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

2020/2046(INI) - 16/09/2021 - Text adopted by Parliament, single reading

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

Legal background

The EU is confronted with unfair or aggressive tax practices, such as the fact that European Union Member States lose between **EUR 160 and 190 billion per year** as a result of tax evasion and profit shifting by multinationals.

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

- extend the scope of the automatic exchange of information on financial accounts and related income (DAC2), to advance tax rulings in cross-border cases and advance pricing agreements (DAC3) and to country-by-country reports filed by multinational enterprises (DAC4);

- provide access by tax authorities to beneficial ownership information as collected under Anti-Money Laundering (AML) rules (DAC5);

- extend the scope of automatic exchange of information on tax planning cross-border arrangements and introduce mandatory disclosure rules for intermediaries (DAC6).

Coverage and reporting requirements

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

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

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

- the beneficial owners of immovable property and companies;

- capital gains related to immovable property and capital gains related to financial assets;

- non-custodial dividend income;

- non-financial assets such as cash, art, gold or other valuables held at free ports, customs warehouses or safe deposit boxes;

- ownership of yachts and private jets;

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

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

Deplores the practice of **shadow tax rulings in Luxembourg**, Parliament urged the Commission to urgently assess a potential breach of the DAC3 requirements by Luxembourg and other Member States with similar practices and to launch infringement proceedings if necessary.

Legal and practical challenges

The Commission monitors the transposition of the DAC legislation in the Member States. However, Members pointed out that it has so far neither taken direct and effective action to address the lack of quality of the data sent between Member States, nor carried out visits to Member States, and neither has it ensured the effectiveness of sanctions imposed by Member States for breaches of the DAC reporting provisions.

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

Data access and surveillance

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

Conclusions

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

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