers information that is "foreseeable relevant".[174][175]

Regarding DAC2, it completely refers to financial information and mentioned above. DAC4 and DAC8, also refer primarily to automatic exchange of financial information. But include partly automatic exchange of non-financial information as well. For example, DAC4 focuses on Country-by-Country(CbC) reporting for multinational enterprises (MNE) groups. The financial information

[170] See Art.8a DAC.

[171] European Commission, DAC1 (n 169), DAC5-fiscal access to beneficial owner information.

[172] European Parliamentary Research Service, Implementation of the EU requirements for tax information exchange: European Implementation assessment (PE 662.603, February 2021) p 5.

[173] European Commission, DAC6. https://taxation-customs.ec.europa.eu/taxation/tax-transparency-cooperation/administrative-co-operation-and-mutual-assistance/directive-administrative-cooperation-dac/dac6_en Accessed 30 June 2025

[174] See Art.5a DAC7.

[175] European Commission, DAC1 (n 169).

includes revenue, paid taxes, profits etc. On the other hand, non-financial information includes organizational structure, economic activity, and number of employees.[176]

With regard to DAC8, it expands the scope of automatic exchange of information under DAC and covers reporting crypto assets. In principle, DAC8 refers to automatic exchange of financial information but partly covers automatic exchange of non-financial information (transaction type, user identifiers).[177]

Reflecting on these amendments of DAC, it is clear that the EU is committed to deal and keep under control the issues on tax avoidance schemes through legal instruments, that are adapted to the real evolution of economic activity.

3.2 Implementation Challenges Among EU Member States

The Directive on Administrative Cooperation, constitutes the main legal instrument that establishes a harmonized framework addressing the needs of the EU countries for mutual assistance in the field of taxation and safe administrative cooperation between their domestic tax authorities. Its main objectives are to combat tax avoidance and evasion in order to ensure fair taxation.[178]

Since DAC is a Directive, Member States of the EU have the choices, forms and methods[179] to transpose it into their national legislation by the set deadline.(Art.288 TFEU). In case of delays in transposition of relevant EU legislation into national law occurs, the Commission opens infringement procedures against the Member States for such delays. The European Commission is responsible for monitoring the transposition and implementation of the EU legislation by the

[176] European Commission, DAC4 (n 77).
[177] European Commission, DAC8 (n 118).
[178] European Commission, Directive on Administrative Cooperation (DAC). https://taxation-customs.ec.europa.eu/taxation/tax-transparency-cooperation/administrative-co-operation-and-mutual-assistance/directive-administrative-cooperation-dac_en Accessed 30 June 2025
[179] See Art.288 TFEU.

Member States, and when necessary, should provide guidelines for the uniform application across the EU. The DAC is consistent with the OECD provision.[180]

The transposition of DAC's amendments into national legislation of the EU Member States showed diverse compliance: DAC1-AEOI was due by 31 of December 2012 with 14 infringements opened, four for the transposition of AEOI (which eventually were partly closed), and it is applicable as of 1 January 2015 (for the data of the 2014 year); DAC3 had a transposition deadline by 31 December 2016. Nine infringement procedures were opened due to late and incorrect implementation (all were resolved).; DAC5 required transposition by 31 December 2017. Eleven Member States failed to meet the deadline of the transposition. They received formal notice of non-compliance, most of the cases were closed early, except Ireland's infringement. Which remained open till early 2021. In the case of the DAC6 with a deadline of 30 June 2019, the European Commission sent a letter of notice to 15 Member States. Some of them were closed, as dated (Mid-January 2021)but the cases for Greece, Italy, Sweden, Estonia, Spain, Czechia, Latvia and Cyprus were still open.[181]

All infringement cases mentioned above for the respective amendments of the DAC, reflect the complexity of the amendments and the practical challenges that the Member States experienced by transposing them into their domestic law. Regarding all the infringements on DAC1, mostly were opened due to late transposition, except for the Estonia case (incomplete transposition of AEOI). Whereas the reasons behind the infringements for DAC3 were late transposition or notification of the European Commission.[182]

A big challenge for the European Commission was to evaluate the DAC due to the limited available data provided and the refusal of the Member States to grant access for study purposes. So, the

---

[180]European Court of Auditors, *Special Report No 03/2021: Exchanging tax information in the EU: solid foundation, cracks in the implementation* (Publications Office of the EU 2021) para 22,26,34. https://www.eca.europa.eu/Lists/ECADocuments/SR21_03/SR_Exchange_tax_inform_EN.pdf Accessed 1 July 2025

[181] European Parliamentary Research Service, Implementation of the EU requirements for tax information exchange: European Implementation assessment (PE 662.603, February 2021) p 16-17. https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662603/EPRS_STU(2021)662603_EN.pdf accessed 2 July 2025

[182] Ibid, p 16-17.

reports, evacuations and studies are merely based only up to 2019 (the external evaluation was complete).[183]

Art.27 of the DAC requires the European Commission to evaluate the Directive's application every five years, starting from 1 January 2013. The evaluation report was published in December 2017 along with a staff working document. A second report under Art.8a of DAC which covers only AEOI was published in December 2018. The second full evaluation is ongoing and is due to be finalized in the first quarter of 2025, to date (this thesis is being drafted by mid-July 2025).[184]

3.2.1 Implementation challenges of DAC1

The Automatic exchange of information (AEOI) under DAC1 became operational in 2015, being the first time Member States exchanged tax information systematically and without prior request, The AEOI included data on: income from employment, directors' fees, pensions, life insurance products, ownership of and income from immovable property.[185]

Tax authorities were required to extract tax information on residents of other Member States and send it every year, all at once, to the relevant tax authorities. But the implementation varied significantly across the EU Member States in relation to data coverage, availability, and completeness. For example: pensions and employment income represented the majority part of the exchanges. Only 24 Member States exchanged data on immovable property, 23 on directors' fees, and just 8, on life insurance products, implying limited data availability and capacity.[186]

Despite the fact that the AEOI under DAC1 is mandatory, still DAC1 does not oblige the Member States to report all five categories of information at once. According to Art. 8(2) of DAC1, Member States must only exchange the data "that is available", and this resulted in large discrepancies in implementation. Some Member States report all five income categories, while others report only

---

[183] Ibid, p 18-19.

[184] European Commission, DAC (n 6).

[185] European Commission, *Commission Staff Working Document – Evaluation of Council Directive 2011/16/EU (DAC1) and its amendments DAC2 and DAC3*, SWD(2019) 327 final, p 19. https://taxation-customs.ec.europa.eu/system/files/2019-09/2019_staff_working_document_evaluation_on_dac.pdf Accessed 3 July 2025.

[186] Ibid.

one or two. The reluctance to report all categories was linked to the administrative burden and lack of access to decentralized registers, such as local land registries for property income.[187]

In 2018, only a few Member States submitted complete information for all five DAC1 income categories, and many omitted key data such as TINs (Tax Identification Numbers). During 2015–2017, just 2% of DAC1 exchanges included a TIN issued by the country of residence, significantly limiting the receiving country's ability to match data with their taxpayers. This deficiency directly affected the accuracy and usefulness of AEOI, weakening the effectiveness of DAC1 implementation.[188] The inclusion of TIN is important in assessing correctly the related taxes. The Commission proposed to make TIN mandatory under DAC1).[189]

According to DAC1, regarding the timeline and validation, Member States must send the data within six months of the end of the tax year. Although, most of the countries respect the deadline, in practice the average delay of exchanging the data was 12 months, after the relevant year. The reason for such delays was due to IT infrastructure and data collecting. Even if some Member States use automatic validation systems to verify the data before submitting, the rest Member States perform manual data quality control, which in practice was not systematic.[190]

Once the information was received, the tax authorities had to match the received data with their domestic databases. The matching rate varied across the EU, but an encouraging development was observed over time. The positive example, in 2017 of Belgium, Estonia, Latvia, Lithuania, Poland, and Slovenia achieved the highest achievement rates, almost fully matching for at least two income categories (wages, director's fees and pensions). The improvement was due to algorithmic learning and better IT system integration. But this only represented a technical progress, when the real use of such information, again was different across EU Member States, because some of the States

[187] European Court of Auditors, Special Report (n 180) p 24-25.
[188] European Court of Auditors, Special Report (n 180) p 24-26.
[189] Ibid (n 180) p 25.
[190] Ibid, p 24-25.

were already using the information for audits, tax and risk assessment, while others had not even started using it.[191]

Under Art. 14(2) of DAC, Member States must provide bilateral annual feedback, but in practice was limited to technical matching rates, with almost no feedback on the data quality, usefulness or enforcement outcomes. This means that the Member States that transmitted the data remained unaware whether the information they shared was used effectively, resulting in undermining the feedback loop, which under DAC is crucial for the future improvement of data quality and compliance.[192]

Another challenge regarding the implementation of DAC1 was the administrative burdens, especially in Eastern and Southern EU Member States, where local property registers and fragmented data, complicated the process in obtaining the accurate information. Furthermore, in some Member States the competent tax authorities (on a local and regional level) held relevant tax data but did not establish a cooperation mechanism with central authorities and this, as a result, affected the quality of the shared data and the efficiency of the received data matching.[193]

Summing up, DAC1 established the first structured framework for AEOI in the EU, but the implementation had serious deficiencies, such as: non-mandatory scope, missing identifiers, delays in transmission and inconsistent use of received information. The European Court of Auditors concluded that DAC1's data was underused and had a limited quality, additionally, highlighted the idea that without complete and timely information, the AEOI system is at the risk of failing its objectives of enabling Member States to combat cross-border tax evasion and tax avoidance schemes, effectively.[194]

3.2.2 Implementation challenges of DAC3

Regarding the AEOI under DAC3, in September 2017, Member States began the automatic exchange of cross-border advance tax rulings (ATRs) and advance pricing arrangements (APAs). Likewise, across the EU under DAC3 were variations: instead of bilateral data transmissions, the

[191] Ibid, p 19-20.
[192] European Court of Auditors, Special Report (n 180), p 25.
[193] Ibid, p 24-25, 30.
[194] Ibid, p 24-26, 30-31.

data under DAC3 was uploaded to a central directory, maintained by the European Commission (with limited access rights) that grants access to all EU Member States,[195]the degree of participation varied: the Netherlands, Luxembourg, and the United Kingdom were the main contributors by January 2018, while several Member States had not exchanged any rulings at all by that time.[196]

Important to mention is that DAC3 excludes rulings concerning natural persons from the scope of mandatory AEOI, which creates a significant loophole because high-net-worth individuals (HNWIs) may exploit this exemption by obtaining rulings that remain undisclosed to other Member States, resulting in avoiding proper taxation in their states of residence. The European Parliament criticized this exemption in 2019 resolution, highlighting that it facilitates tax avoidance by HNWIs. DAC3 aimed to strengthen transparency and prevent harmful tax practices by ensuring that such rulings would no longer remain secret between Member States and they will be aware of the taxpayers that are engaged in potentially aggressive tax planning schemes.[197]

Another big weakness of DAC3 lies in the quality of the information. Even if the Member States complied with the obligation to upload the data in the central directory, and the database was considered largely complete, still problems appeared regarding the quality of the data, which was vague and not enough. The individuals' taxpayers were often not named in the uploaded database, making this difficult for other tax authorities to perform data matching. Moreover, the summaries of the rulings often lacked details which for the recipient Member State represented a challenge in understanding the substance of the ruling or to assess the potential tax implications. In addition, even if the data under DAC3 was available in the database, some of the Member States did not even use it.[198]

Summing up, even if DAC3 succeeded in maintaining the exchange of previous confidential rulings, the initial implementation had weaknesses due to the exclusion of HNWIs from AEOI; poor data quality (missing names, vague summaries); absence of systemic procedures for risk

[195] Ibid, p 33-34.
[196]Commission Staff Working Document (n 185) p 20-21.
[197] European Court of Auditors (n 180) p 34-35.
[198] Ibid, p 34-35.

assessment and tax enforcement based on DAC3 data , and minimal use of the central directory by national tax authorities.[199]

3.2.3 Implementation Challenges of DAC5

Regarding DAC5, which entered into force in January 2018, and introduced a crucial amendment to DAC by granting tax authorities access to beneficial ownership information collected under Anti-Money-Laundering (AML) frameworks. The aim of it is to strengthen the effectiveness of the automatic exchange of information system and identifying hidden incomes and assets across Member States by building a bridge between AML registers and tax administrations.[200] However, the effectiveness of DAC5 has been significantly influenced by the AML directives and has been undermined by their deficiencies in the transposition and enforcement. Although AMLD4 was meant to be transposed by 27 June 2017 and AMLD5 by 10 January 2020, many Member States failed to meet these deadlines. As a result, the Commission launched infringement procedures against eight Member States for non-compliance with AMLD4 and 16 Member States for failures under AMLD5.[201] This lack of uniform implementation of DAC5, undermines the reliability of beneficial ownership registers, which DAC5 depends on.

Furthermore, the value of DAC5 is also weakened by the structural deficiencies in AML implementation such as the absence of beneficial ownership data for real estate and life insurance contracts; the non-determination of beneficial owners for accounts held via active non-financial entities (NFEs) and the lack of interconnected registers that links real estate and beneficial ownership databases. Besides that, inconsistent definitions of "beneficial ownership", "due diligence" and "tax crimes" persist across the EU, impeding effective cooperation.[202]

The Financial Action Task Force (FAFT) in its 2020 evaluation of 18 EU Member States revealed critical flaws in AML performance. None of the Member States were assessed with a "high" level

---

[199] Ibid, p 34-36.

[200] European Parliament, *Report on the implementation of the EU requirements for exchange of tax information: progress, lessons learnt and obstacles to overcome* (A9-0193/2021, 3 June 2021) p 15-16 para 19.

[201] Ibid, p 16 para 20.

[202] Ibid (n 200), p 16 para 19.

of effectiveness, only Spain achieving a "substantial" rating. Most other Member States were classified as having either moderate or low levels of effectiveness in applying AML measures.[203]

These findings confirm that achievements of DAC5 depend on the integrity of the national AML systems.

What is more, is that complex ownership structures such as shell companies and trusts have been used to hide beneficial ownership and bypass the AML and DAC framework. The OpenLux[204] revelations illustrate the extent to which loopholes in the registration and monitoring of beneficial ownership can jeopardize transparency. The European Parliament, thus, encouraged that the beneficial ownership of trusts should be made equally transparent as that of companies under AMLD5.[205]

Important to mention is the case of Germany which since 2015 has maintained a Transparency Register that is based on the EU Anti-Money Laundering Directive. The main purpose of this register is to increase transparency in ownership structures to combat money laundering and financing terrorism. But, in the last years, big changes occurred and affected the notification procedure for ultimate beneficial owner (UBOs) resulting in the Financial Transparency and Information Register Act (TraFinG), which entered into force on 1 August 2021 and amended the Money laundering Act (GwG). All these changes affected the German companies by forcing them to take certain actions.[206]

If before the changes in Germany the companies could rely on the fact that the information on beneficial ownership information was already known through other registers, now this fiction is abolished. This means that all German companies must explicitly declare their beneficial owners

---

203 Ibid, p 15-16 para 19, 21.

204 OpenLux was an investigative journalism project that was initiated by *Le Monde,* in collaboration with 16 media partners, which was published in February 2021. It uncovered the hidden side of Luxembourg's financial system and revealed that approximately **55,000 offshore companies**, managing an astonishing **€6 trillion in assets**, are registered in the country, many serving as shell entities for billionaires, multinationals, sports stars, and even criminal organizations. See. Le Monde, https://www.lemonde.fr/les-decodeurs/article/2021/02/08/openlux-the-secrets-of-luxembourg-a-tax-haven-at-the-heart-of-europe_6069140_4355770.html, Accessed 6 July 2025

205 European Parliament, Report (n 201) p 19 para 23.

206 Piotr Podsiadlo, 'Beneficial Ownership Information Reporting in Germany – Changes to Notifications' (EY, 2025) https://www.ey.com/en_pl/insights/law/beneficial-ownership-information-reporting-in-germany?utm Accessed 6 July 2025

(presumed and fictitious) to the Transparency Register (or "UBO Register"), without delay, even when no individual holds more than 25% ownership or control (§ 32 sentence 5 GwG).[207]

The new legislation has left unchanged the definition of beneficial owner under § 3 GwG. Which means any natural person who directly or indirectly: holds >25% of share capital; Controls >25% of voting rights ; Exercises control in a comparable way (e.g., general partner, veto rights).The obligation report exists regardless of the beneficiary's residential address and foreign final beneficial owner must also be declared. But in cases when no natural person meets the above requirements, the German company must declare its so-called "presumptive beneficiaries "(managing directors).[208]

New obligations under the Second Sanctions Enforcement Act (SDG II) are introduced for foreign entities (e.g., Polish companies) that own German real estate. They must report to the UBO even if the acquisition took place before these regulations entered into force. This also applies to indirect ownership via German entities; therefore, the reporting is mandatory if: ownership of the real estate was acquired before 1 January 2020; Shares were acquired in a real estate-holding company before 1 August 2021; There is an economic interest per § 1(3a) GrEStG acquired before 1 August 2021.

Another important aspect is that the deadline for reporting the beneficial owners in the case of already existing ownership was 30 June 2023. Late compliance can still be made, but penalties may apply.[209]

Exemptions from the reporting obligations exist for foreign entities that have already reported the relevant data on the ultimate beneficial ownership to another UBO register in another Member State of the EU. (for example, since in Poland there are no registers for the real estate ownership, they are not exempt).[210]

Moreover, consequences could appear if a reporting company fails to report the required information in the Transparency Register, missing the deadline or failing to provide the full information could be fined up to EUR 150.000. For serious, repeated or systematic breaches, the

[207] Ibid.
[208] Piotr Podsiadlo (n 206).
[209] Ibid.
[210] Ibid (n 206)

company may be fined up to EUR 1 million or twice the gained economic advantage. Also, the competent administrative authorities publish on their website non-appealable decisions on fines, for five years with details about the persons responsible of the infringement and details about it. This can cause serious reputational damage to entrepreneurs.[211]

Also, not less important is the situation in Hungary where in 2021 the UBO register was established in order to enhance transparency and align with the EU AML standards. Unfortunately, due to the weak regulatory system and deliberate political obstructions, the register has limited functionality. The access for journalists and NGOs is heavily restricted even if formally the register exists, especially after the 2022 CJEU ruling. Hungary used this ruling as a pretext to limit the public access to data imposing bureaucratic obstacles under the pretext that protects privacy. Now, if someone wants access, they must prior request permission based on "legitimate interest", this blocks anti-corruption groups from easily investigating ownership structures. Even so, alternative platforms exist in Hungary to check ownership, but their data is not detailed enough to fully describe who owns and how assets are controlled.[212]

A critical issue lies in the lack of transparency of trusts and private equity funds, which have become popular instruments for hiding assets in Hungary. These structures are largely exempt from the UBO-register, and even if data exists, its accuracy is doubtful due to the inadequate due diligence obligations and minimal enforcement. Because the Hungarian government failed to ensure reliable UBO data, together with the legislative amendments that block public access, the anti-corruption mechanism is now very weak. As a result, politicians and others continue to hide their financial interests from scrutiny. In contrast with the EU, Hungary remains an attractive jurisdiction for those seeking to hide asset ownership.[213]

3.2.4 Implementation Challenges of DAC6

DAC6 represents the 5th amendment to DAC which and entered into force in July 2020. Its main objective is to enhance tax transparency by obliging intermediaries or taxpayers to mandatory disclose information about potential aggressive cross-border arrangements, based on specific

---

[211] Ibid.

[212] Institute for Development of Freedom of Information, 'Challenges in Accessing Beneficial Ownership Data in Hungary' (29 July 2024) https://idfi.ge/en/bo-standards-hungary-analysis Accessed 7 July 2025.

[213] Ibid (n 212).

features known as “hallmarks”(see Annex IV of DAC6). These disclosures are automatically exchanged via an EU central directory which enable tax authorities to assess and counter tax avoidance schemes.[214]

The implementation of DAC6 across Member States has been plagued by divergent interpretations, particularly regarding the “main benefit test” and various hallmarks that define reportable arrangements. The main benefit test, a central condition for disclosure, was applied inconsistently, with differences in whether a quantitative analysis should be conducted. Additionally, the audit identified uncertainty in interpreting terms such as “made available,” “ready for implementation” and “intermediary,” which has led to variations in reporting obligations and risks underreporting across the EU.[215]

The European Parliament’s report criticizes the absence of binding EU-level implementation guidelines, noting that neither the Commission nor the Member States succeeded in publishing common interpretations through the DAC6 hallmark working group. Although the Commission organized Fiscalis events and supported working groups, a lack of consensus prevented the issuance of joint guidance. This regulatory vacuum has allowed inconsistent national practices to persist.[216]

While all five audited Member States (Ireland, Cyprus, Luxembourg, Malta, Netherlands) have operational IT platforms and processes for exchanging the DAC6 information, still, the measures for quality control are inconsistent. Some Member States (Luxembourg and the Netherlands) carry out detailed examinations perform, while other Member States only check the compliance of technical schema. Moreover, few Member States systematically analyze the data they receive, with DAC6 information often used only on ad hoc basis, thereby undermining the directive’s intended deterrent effect.[217]

Legal loopholes further undermine DAC6’s effectiveness. All five Member States granted exemptions for legal professional privilege, meaning lawyers and similar professionals were not

---

[214] European Parliament, Report (n 200) p 18 para 37.
[215] European Parliament, Report (n 200) p 19-20.
[216] Ibid, p 22-23.
[217] Ibid, p 24-26.

obliged to report. This opened the door to unreported arrangements, particularly in cross-border settings involving non-EU jurisdictions. The possibility for intermediaries to forum shop (i.e., choosing the most favorable Member State for reporting) exacerbates these weaknesses.[218]

Though DAC6 requires "effective, proportionate, and dissuasive" penalties, enforcement has been negligible. All five Member States had established penalty regimes ranging from EUR 20.000 (Cyprus) to over EUR 1 million (Netherlands), but none had applied any penalties by the time of the audit. The report highlights that legal ambiguities, procedural differences and low minimum sanctions, weaken the deterrent function of DAC6.[219]

The Commission failed to perform the required biennial evaluation of DAC6's Annex IV (hallmarks) due by 1 July 2022. This obligation was later revoked under DAC8 and incorporated into a broader DAC evaluation. As of the audit period, the second DAC evaluation (including DAC6) is ongoing and expected to be published in early 2025. Without a proper evaluation, performance is assessed inadequately.[220]

To sum up, the implementation of DAC6 across EU Member States shows that, although the infrastructure for exchanging the data in in place, still, due to the legal ambiguities, uneven application, lack of quality control, and limited use of the data exchanged, the effectiveness of DAC6 is undermined. The lack of a clear guidance from the Commission, resulted in fragmented application and legal uncertainty of DAC6 and reduced the capacity of DAC6 to deter aggressive tax planning.[221]

A. Implementation Challenges of DAC6 in Germany

Germany implemented DAC6 into national law on 21 December 2019 but with the obligation to report from 1 July 2020 (this was the first group that introduced the reporting under DAC6, together with Austria and Finland. The remaining Member States used an optional deferral with reporting from 1 January 2021). In spite of early implementation, Germany faced several

---

[218] Ibid, p 27.
[219] European Parliament, Report (n 200) p 29.
[220] Ibid, p 24.
[221] Ibid, p 18-20, 22-27, 29,

challenges due to the lack of guidance, different interpretation of the definitions and professional secrecy conflict.[222]

One of the biggest problems was the absence of final guidance regarding the interpretation of the DAC6 rules in Germany, because in early 2021, only one draft from 2020 was available. This lack of clarity created legal uncertainty in the application of the rules. Even so, reporting has started. Moreover, in Germany the DAC6 reports must be sent to the German Federal Tax Office (called "*Bundeszentralamt für Steuern")* and not to the local tax office. Germany also opted for electronic reporting via an electronic system platform. In order to do so, a specific XML format must be used to upload the information correctly.[223]

Germany interprets the definition of the covered taxes broader than the other EU Member States. So, Germany applies DAC6 reporting obligation for the following taxes: personal income tax, corporate income tax, trade tax, real estate transfer, motor vehicle tax, insurance tax, property tax, inheritance and gift tax, air transport tax, non-harmonized excise duties (coffee tax). As it can be deducted, Germany considers transfer taxes (real estate transfer taxes) as being part of the covered taxes, whereas other EU Member States do not impose the DAC6 reporting for transfer taxes.[224]

Germany also implemented a narrower definition of "intermediary", and limited this only to "promoters", while the Directive includes both "promoters" and "service providers". This deviation creates inconsistencies and fragmentation in implementation of DAC, potentially leading to underreporting. This could lead to the situation where certain arrangements in Germany are not reported because the intermediary does not qualify, while other Member States may assume it was reported.[225]

Further, in Germany certain professions are subject to professional secrecy (e.g. lawyers or tax advisors), whereas in other EU Member States tax advisors for example, are often not bound by professional secrecy. As a result, since these professionals are required to report under DAC6 as

---

[222] Deloitte, *Tax Analysis: European Union-Mandatory Tax Reporting (DAC6) Implemented*, Issue P330/2021 (Deloitte China, 11 January 2021) p 2. https://www.deloitte.com/content/dam/assets-zone1/cn/en/docs/services/tax/2024/deloitte-cn-tax-tap3302021-en-210111.pdf Accessed 8 July 2025.

[223] Deloitte China (n 222) p 2.

[224] Ibid.

[225] Ibid(n 222), p 2-3.

intermediaries, this creates a conflict between their obligation to report and the duty of confidentiality. When such conflict happens, the intermediary must inform the taxpayer about the situation, then the taxpayer has two options: to give permission to the intermediary to break the confidentiality and make the report; or to file the DAC6 report themselves.[226]

Based on the current draft guidance in Germany, for DAC6 reporting a tax rate below 4% is considered an “almost zero tax rate”. This is higher than the interpretation in many other EU countries. Also, Germany includes tax benefits from non-EU countries (as a potential tax advantage) when deciding if the main benefit test is met. This means that a tax arrangement might not need to be reported in other EU countries, but it would need to be reported in Germany. For example, a 3% tax rate (which is not seen as “almost zero”) might not trigger reporting in some countries but would in Germany due to its stricter rules. This shows how each country’s interpretation can differ. Therefore, it is important to check the specific rules in Germany under DAC6.[227]

So, all the above-mentioned differences in legal definitions, scope, and enforcement confirm the fragmentation in the implementation of DAC6 and the need for better harmonization and guidance across Member States.[228]

B. Implementation of DAC6 in Austria

About Austria, DAC6 was implemented with effect from 1 July 2020 and with reporting obligation effective from 1 July 2020, but penalties for delayed filling were postponed. By that time, there was no formal guidance published. (neither in draft nor final).[229]

The DAC6 filing can be done in two languages (English and German) but certain information such as details of the hallmarks, a summary of the content of the reportable arrangements etc., must be submitted in English. The reporting is done in XML-Schema via the portal of Austrian tax

[226] Ibid, p 3.
[227]Deloitte China (n 222) p 3.
[228]Ibid.
[229]Ibid.

authorities. If the electronic transmission is not reasonable it can be submitted also via an official form.[230]

In Austria DAC6 reporting obligations apply for the following tax areas: income tax (corporate tax income and withholding tax), real estate transfer tax, statutory fees under the Austrian Fees and Duties Act, vehicle tax and standardized consumer tax.[231]

C. Implementation of DAC6 in Finland

Regarding Finland, DAC6 was introduced into national law on 30 December 2019. Since Finland did not use the optional deferral granted by the EU, the reporting obligation started from 1 July 2020. Comparing to Germany and Austria that did not publish any guidance, the Finnish tax authorities on 30 April 2020 published a general guidance, and on 5 June 2020 a technical reporting guidance. Additionally, in Finland the fillings under DAC6 can be submitted in three languages: Finnish, Swedish or English. The tax authorities recommend that at least the summary of the arrangement and the relevant sections of law should be submitted in English. For corporations is requested the electronic filling but the individuals have the option to submit the report in a paper format. The electronic reports are transmitted in the portal, which is designed for all electronic tax filings.[232]The Finish implemented law applies primarily to direct taxes, (VAT, custom duties, excises are excluded and have no relevance when considering the tax benefit). The tax benefit may include a lower tax rate, exempted income, deductions, tax loss, avoidance of withholding tax, deduction relating to foreign tax or any economic benefit gained in taxation.[233]

D. The implementation of DAC6 in Luxembourg

Luxembourg implemented DAC6 word by word and followed the structure of the Directive through the Law dated 25 March 2020, applying it retroactively to arrangements from 25 June 2018 onward. Even if transposed accurately, Luxembourg also faced some challenges.[234]

---

[230]Ibid.
[231] Ibid.
[232] Deloitte China (n 222) p 3-4.
[233] Ibid (n 222), p 4.
[234]Deloitte Luxembourg, *Understanding DAC 6* (Deloitte Luxembourg) https://www.deloitte.com/lu/en/services/tax/research/dac-6-directive.html accessed 9 July 2025.

Reporting obligations under DAC6 started on 1 July 2020, and retroactive arrangements implemented from 25 June 2018 till 30 June 2020 had to be reported by 28 February 2020, the delay happened because of the COVID-19. Regarding the future arrangements, they must be reported within 30 days of a triggering event.[235]

In Luxembourg, the five hallmark categories were fully transposed, and the Main Benefit Test applies to specific hallmarks (those where an arrangement obtains a tax advantage). Important to be mentioned is that the main benefit test in Luxembourg covers direct taxes.[236]

Regarding the intermediaries, under the Luxembourg law, promoters and service providers are included and they have the right to prove lack of knowledge or involvement. Also, legal professional privilege applies to lawyers, auditors and chartered accountants, they are exempt from reporting but obliged to notify other intermediaries or the taxpayer (the taxpayer cannot waive this privilege).[237]

For the failure to report, late reporting, incomplete or inaccurate reporting, also for the breach of the requirements imposed on the intermediaries concerned by the legal professional privilege, a penalty up to EUR 250.000 would apply. Luxembourg emphasized that DAC6 does not impose additional specific reporting obligations on intermediaries and taxpayers that will cross beyond their existing professional obligations. For many intermediaries and some taxpayer's current professional obligations cover Anti-Money Laundering requirements.[238]

Even if the law is detailed and transposed by following the wording of the Directive, it is needed clearer key concepts and indeed, a practica guidance. During this period, businesses should prepare by assessing impacted transactions, also implementing internal compliance mechanisms and using proper technology to successfully manage the reporting obligations under DAC6.[239]

[235] Ibid.
[236] Ibid.
[237] Ibid.
[238] Deloitte Luxembourg (n 234).
[239] Ibid.

3.2.5 Implementation challenges of DAC7

Since, there is lack of published information regarding the implementation of DAC7 across the EU Member States about the effectiveness and challenges in implementation, and not yet a report on evaluation from the European Commission, the following paragraphs are limited to general facts.

Under DAC7, adopted in March 2021 (not yet a Report from the European Commission) aims to tackle tax evasion via cooperation between Member States. It obliges the digital platforms (located in the EU and non-EU operators) such as websites and mobile apps that allow taxpayers to sell goods, offer services or rent out property or transport, to report the taxpayers' activities. Member States were required to transpose DAC7 into their national legislation by 31 December 2022.[240]

According to DAC7, the digital platform operators are required to report specific information about the users of their platforms and transactions facilitated by their platforms. The regulations under DAC7 came into effect on 1 of January 2023. The transposing process started differently across the EU Member States (some started to adopt DAC7 by launching public consultations or releasing draft legislations, others have not yet implemented the Directive as of writing).

Therefore, due to the fragmentation in transposing and implementation, the European Commission on 27 January 2023, issued letters of the formal notice to 14 Member States.[241]

In Denmark the Customs and Tax Administrations released detailed guidance on registration and reporting obligations under DAC7 for digital platform operators. The guidance establishes requirements for the 2024 reporting year and offers clarity regarding the platform compliance responsibilities. Therefore, platform operators that facilitate sales of goods, rental of immovable property or transport, or personal services are obliged to register and report relevant information about the seller (applies to resident and non-resident platforms that make their platforms available in Denmark).[242]

---

[240] Inside DAC7*: The EU's Newest Tax Directive & Its Implementation Status* (Trolley, 14 March 2023, last updated 24 June 2025) https://trolley.com/learning-center/dac7-implementation-progress Accessed 10 July 2025.
[241] Ibid.
[242] Denmark: Tax Agency provides advice on DAC7 reporting requirements (Global VAT Compliance, 2 April 2023) https://www.globalvatcompliance.com/globalvatnews/denmark-dac7-platform-reporting/ accessed 11 July 2025.

Moreover, even if a platform operator has no reportable sellers for the year 2024, it is still obliged to submit zero reports, to fulfill its compliance obligation. Also, platform operators must register or deregister with the Danish business authority within eight days of the obligation arising or ceasing. Another important aspect is that the platform operators must report all the relevant information on sellers only in one EU country (even if the activities occur in multiple EU Member States), to avoid duplication and ensure centralized compliance. As a result, the reporting platform operators must have reported the information by 31 January 2025 for the year 2024.[243]

For the purposes to comply with the General Data Protection Regulation (GDPR), the reporting platform operator must also inform individual sellers that their personal data will be collected and reported in accordance with DAC7.[244]

Under DAC7, a reportable seller is an EU resident or non-EU resident (individual or company) that is registered on the platform and carries out relevant activity. (Non-EU residents that rent out immovable property located in the EU, are also reportable sellers). Excluded from DAC7 reporting are governments and publicly traded entities, also, excluded are casual sellers of goods for which the platform facilitated less than 30 sales with a total EUR 2000 during the reporting period. Another category that is excluded are the sellers engaged in high-frequency renting of immovable property (such as hotel chains and tour operators) that have more than 2000 relevant transactions during a reporting period.[245]

In case of non-compliance with DAC7, Member States may determine and impose penalties that must be effective, proportionate and dissuasive. Sellers who fail to provide a reporting platform operator with the information requested to platform due diligence will have their account closed after receiving two reminders.[246]

[243] Ibid.
[244]Complying With EU's DAC7 Reporting Directive (Bloomberg Tax, 14 May 2024) https://pro.bloombergtax.com/insights/international-tax/unpacking-eus-dac7-directive accessed 11 July 2025.
[245] Ibid (n 244).
[246] Ibid.

3.3 The overall impact of DAC provisions

The effectiveness of the AEOI under DAC1 that covers five income categories showed limited but growing success. Since 2015 under the AEOI system, Member States have received mass tax information on employment, pensions, director' fees, life insurance products and immovable property. The effectiveness varies across Member States, due to different national practices of collecting data and limitations in available taxpayer information such as life insurance products data which was only provided by 8 countries.[247]

Even though the AEOI under DAC1 did not reach the full potential, still certain elements of the Directive contributed to safeguard the tax revenue of some Member States. For example, Belgium, Finland, Estonia Poland and Slovenia reported additional assessed revenues mostly of pensions and wage income (some gained several millions of euros per year and some hundred thousand to few millions). Regarding the cost burdens for building up their AEOI systems, the estimation of benefit covers only for a limited number of years and Member States. Even so, the Member States that managed to report some benefit, it exceeds the costs.[248]

Despite the slow start, the accuracy of matching foreign data with national databases has improved in time. For example six Member States (Belgium, Estonia, Latvia, Lithuania, Poland and Slovenia) were the "best matchers" that achieved nearly full matching rates for wages and pensions in 2017, and this improvement is attributed to the learning process built in algorithms which lead to partly automated matching especially with repetitive exchanges about the same taxpayers (such pensions) and better identification techniques.[249]Nevertheless, at the end of 2017, seven Member States were still not fully using the received information under DAC1, for example 11 Member States did not use the data on life insurance data.[250]

Member States exchanged information automatically via a central directory on cross-border tax rulings and advance tax agreements under DAC3, as of 2018 the main senders were Netherlands, Luxembourg and the UK. A few Member States have not shared any rulings. Unfortunately, there is no information available regarding the actual use of DAC3 information, but from what Member

---

247 European Commission, Commission Staff Working (n 185) p 19-21.
248 Ibid, p 28-30.
249 European Commission, Commission Staff Working (n 185), p 20.
250 Ibid, p 23.

States communicated is that the exchanged information, in particular the summary of the rulings is often too brief to be used. Which means that it is very difficult for the Member States to know when to request information, and then if it is requested to demonstrate that it satisfies the foreseeable relevance requirement, so it is easy for the Member State to refuse to exchange the information.[251]

Surprisingly, the Member States expressed satisfaction with the Directive, rating its effectiveness between 3.97 and 4.28 out of 5 over the years 2013–2018.[252]Still, the evaluation concluded that there is limited information to completely assess the effectiveness of the DAC in improving the functioning of the internal market, fairness of taxation, or in delivering a meaningful deterrent effect. While there were some insights of increased voluntary compliance, the data remain unsystematic and not yet very effective.[253]

In general, according to the Evaluation of the European Commission the implementation of AEOI under DAC imposed significant financial, administrative, and technical burdens on the Member States, such as IT investments, staff training and systemic upgrades. Even if the lack of comprehensive data from all Member States and in spite that not all Member States made use of the exchanged information, the States that were fully operational under DAC1 obtained monetary benefits that exceeded the cost for the implementation. However, high costs and limited resources still represents a big concern for smaller or less digitally advanced Member States. For example, the report emphasizes data quality issues, inconsistencies in taxpayer identification (like missing TINs) and difficulties in interpreting or using short DAC3 summaries. Additionally, delays in replies to information requests were significant, around 45% of responses exceeded the six-month deadline in 2017, due to complex national procedures and capacity constraints.[254]

Considering the above, the implementation of AEOI under DAC1 to DAC3 generated significant costs due to the IT infrastructure development. So, the total cost across the EU Member States was estimated in 2017 at approximately €130 million from the national budgets. Indeed, costs varied across Member States not because of the country size or number of exchanges, but because of the

[251] Ibid, p 21.
[252] Ibid, p 27.
[253] Ibid, p 30-31.
[254]European Commission, Commission Staff Working (n 185) p 18-20, 23, 28, 32-33.

different IT readiness levels and procurement methods. DAC3 had the highest record cost due to its limited volume. And, regarding the effectiveness, while DAC1 led to positive outcomes (e.g., risk management and revenue collection in some Member States) DAC2 and DAC3 were still in early stages by 2017, so with limited evidence of practical use it is hard to assess its effectiveness. Also, the use of received data remained inconsistent among the countries, and this led to the undermining of full realization of AEOI's potential.[255]

[255] Ibid, p 32-38.

Chapter 4: Conclusions and Policy Recommendations

4.1 Summary of Findings

A primary conclusion that reflects the overall thesis is that due to lack of transparency in some Member States, tax evasion and tax avoidance schemes escalated. This is reflected by the 2008 financial crisis and further tax scandals (Panama Papers and LuxLeaks) that revealed how broken and weak the global tax system is in front tax avoidance and evasion and how easy those schemes operated. In spite of that, learning from mistakes, these events represented a wake-up call for governments to start fighting against these practices. The first who acted, was the US with FATCA which then was followed globally by the OECDs via CRS and then the European Union with the DAC framework. These legal instruments have increased transparency through automatic exchange of information (AEOI). But, still, challenges remained. At the EU level, the hardest part was to achieve cooperation and unanimity within the EU. Because only mutual efforts and commitment to exchange information, can ensure a fairer and more robust global tax system.[256]

Extremely important is to understand the differences between tax avoidance and evasion, because both can generate serious threats to the integrity and resilience of national tax systems, undermining public trust, distorting fair competition and causing massive losses in public revenue. When tax evasion (or tax fraud) is clearly illegal, tax avoidance on the other side is often legal, and here lies the problem, if it is legal, then why should be restrained?! The problem is that tax avoidance raises significant ethical and policy concerns, because cross-border aggressive tax planning exploits legal loopholes and mismatches. Therefore, to fight these challenges only a legal instrument can be efficient, this is why the EU relies heavily on administrative cooperation among Member States, via the Directive on Administrative Cooperation (DAC). Because, exchanging the tax information automatically it can ensure the protection of the EU single market, secure fair taxation and preserving economic stability regardless of globalization and digitalization.[257]

Even if the European Union has limited competence in direct taxation, appreciable is the commitment of the EU to fight against tax avoidance schemes and highlighting the need for transparency in our globalized world. So, all the complex tax avoidance schemes triggered the

[256]See Chapter I, Subchapter 1.1.
[257]See Chapter I, Subchapters 1.2, 1.3.

adoption and further the development of the DAC framework. Which trepresents the main legal instrument for administrative cooperation among the Member States in the field of direct taxation that aims to close the loopholes within the EU jurisdictions legal framework and to improve tax compliance. [258]

The DAC through all the amendments that went through, now has a broader scope that covers all foreseeably relevant tax information necessary for the enforcement of national tax laws. While broadly defined, this standard excludes speculative or indiscriminate requests and has been clarified through case law and OECD interpretations. Moreover, the Directive applies to nearly all taxes except those explicitly excluded (e.g., VAT, customs etc.). Also, the DAC applies to all taxpayers (individuals and entities regardless of nationality or legal form), as long as the information exchanged relates to taxes within the EU. It extends to all EU Member States, but not automatically to EEA countries. Important to mention is that the DAC applies retroactively in some cases and onward in others (depending on the category of information). Indeed, this wide temporal scope enhances tax enforcement capabilities but, on the other side raises concerns about legal certainty in retroactive cases (because the taxpayers that acted in a way in the past, could have not known that the DAC will come into force and will cover their cases).[259]

Another important aspect regarding the DAC provisions is that it complies with the GDPR and CFR rules. But certain taxpayers' rights may be limited to protect the public interest in tax collecting. Even so, the taxpayers must be informed early enough (for example in the situation of the platform operators under DAC7) so they can exercise their rights, but the personal data must not be retained longer than necessary.[260]

Since this thesis focuses on the automatic exchange of information under the DAC, and in spite that the Directive does not define what non-financial information is, this thesis refers to non-financial information as data that does not relate to financial accounts (under DAC2), but these

[258]See Chapter II, Subchapter 2.1.
[259] See Chapter II, Subchapter 2.3.
[260] See Chapter II, subchapter 2.4.

includes employment income, pensions, rulings, platform transactions, and beneficial ownership which are scattered among the following amendments: DAC1, DAC3, DAC5, DAC6, DAC7.[261]

After the analysis of practical implementation of all the DAC amendments that cover the automatic exchange of non-financial information, the analysis has resulted in the following conclusions that: despite the harmonization intent of the DAC, Member States have encountered significant challenges in the transposition process, because at the end, in practice DAC's amendments have been late and ununiform integrated into national law. Moreover, the Member States had delays and incomplete implementation. Also, due to the limited data access for evaluations, underlines the fragmented application across the EU, revealing a persistent gap between legal obligations and practical compliance. For example:[262]

DAC1 introduced the first structured AEOI system in the EU, but its effectiveness was hindered by many factors, such as the mission missing identifiers (like TINs), delays and inconsistent reporting across Member States. One positive practical result was the technical progress that was made in matching data, but the lack of mandatory reporting for all categories of information (income) and limited feedback mechanisms weakened its overall impact.

Under the implementation of DAC3 that introduced advanced tax transparency through the automatic exchange of tax rulings and APAs, the most challenging part was from the loopholes. In particular the fact that the natural persons were excluded and the weak quality of the data exchanged. Additionally, many Member States either failed to submit the data or ignored its use. All these undermined DAC3's deterrent effect against aggressive tax planning.

Also, the implementation of DAC5 was quite challenging for the Member States. Because the success implementation depends on AML frameworks, which were delayed and inconsistent. Therefore, the AML implementation across Member States weakened the effectiveness of DAC5 which manifested through structural issues, such as fragmented registers and vague definitions of "beneficial ownership" that obstructed transparency, as illustrated by cases in Germany and Hungary.

[261] See Chapter III, Subchapter 3.1.
[262] See Chapter III. Subchapter 3.2.

Regarding DAC6, it also faced serious inconsistencies during the implementation across Member States, from inconsistent interpretations of "hallmarks" and the "main benefit test" to enforcement and penalties. Moreover, despite the fact that the IT systems and infrastructure existed, the information was barely used, also, due to legal ambiguities and professional privilege exemptions, DAC6's implementation fails the consistency which is needed for a robust enforcement.

Even if the data available is limited on DAC7 regarding the implementation, DAC7 has already shown early signs of transposition delays and compliance fragmentation across the EU. Although the transposition is in time made, proper enforcement and harmonization are crucial to ensuring a level playing field in the platform economy.

Summing up the challenges that the EU Member States encountered when implementing the DAC amendments, despite a solid legal foundation for transparency and administrative cooperation established by the DAC provisions, in practice, unfortunately DAC's effectiveness is compromised because its practical impact is mixed, and no harmonization exists. Even if some Member States claimed success of DAC1, others did not even communicate their feedback. Moreover, the information exchanged under DA1-DAC3, has shown that was widely not used by the Member States and the legal provisions were inconsistently interpreted and implemented. Hopefully, the full potential of AEOI is yet to be realized even if the member States bear the burden of high costs and technical disparities in implementation. There are big differences regarding the enforcement. All in all, for a successful, harmonized implementation of the DAC provisions it is required stronger coordination between member States and guidelines on the implementation.[263]

Moreover, it is noticeable that over the years, the EU has gradually expanded its tax reporting rules through all the amendments, especially from DAC1 to DAC6, and the work is ongoing with DAC7. But problems remain. Especially in practice, the most challenging is DAC6, which focuses on cross-border tax arrangements (CBAs), which is very broad and can be understood differently by each EU country. As for the Luxembourg example, even though the government followed the wording of DAC6 closely (through Law of 2020), it did not provide enough explanation or official guidance on how to interpret key terms like the "hallmarks" and not only. All this creates confusion

[263] See Chapter III. Subchapter 3.3.

for tax advisors and companies. More than that, DAC6 involves multiple "intermediaries" (like tax advisors, lawyers, banks) in a single arrangement, and each may have different views on whether a deal must be reported. As a result, the same arrangement could be reported multiple times unnecessarily, making the work harder for both intermediaries and tax authorities, and in this way the costs for taxpayers are increased.[264]

Another challenge for the intermediaries is related to legal professional privilege, that they must notify other intermediaries or the taxpayer about the reporting duty, but there is confusion about who exactly must be notified, especially in the case when the others are also exempted from reporting. This causes too many notifications and inconsistent practices.[265]

Finally, the lack of clear, detailed guidance from the governments of the Member States creates inconsistency and stagnation in implementation of DAC. In such cases the EU Commission should step in to offer guidance and help and to show the Member States how to apply the rules under the DAC framework effectively, in a way that reduces the confusion and avoids additional administrative burden and costs, and not only issue rules that the Member States must follow. Because, at the end, the success and effectiveness of a Directive depends on how the member states transpose them into national legal framework. So, it can be understandable why there is no harmonization under the DAC framework within the EU and the effectiveness is delayed since all the member States have their own specifics and public policy rules, also different financial power to implement the Directive.

4.2 Recommendations and Future Outlook Strengthening the Directive

To achieve the goals of the Directive on administrative cooperation (DAC) of ensuring transparency and fighting tax avoidance schemes, first, the legal provisions must be clear and drafted in a way that can be uniformly understood and applied across the EU. Therefore, the EU should: reduce unnecessary duplication, also it should align rules between countries and reduce the paperwork burden for businesses. Moreover, due to the lack of information on the evaluation of the DAC, it is hard to assess the real impact of DAC in practice, so, the EU should publish more

[264]Sonia Belkhiri and Jiar Al-Zawity, 'DAC6 Implementation in Luxembourg-Risk of Multiple Reporting Obligations Exists' (2021) 8(2) *Insights* 29, p 40-41, http://publications.ruchelaw.com/news/2021-03/InsightsVol8No2.pdf Accessed 14 July 2025.
[265] Ibid (n 264).

statistics on the actual results, like how much revenue under the DAC framework was recovered, successful practices should be shares between Member States. And this can be seen as a "learning from mistakes" assessment.

With each amendment of DAC, the mistakes and inconsistencies are tried to be fixed, for example in the situation of DAC1, if initially the reporting obligation was limited to one or two categories of information, DAC7 and DAC8 tries to fix this. But, since there is limited available information on the evaluation of the DAC provisions, the following analysis are based on the available information. Also, in order not to repeat the mistakes, is important to learn from them.

The following suggestions are drawn from the available information analyzed.

So, regarding the DAC1, the Commission should revise the Art. 8(2) to require mandatory exchange of information for all five income categories, regardless of data availability, by obliging the Member States to collect the missing categories such as life insurance products and immovable property and maybe in this way the current discrepancies would be eliminated and strengthen the automatic exchange of information mechanism. Important to mention is that the Tax Identification Number (TIN) was not mandatory under DAC1, but hopefully via DAC7 that introduced it as mandatory, the TIN will improve the matching rates and increase the reliability of the exchanged information.[266] As mentioned above, by the year 2026 all five categories of information are required to be reported.

Another important aspect is related to the feedback mechanism (Art.14 (2)), the Commission should revise this mechanism including maybe some qualitative indicators on the data quality, usefulness and enforcement outcomes, not just reporting technical matching rates. Probably, this would close the feedback loop and help data sharing between Member States.[267]

Regarding Eastern and Southern Europe, where the administrative burdens hold back the effective data collection, should be supported by the EU funding mechanism, so the data collection between local and central tax authorities of those states can be consistent and efficient. Also, an audit for

[266] See Chapter III, Subchapter 3.2.
[267] Ibid.

the money spend in the implementation should be carried out, to ensure that the money was used as planned.[268]

Regarding the obligation of the European Commission to evaluate every five years the real applicability of the DAC across Member States, should be limited to three years. So, the inefficiencies could be earlier discovered and fixed. In addition to that, there should be drafted a common EU-level guidance that harmonizes the interpretation of the main terms also how the hallmarks (under DAC6) should applicated, the main benefit test etc., because without a harmonized guidance, fragmentation and legal uncertainty will continue to hinder the entire AEOI mechanism in combating tax avoidance and evasion in Europe.[269]

On the Tax Rulings under the DAC3, it should be avoided the Duplicate Reporting with DAC6, for example if a tax ruling is already reported under DAC3, should not be again reported under DAC6, this reduces paperwork. Also, regarding the rulings posted, the tax authorities should post the anonymized version, or at least to share the statistic of them to increase predictability and clarity. Moreover, there is necessary clarity of the definition of "Cross-Border" because it is used differently in each country. The EU should define it clearly and ensure Member States apply it consistently.[270]

On the cross-border arrangements under DAC6, the Commission should harmonize by issuing common guidance or FAQ to reduce inconsistencies. Also to establish a whitelist of Safe Arrangements (a list of arrangements that don't need to be reported (e.g. under the Merger Directive)) to reduce unnecessary filings. Moreover, terms like "cross-border transfer", "intragroup," and "EBIT" need clear definitions. Hallmarks should focus more on aggressive tax planning, also there should be added a value threshold so the small and immaterial transactions should be exempt from the reporting, so the burden will be diminished.[271]

Another important aspect under the DAC6 that should be improved for a better effectiveness and uniformity is related to the main benefit test, so the "tax advantage" must be defined and the test

---

[268] Ibid.

[269] Ibid.

[270] PricewaterhouseCoopers International Ltd, *PwC Response to the European Commission Consultation on the Review of DACs 1–6* (30 July 2024), 6, https://www.pwc.com/gx/en/about/pdf/pwc-response-to-ec-consultation-on-the-review-of-dac-1-6.pdf accessed 15 July 2025.

[271] Ibid (n 270) 9-12.

would be applied more consistently across all hallmarks. Moreover, should be allowed some filling exceptions when one party has already reported the arrangement, others (intermediaries) should not have to file again. And the reporting deadline from 30 days should be increased to 90 days, to give the taxpayer more time to gather the accurate information.[272]

Regarding DAC7 and DAC8, it is awaited to be released a report on evaluation, so the practical effectiveness can be real assessed and improved by recommendations.

4.3 Future of Tax Transparency in the EU

It is clear that the European Union must not stop in creating a robust legal framework that will tackle the tax avoidance and evasion phenomenon, because the globalization and digitalization processes does not stop either from evolving, therefore the European Union, in order to ensure the effective functioning of the internal market must be ready to cover all the situations that can arise in the future.

Reflecting on the fast evolving of Artificial Intelligence (AI) and Blockchain, it is considered that they can help the governments to improve their tax systems, because these technologies can reduce tax fraud, increase transparency and strengthen tax collection. Indeed, these tools could be very effective, but the problem lies in the high costs and lack of the trained staff.[273]

Since the tax collecting process is often difficult in many countries due to tax evasion and avoidance and outdated systems, AI can help quickly to analyze large sets of data to detect fraud, while Blockchain can securely record transactions and keep it in the history of it that cannot be changed. These tools have already improved the finance systems, and some countries (Mexico, Serbia) apply them to collecting taxes.[274]

All in all, the potential use of the AI and Blockchain technologies in the field of taxation is a concept that should not be overlooked.

---

[272] Ibid, 11-14.

[273] 'Ubesie Madubuko Cyril, Ejike Kenneth Chukwuma, Udeh Amaka Jennifer 'Digital Tools, Better Taxes: How AI and Blockchain Are Shaping Modern Tax Systems' (2025) 9(5) *World Journal of Innovation and Modern Technology* , p 156, https://www.iiardjournals.org/get/WJIMT/VOL.%209%20NO.%205%202025/Digital%20Tools,%20Better%20Taxes%20156-165.pdf Accessed 16 July 2025

[274] Ibid, p 157.

4.3.1 Implications of DAC9 in the European Union

On 28 October 2024, the European Commission proposed DAC9, which represents the last amendment to DAC. DAC9 supports the Minimum Taxation Directive (2022/2523) known as Pillar 2 Directive. Also, DAC9 introduces a technical and legal framework for filling and exchanging the Top-Up Tax Information Return (TTIR) across Member States. Therefore, under the Minimum taxation Directive, multinational enterprise (MNE) groups and large-scale domestic groups in the EU are subject to a minimum 15% effective tax rate, so, where the tax falls below that, a top-up tax is going to be imposed. Art. 44 of the Directive sets out that the covered entities are obliged to file a TTIR, which DAC9 operationalizes via centralized and uniform reporting standards.[275]

DAC9 proposes: central filling which means that one entity (typically the Ultimate Parent Entity (UPE)) can submit the TTIR on behalf of the entire group; automatic exchange, so the TTIR data will be automatically exchanged among the Member States, based on "dissemination" approach, depending on each State's implementation Income Inclusion Rule (IIR), Undertaxed Profile Rule (UTPR) or Qualified Top-Up Tax (QDTT).[276]

The deadline for the reporting is set at 15 months after the end of the fiscal year or 18 months for the first reporting year (for example, 30 June 2026 for the fiscal year 2024). Additionally, Member States must exchange the received TTIR data within three months or six months for the first-year reporting.[277]

DAC9 aims to reduce the compliance burden by simplifying the reporting process via standardized forms, also to minimize the duplicative fillings and to facilitate the data exchange via a common IT format. But the report raises questions regarding the extensive reporting requirement (24 pages of data points) if this truly reduces the compliance burden or merely shifts it. As a result, in order to become law, DAC9 must be adopted unanimously by the Council and transposed by the Member

[275] Katerina Ilieva, 'The Latest Proposed Amendment to DAC: A Short Introduction of DAC9' (1 November 2024) *EU Tax Focus*, IBFD p 1.
[276] Ibid(n 275), p 1-2.
[277] Ibid, p 2.

States by 31 December 2025. Also, those States that do not apply IIR or UTPR have the option to postpone the DAC9's application.[278]

On 7 of July 2025, the European Commission adopted an Implementing Regulation that establishes the technical solution for the automatic exchange of top-up tax information return between Member States under the DAC9. This regulation provides a common IT schema based on one development of OECD that will guarantee full interoperability between reporting under DAC9 and the OECD framework, so the administrative burden on tax authorities and businesses alike could be minimized. DAC9 supports the application of the Pillar 2 Directive, whose main objective is to ensure that the taxpayers comply with their obligations under Pillar 2 Directive.[279]

To conclude, it is appreciable the commitment and efforts of the EU in combating tax avoidance and evasions schemes, but the new amendment and the obligation to transpose and implement could overwhelm the Member States even more, because previous DAC amendments (such DAC8) is not even fully transposed, therefore in spite of the good intention and purpose of DAC9, Member States might encounter complex burdens in implementation.

---

[278] Ibid, p 2-3.

[279] European Commission, Implementing Regulation to Facilitate Automatic Exchange of Tax Information under DAC9 (7 July 2025), https://taxation-customs.ec.europa.eu/news/implementing-regulation-facilitate-automatic-exchange-tax-information-under-dac9-2025-07-07_en Accessed 17 July 2025.

CONCLUSIONS

At the end of deep analysis and research on the Directive on administrative cooperation in the field of direct taxation, with focus on the automatic exchange of non-financial information between Member States of the EU, as being considered the main legal tool against tax avoidance schemes, it can be stated that, indeed, the European Union is very committed to fight tax avoidance and evasion practices. This is seen in the whole range of amendments and legal tools that have been issued.

It is hard to draw a clear conclusion on the practical effectiveness of the DAC because there is limited information on the evaluation available. Therefore, from what is already accessible, can be expressed that the DAC, in general has improved the functionality of the single market and on some level has safeguarded the tax revenue of the Member States. Additionally, it has improved the public awareness regarding the importance of fighting tax avoidance practices because they have a negative impact on the tax system. Some elements of DAC, indeed have contributed to improve the tax fairness and address tax avoidance and fraud schemes[280], but there are plenty of inconsistencies and fragmented implementation across the EU that undermined its functionality, and it is hard to call it "harmonized".

Lots of challenges the Member States encountered when implemented the DAC rules, due to unclear provisions, inconsistent interpretation of key terms and the lack of a common guidance, lack of enforcement and penalties, costs and administrative burdens, lack of robust IT mechanisms and trained staff and so on, led to the situation where a Directive in the EU is interpreted and applied differently. Each new amendment tries to fix the mistakes and loops of the previous amendment, so, now EU enjoys a nice legal tool on the paper, but its practical effectiveness is questionable.

Beyond doubts, DAC's effectiveness in time will be improved, when all the loopholes will be covered and the Member States will implement the Directive in a harmonized way.

[280] European Commission, Commission Staff Working (n 185) p 27, 29-30, 57.

Bibliography

The used sources are cited in accordance with the Oxford University Standard for the Citation of Legal Authorities (OSCOLA) 4th Edition.

EU Treaties

Charter of Fundamental Rights of the European Union [2012] OJ C326/391

Treaty of the European Union (TEU)

Treaty on the Functioning of the European Union (TFEU)

EU Legislation (Directives, Regulations)

Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC

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

Council Directive (EU) 2023/2226 of 17 October 2023 amending Directive 2011/16/EU on administrative cooperation in the field of taxation

European Commission, *Implementing Regulation to Facilitate Automatic Exchange of Tax Information under DAC9* (7 July 2025) https://taxation-customs.ec.europa.eu/news/implementing-regulation-facilitate-automatic-exchange-tax-information-under-dac9-2025-07-07_en accessed 18 July 2025

EU Case Law

Case C-432/23 *F and Ordre des avocats du Barreau de Luxembourg v Administration des contributions directes* EU:C:2024:746

Case C-694/20 *Orde van Vlaamse Balies and Others v Vlaamse Regering* EU:C:2022:963

Books

Lang et al (Eds), *Introduction to European Tax Law on Direct Taxation* (8th edn, Linde 2024)

Articles and Reports

Belkhiri S and Al-Zawity J, 'DAC6 Implementation in Luxembourg – Risk of Multiple Reporting Obligations Exists' (2021) 8(2) *Insights* 29

Digital Tools, 'Better Taxes: How AI and Blockchain Are Shaping Modern Tax Systems' (2025) 9(5) *World Journal of Innovation and Modern Technology* 156

Ilieva K, 'The Latest Proposed Amendment to DAC: A Short Introduction of DAC9' (1 November 2024) *EU Tax Focus*, IBFD

Podsiadlo P, 'Beneficial Ownership Information Reporting in Germany – Changes to Notifications' (EY, 2025)

Popa O and Valerio C, 'The (Most Recent) Proposal for an EU Directive to Amend the Rules on Administrative Cooperation in the Field of Taxation (DAC8)'

Vermeiren M and Lips W, 'The Panama Papers and the International Battle Against Tax Heavens: Lessons for the EU' (Heinrich-Böll-Stiftung, 11 April 2016)

Official EU Websites and Reports

European Commission, 'Administrative Co-operation and Mutual Assistance' https://taxation-customs.ec.europa.eu/taxation/tax-transparency-cooperation/administrative-co-operation-and-mutual-assistance_en accessed 18 July 2025

European Commission, 'Directive on Administrative Co-operation (DAC)' https://taxation-customs.ec.europa.eu/taxation/tax-transparency-cooperation/administrative-co-operation-and-mutual-assistance/directive-administrative-cooperation-dac_en accessed 18 July 2025

European Commission, *Commission Staff Working Document – Evaluation of Council Directive 2011/16/EU (DAC1) and its amendments DAC2 and DAC3*, SWD(2019) 327 final https://taxation-customs.ec.europa.eu/system/files/2019-09/2019_staff_working_document_evaluation_on_dac.pdf accessed 18 July 2025

European Commission, 'Explanation on the Main Aspects of DAC, Directive 2014/107/EU' https://taxation-customs.ec.europa.eu/system/files/2024-12/directive_2014_107_eu_en.pdf accessed 18 July 2025

European Council, 'Combatting Tax Avoidance in the EU' https://www.consilium.europa.eu/en/policies/combatting-tax-avoidance-in-the-eu/ accessed 18 July 2025

European Council, 'How EU Tax Policy Works' https://www.consilium.europa.eu/en/policies/eu-tax-policy/ accessed 18 July 2025

European Court of Auditors, *Combatting Harmful Tax Regimes and Corporate Tax Avoidance* https://www.eca.europa.eu/ECAPublications/SR-2024-27/SR-2024-27_EN.pdf accessed 18 July 2025

European Court of Auditors, *Special Report: Exchanging Tax Information in the EU: Solid Foundation, Cracks in the Implementation* (03/2021) https://www.eca.europa.eu/Lists/ECADocuments/SR21_03/SR_Exchange_tax_inform_EN.pdf accessed 18 July 2025

European Parliamentary Research Service, *Implementation of the EU Requirements for Tax Information Exchange: European Implementation Assessment*, PE 662.603 (2021)

European Parliament, *Direct Taxation: Personal and Company Taxation* https://www.europarl.europa.eu/factsheets/en/sheet/80/direct-taxation-personal-and-company-taxation accessed 18 July 2025

European Parliament, *General Tax Policy* https://www.europarl.europa.eu/factsheets/en/sheet/92/general-tax-policy accessed 18 July 2025

European Parliament, *Report on the Implementation of the EU Requirements for Exchange of Tax Information: Progress, Lessons Learnt and Obstacles to Overcome* (A9-0193/2021, 3 June 2021)

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* [2021] P9_TA(2021)0392

Other Websites and Online Publications

Adam Smith Institute, 'Death and Taxes' https://www.adamsmith.org/blog/death-and-taxes accessed 18 July 2025

Bloomberg Tax, 'Complying With EU's DAC7 Reporting Directive' (14 May 2024) https://pro.bloombergtax.com/insights/international-tax/unpacking-eus-dac7-directive accessed 18 July 2025

Deloitte China, *Tax Analysis, European Union – Mandatory Tax Reporting (DAC6) Implemented*, Issue P330/2021 https://www.deloitte.com/content/dam/assets-zone1/cn/en/docs/services/tax/2024/deloitte-cn-tax-tap3302021-en-210111.pdf accessed 18 July 2025

Deloitte Luxembourg, *Understanding DAC6* (2025) https://www.deloitte.com/lu/en/services/tax/research/dac-6-directive.html accessed 18 July 2025

Global VAT Compliance, 'Denmark: Tax Agency Provides Advice on DAC7 Reporting Requirements' (2 April 2023) https://www.globalvatcompliance.com/globalvatnews/denmark-dac7-platform-reporting/ accessed 18 July 2025

Institute for Development of Freedom of Information, 'Challenges in Accessing Beneficial Ownership Data in Hungary' (29 July 2024) https://idfi.ge/en/bo-standards-hungary-analysis accessed 18 July 2025

ITAXA Blog, 'International Taxation in Simple Words' https://www.itaxa.it/blog/en/dizionario/tax-avoidance/ accessed 18 July 2025

Le Monde, 'OpenLux: The Secrets of Luxembourg, a Tax Haven at the Heart of Europe' (8 February 2021) https://www.lemonde.fr/les-decodeurs/article/2021/02/08/openlux-the-secrets-of-luxembourg-a-tax-haven-at-the-heart-of-europe_6069140_4355770.html accessed 18 July 2025

OECD, 'Base Erosion and Profit Shifting (BEPS)' https://www.oecd.org/en/topics/policy-issues/base-erosion-and-profit-shifting-beps.html accessed 11 April 2025

OECD, 'Video: Building Fairer Societies Through Tax Co-operation' https://www.oecd.org/en/topics/base-erosion-and-profit-shifting-beps.html accessed 4 May 2025

Patrick Wanhoudt, *LuxLeaks: The Big Deal Behind the Reveal* (2024) https://luxsb.lu/wp-content/uploads/2024/10/LuxLeaks-the-Big-Deal-Behind-the-Reveal.pdf accessed 18 July 2025

PricewaterhouseCoopers International Ltd, *PwC Response to the European Commission Consultation on the Review of DACs 1–6* (30 July 2024) https://www.pwc.com/gx/en/about/pdf/pwc-response-to-ec-consultation-on-the-review-of-dac-1-6.pdf accessed 18 July 2025

Thomson Reuters Tax & Accounting, 'What Are General Anti-Avoidance Rules (GAAR)' https://tax.thomsonreuters.com/blog/what-are-general-anti-avoidance-rules/ accessed 18 July 2025

Trolley, 'Inside DAC7: The EU's Newest Tax Directive & Its Implementation Status' (14 March 2023, updated 24 June 2025) https://trolley.com/learning-center/dac7-implementation-progress accessed 18 July 2025