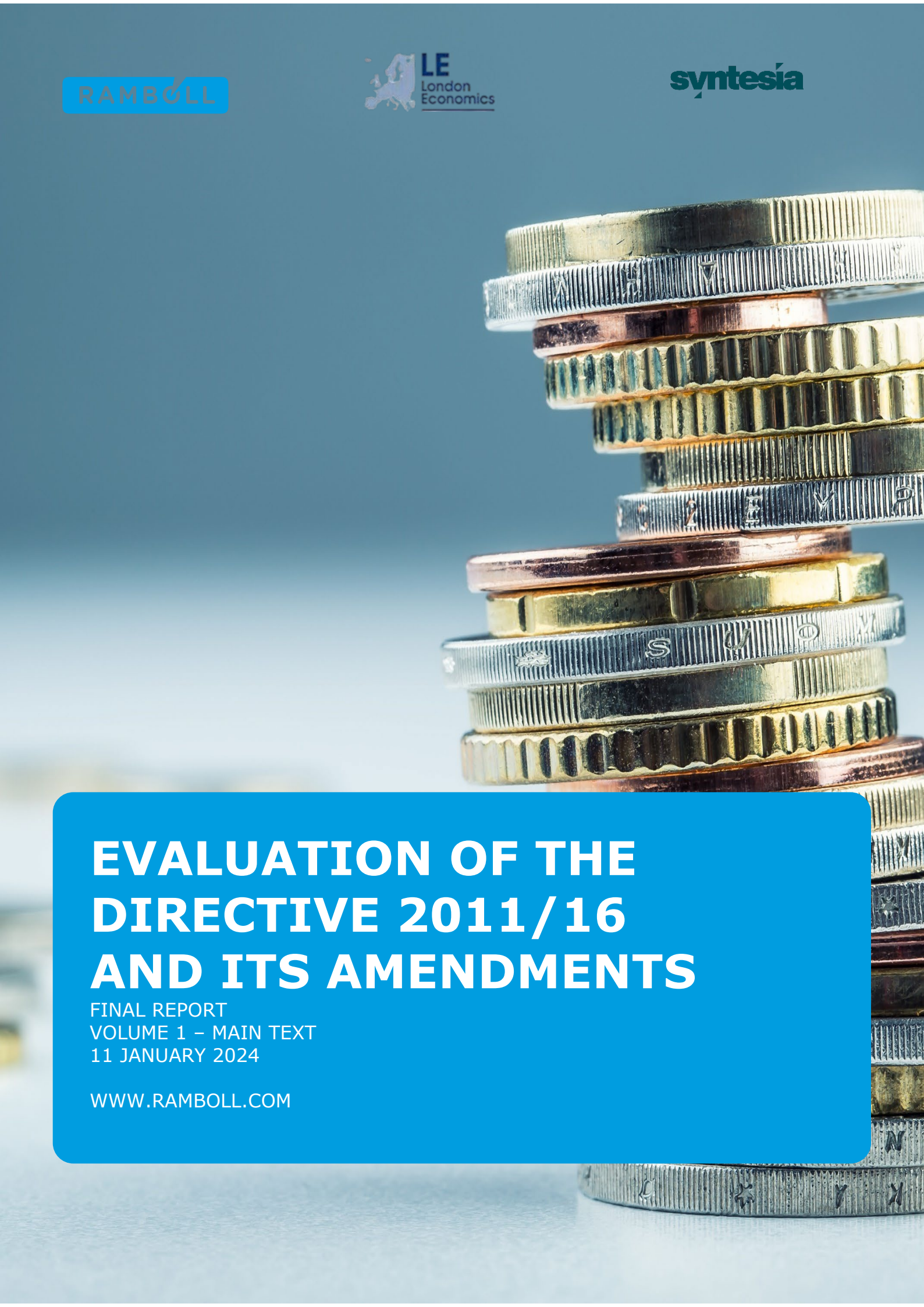

EVALUATION OF THE DIRECTIVE 2011/16 AND ITS AMENDMENTS

FINAL REPORT
VOLUME 1 – MAIN TEXT
11 JANUARY 2024

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FINAL REPORT
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ABSTRACT

The Evaluation Study was prepared for the European Commission – Directorate General for Taxation and Customs Union, and it is intended to support the forthcoming Commission Evaluation of the Council Directive 2011/16 on administrative cooperation in the field of direct taxation (DAC), with particular attention to the period from 2018 onwards. Overall, the evaluation of the Directive is positive. DAC has not created significant issues in transposition and led to the exchange of a substantial volume of information. The Directive aims to tackle tax erosion, encourage tax compliance, and avoid the risk of an unharmonized policy response. While these issues are not all equally relevant in quantitative terms, the Directive is considered fit for its purpose. The framework set up by DAC is effective as it is conducive to administrative cooperation: data exchanges of early provisions are increasingly complete, with a matching rate higher than in the previous evaluation. The information exchanged is used in most cases for tax control and to foster spontaneous tax compliance, as well as for risk assessment. The comparison between the costs and the benefits suggests that the costs due to DAC are commensurate with the benefits generated. Finally, DAC and its provisions are coherent with other relevant EU and international initiatives. Its binding nature and IT infrastructure make DAC superior to international or bilateral initiatives in terms of efficiency.

RÉSUMÉ

L'étude d'évaluation a été préparée pour la Direction générale de la fiscalité et de l'union douanière de la Commission européenne et vise à soutenir la prochaine évaluation par la Commission de la directive 2011/16 du Conseil sur la coopération administrative dans le domaine de la fiscalité directe (DAC), avec une attention particulière sur la période allant de 2018 à nos jours. Globalement, l'évaluation de la directive est positive. La DAC n'a pas créé de problèmes importants de transposition et a conduit à l'échange d'un volume important d'informations. La directive vise à lutter contre l'érosion fiscale, à encourager la conformité fiscale et à éviter le risque d'une réponse politique non harmonisée. Bien que ces questions ne soient pas toutes aussi significatives en termes quantitatifs, la directive est considérée comme adaptée à son objet. Le cadre mis en place par la DAC est efficace car il est propice à la coopération administrative : les échanges de données des premières dispositions sont de plus en plus complets, avec un taux de correspondance supérieur à celui de l'évaluation précédente. Les informations échangées sont utilisées dans la plupart des cas à des fins de contrôle fiscal et pour favoriser la conformité fiscale spontanée, ainsi que pour l'évaluation des risques. L'analyse coûts-bénéfices suggère que les coûts dus à la DAC sont proportionnels aux bénéfices générés. Enfin, la DAC et ses dispositions sont cohérentes avec d'autres initiatives communautaires et internationales importantes. Son caractère exécutoire et son infrastructure informatique rendent la DAC supérieure aux initiatives internationales ou bilatérales en termes d'efficacité.

KURZDARSTELLUNG

Die Bewertungsstudie wurde für die Europäische Kommission – Generaldirektion Steuern und Zollunion – erstellt und soll die bevorstehende Bewertung der Richtlinie 2011/16 des Rates über die Zusammenarbeit der Verwaltungsbehörden im Bereich der direkten Steuern (DAC) durch die Kommission unterstützen, mit besonderem Augenmerk auf den Zeitraum ab 2018. Insgesamt fällt die Bewertung der Richtlinie positiv aus. Die DAC hat keine nennenswerten Probleme bei der Umsetzung aufgeworfen und zum Austausch einer beträchtlichen Menge an Informationen geführt. Die Richtlinie zielt darauf ab, die Steuererosion zu bekämpfen, die Einhaltung der Steuervorschriften zu fördern und das Risiko einer nicht einheitlichen politischen Reaktion zu vermeiden. Auch wenn nicht alle diese Punkte in quantitativer Hinsicht gleichermaßen relevant sind, wird die Richtlinie für ihren Zweck als geeignet angesehen. Der von der DAC geschaffene Rahmen ist wirksam, da er die Zusammenarbeit der Verwaltungen fördert: Der Datenaustausch über anfängliche Bestimmungen ist zunehmend vollständig, wobei die Übereinstimmungsquote höher ist als bei der letzten Bewertung. Die ausgetauschten Informationen werden in den meisten Fällen für die Steuerkontrolle und zur Förderung der spontanen Einhaltung der Steuervorschriften sowie zur Risikobewertung verwendet. Der Vergleich zwischen den Kosten und dem Nutzen deutet darauf hin, dass die durch DAC verursachten Kosten in einem angemessenen Verhältnis zu dem erzielten Nutzen stehen. Schließlich sind DAC und seine Bestimmungen mit anderen relevanten EU- und internationalen Initiativen kohärent. Aufgrund seiner Verbindlichkeit und seiner IT-Infrastruktur ist das DAC internationalen oder bilateralen Initiativen in Bezug auf die Effizienz überlegen.

CONTENTS

ABBREVIATIONS AND ACRONYMS

ACDT	Administrative Cooperation in Direct Taxation
AEOI	Automatic Exchange of Information
AML	Anti-Money Laundering
AMLD	Anti Money Laundering Directive
APA	Advanced Price Agreements
ATAD	Anti-Tax Avoidance Directive
ATR	Advance Tax Rulings
BEPS	Base Erosion and Profits Shifting
BO	Beneficial ownership
CbCRs	Country-by-Country Reports
CCN/CSI	Common Communication Network/Common Systems Interface
CESOP	Central Electronic System of Payment
CFT	Countering the financing of terrorism
CLO	Central Liaison Office
CPIS	Coordinated Portfolio Investment Survey
DAC	Directive on Administrative Cooperation in the Field of Direct Taxation
DF	Directors' Fees
ECB	European Central Bank
ECA	European Court of Auditors
eFCA	electronic Forms Central Application
EOI	Exchange of Information
EOIR	Exchange of Information on Request
EP	European Parliament
IE	Income from Employment
IO	Information Obligation
IP	Immovable Properties
KYC/AML	Know Your Customer/Anti-Money Laundering
LIP	Life-Insurance Policies
MCAA	Multilateral Competent Authority Agreement
MBT	Main Benefit Test
MDR	Mandatory Disclosure Rules
MiFID	Markets in Financial Instruments Directive
MNEs	Multinational Enterprises
NFE	Non-financial Entities
OECD	Organization for Economic Co-Operation and Development
OIN	Organisation Identification Number
PAOE	Presence in Administrative Offices and Participation in Administrative Enquires
PEN	Pensions
QFD	Questionnaires on the Functioning of The Directive
ROY	Royalties
SCM	Standard Cost Model
SEOI	Spontaneous Exchange of Information
SG AEOI	Sub-Group on the Automatic Exchange of Information
TIN	Taxpayer Identification Number
ToR	Terms of Reference
TSI	Technical Support Instrument
VAT	Value Added Tax
VIES	VAT Information Exchange System
WG ACDT	Working Group on Administrative Cooperation in the field of Direct Taxation

1. INTRODUCTION

1.1 Content of the report

This Final Report is the third deliverable prepared for the assignment on the **Evaluation of the Directive 2011/16 EU and its amendments**, based on the contract TAXUD/2022/AO-12. The Report is submitted to the European Commission, Directorate General for Taxation and Customs Union (DG TAXUD) by a grouping of consulting firms and research institutions led by Ramboll and including Syntesia Policy and Economics and London Economics.

The Report is structured as follows:

- Section 2 gives an overview of the Directive and reconstructs its Intervention Logic;
- Section 3 describes the policy process including the transposition and implementation of the Directive and the follow-up to previous assessments;
- Section 4 assesses the uptake of the Directive, i.e., the extent to which its provisions and tools have been used by tax authorities;
- Section 5 covers the relevance of the Directive, i.e., the extent to which the objectives and tools of the Directive are in line with the needs of the Member States and the Directive's fitness for purpose;
- Section 6 assesses the effectiveness of the Directive in achieving its specific objectives, i.e., increasing the ability to fight tax fraud and evasion, increasing spontaneous tax compliance;
- Section 7 looks at the effectiveness of the Directive in fulfilling its general objectives, i.e., safeguarding Member States' tax base and revenue, contributing to the smooth functioning of the Internal Market, and increasing the transparency and fairness of the European tax systems.
- Section 8 presents the efficiency analysis of the costs and cost savings borne by tax authorities and private sector and the extent to which costs are commensurate with the outcome achieved;
- Section 9 analyses the coherence of the Directive with other EU and international provisions;
- Section 10 covers the assessment of the EU added value.
- Section 11 presents the conclusions and the lessons learned.

The Report is complemented by a Volume 2, including the annexes to the main text, specifically including:

- The full Evaluation Matrix
- Details on the consultations
- Information on the transposition of DAC provisions into national legislation
- Analysis of AEOI statistics (DAC1/DAC2): approach and data limitations
- Detailed overview of DAC1 AEOI exchanges
- Details on Fiscalis

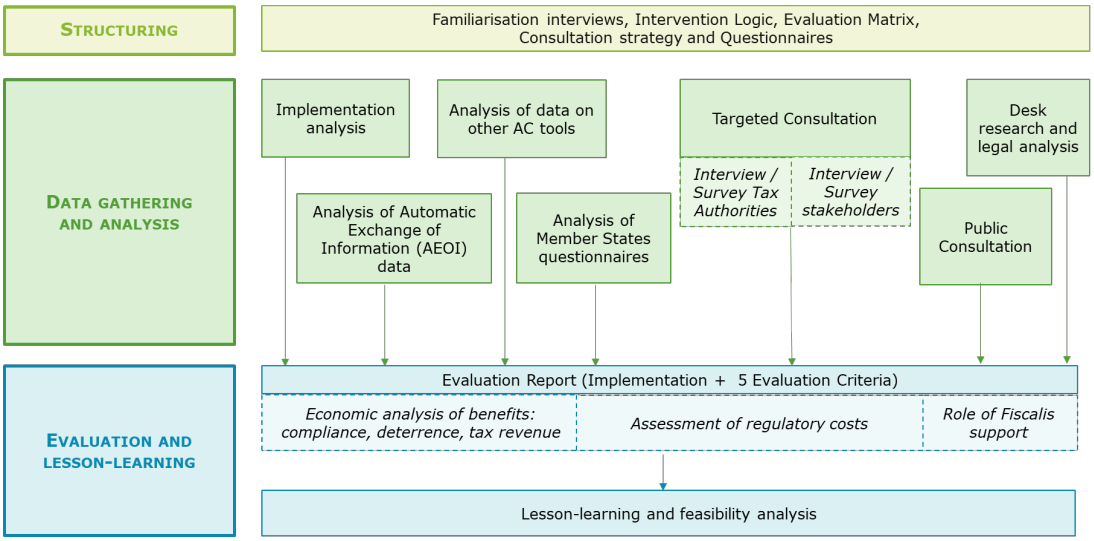
1.2 Overview of the Assignment

The assignment consists in full-fledged evaluation of Directive 2011/16/EU (hereinafter DAC or the Directive), with particular attention to the period from 2018 onwards. The assignment has been carried out in line with the Better Regulation Guidelines and covered the **five standard evaluation criteria** (effectiveness, efficiency, relevance, coherence, and EU added value), as well as an analysis of the Directive **implementation**.

The methodology has been designed to ensure the compatibility with the 2019 Evaluation[1] and to consider the 2021 European Court of Auditors report[2] and European Parliament resolution[3]. The evaluation was carried over three phases (Figure 1):

- **Evaluation Design**, involving the preliminary activities for the development of the evaluation including the refinement of the methodology and the creation of the evaluation tools.
- **Data Gathering and Analysis**, during which the data analysis processes, consultation activities, legal and desk research have been completed, providing the data and information necessary for the subsequent assessment.
- **Evaluation and lesson-learning**, during which the data and information collected have been used to produce the evaluation report, covering the five evaluation criteria and the implementation analysis, as well as to produce conclusions and lessons learned.

Figure 1. Overall approach to the Assignment



The Assignment was launched in November 2022 with the signature of the contract and was articulate into three phases:

- **Inception phase.** The inception phase was concluded by the submission of the revised inception report in March 2023. During the inception phase, the following activities were completed:
  - **Data Mapping**. The identification of the available data was conducted including both public and non-public sources. For public sources, the mapping included a review of the legal information, of the available literature (policy documents, academic contributions, and other sources). In parallel, the Commission's internal sources of information (EU and national data, statistics on DAC tools, Member States questionnaires) were organised and reviewed.

[1] Commission Staff Working Document, Evaluation of the Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC; Report for the European Commission – DG TAXUD, Evaluation of Administrative Cooperation in Direct Taxation, by Economisti Associati. Hereinafter, respectively, the 'Evaluation' or '2019 Evaluation', and the 'Evaluation Study'.

[2] European Court of Auditors, Exchanging tax information in the EU: solid foundation, cracks in the implementation, Special Report.

[3] Report on the implementation of the EU requirements for exchange of tax information: progress, lessons learnt and obstacles to overcome (2020/2046(INI)), Committee on Economic and Monetary Affairs, A9-0193/2021, 3.6.2021; European Parliamentary Research Service, Implementation of the EU requirements for tax information exchange.

- **Familiarisation interviews**. 16 interviews were conducted to identify the most important issues for subsequent examination and collecting broad insights on the topics covered by the Evaluation, as well as to secure future support by EU umbrella organisations in contacting stakeholders throughout the EU.
- **Refinement and operationalisation of the methodology.** The methodology for the Evaluation was fine-tuned and the tools for the subsequent fact-finding work have been developed. This included the Directive's Intervention Logic (see Section 2.2), and the Evaluation Matrix[4]. Also, the consultation strategy and materials were finalised, including the sample strategy and the consultation questionnaires.

- **Data gathering and analysis phase.** The data gathering and analysis phase lasted from March to June. The activities carried out during the data gathering and analysis phase included:
  - **Implementation analysis** to provide an indication of the transposition of DAC provisions into national legislations.
  - **Analysis of AEOI and other administrative cooperation tools data.** The Study Team carried out a quantitative analysis of AEOI statistics focusing on providing an overview of the exchanges, including *inter alia*: the availability of data; the geographical patterns of exchanges; and the completeness and timeliness of the information exchanged. Part of the analysis also concerned non-AEOI tools through the review of the CACT statistics.
  - **Analysis of Member States questionnaires on Administrative Cooperation in Direct Taxation (ACDT),** namely: the Yearly Assessment questionnaire - which covers AEOI provisions; the Questionnaire on the Functioning of the Directive - which investigates Member States' views on all DAC provisions including the other forms of administrative cooperation; and finally, also on the Questionnaire on the Relevance of DAC6 Annex IV.
  - **Desk research and legal analysis**. Other qualitative sources such as, academic literature and studies relevant to the assessment of the functioning of the Directive were analysed.
  - **Targeted Consultation.** Over 50 interviews were conducted with private stakeholders and all 14 interviews with tax authorities were completed. In addition, three surveys were carried out: an e-mail survey of the remaining 13 tax authorities; an online survey of financial institutions (11 replies) and intermediaries (60 replies).[5]

- **Evaluation and lesson-learning.** The evaluation and lesson learning lasted from June to September. During this phase the Study Team carried out the evaluation proper. All the data, information and views gathered were systematised, triangulated and analysed to answer the evaluation questions.

[4] The full Evaluation Matrix is available in Volume 2.

[5] The Open Public Consultation , initially planned for the end of summer, was postponed to the end of the Evaluation study, due to the DAC8 legislative process. A first draft of the open public consultation questionnaire has been delivered on May 30 and is attached to this report (in Section 1 of Volume 2).

2. BACKGROUND AND INTERVENTION LOGIC

2.1 Overview

Administrative Cooperation in Direct Taxation (ACDT) covers a set of cooperation tools provided to national tax authorities to strengthen transnational interactions and exchange of information related to direct taxation. The interactions and exchange of relevant information help tax authorities to correctly assess and apply taxes, as well as address and prevent the distortions to tax compliance due to a globalised and digital economy.

At the EU level, ensuring fair and effective taxation is paramount for the correct functioning of the Internal Market: freedom to move, operate, and invest across national borders combined with the different taxation systems can indeed pave the way to **tax fraud and evasion** resulting from the non-declaration of incomes originating from non-residence countries or assets held therein as well as **tax avoidance**, particularly when there are loopholes in Member States' taxation systems that encourage aggressive tax planning strategies.

The first EU piece of legislation focusing on administrative cooperation was the 1977 **Mutual Assistance Directive**[6]. When adopted, the Directive covered all areas of taxation - including VAT and excise duties but was eventually refocused[7] only towards direct taxation matters. The Mutual Assistance Directive promoted ACDT introducing the early forms of exchange of information, namely: Exchange on Request (EOIR), Automatic Exchange of Information (AEOI), and spontaneous exchange of information (SEOI).

The second legislative landmark in ACDT, the **EU Savings Tax Directive**[8] was introduced in 2003 creating the first multinational mandatory AEOI programme. Specifically, this Directive required Member States to share information on interest payments or sales proceeds from financial assets made to non-resident individuals (or alternatively to impose a withholding tax on those payments). Through the signing of specific 'savings agreements', these requirements were extended to five non-EU countries (Switzerland, Andorra, Liechtenstein, Monaco, and San Marino) and to Member States' dependent territories[9].

In 2011, the Mutual Assistance Directive was repealed into the Directive on Administrative Cooperation in the field of direct taxation (DAC, or the Directive)[10]. The Directive revamped some already existing cooperation tools and introduced new ones. DAC – subsequently known as DAC1 – integrated the EOIR, SEOI and simultaneous control provided in the Mutual Assistance Directive, and **revamped AEOI introducing the mandatory AEOI** of five specific categories of income and capital, for which information is available to national tax authorities: income from employment, director's fees, pensions, life insurance products and immovable property. Moreover, DAC introduced the possibility of presence of tax officers of a given Member State in the administrative offices of another Member State, sharing of best practices and experience and bilateral feedback as other forms of administrative cooperation. The introduction of DAC allowed for a more comprehensive approach to ACDT, providing clear operational rules e.g., on the time limits,

[6] Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation.

[7] Consolidated text: Council Directive of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums (77/799/EEC).

[8] Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments.

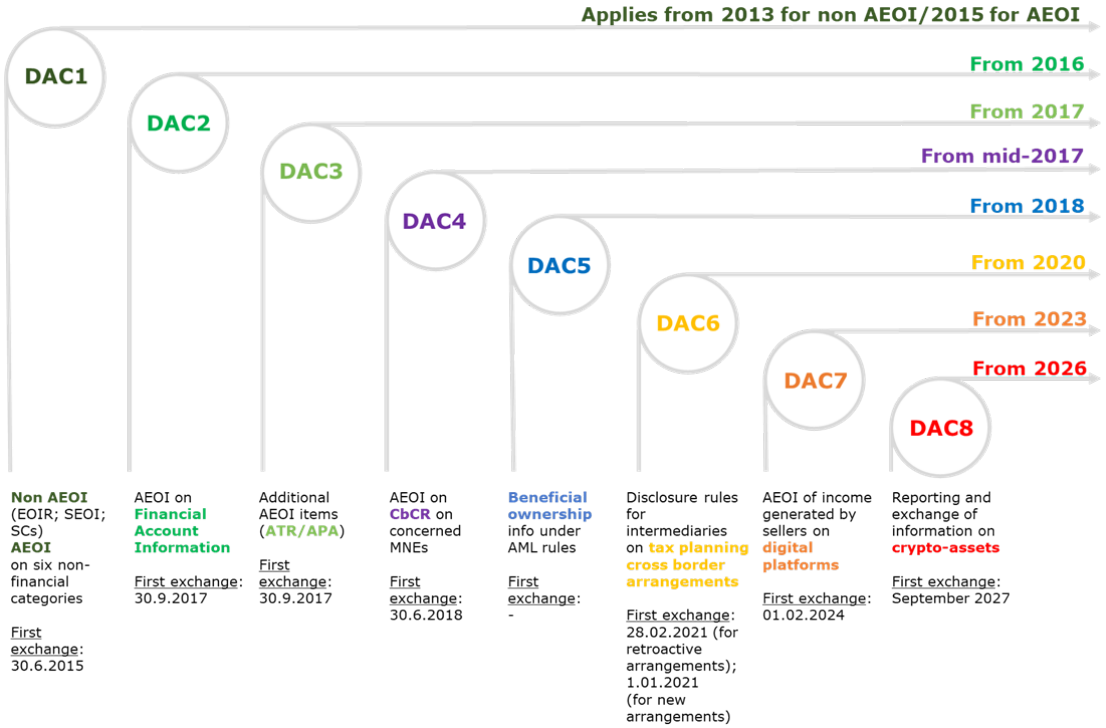
[9] The territories were: three United Kingdom-dependent territories (Guernsey, Jersey and the Isle of Man), the five British Caribbean territories (Anguilla, the Cayman Islands, Montserrat, the Turks and Caicos Islands and the British Virgin Islands) and the two Dutch Caribbean territories (the Netherlands Antilles and Aruba).

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

feedback provisions, standard forms, and secured channels for EOI, as well as aligning EU rules with international standards[11].

Throughout the decade of implementation of the Directive, seven amendments have been adopted. As summarised in Figure 2 below, these amendments aimed at expanding the ACDT tools' remit, addressing new economic realities and their related tax transparency and fairness potential issues, as well as to comply with OECD and international standards.

Figure 2. Overview of the evolution of DAC



Source: Author's elaboration based on ECA (2021)

Building upon DAC1,[12] DAC2[13] entered into force in 2014 repealing the EU Savings Tax Directive, including **certain financial assets held by non-residents and the income accruing from such assets in the scope of AEOI** and ensuring a common and consistent approach to the implementation by EU Member States of the OECD Common Reporting Standards (CRS), adopted in the same year[14]. The time limit for the first exchange was set in September 2016.

The Directive was further amended in 2015 by DAC3[15], which introduced AEOI of **cross-border Advance Tax Rulings** (ATR) and **Advanced Price Agreements** (APA). This kind of information was previously shared through SEOI. Specifically, within the EU the Code of Conduct for transfer

[11] I.e., Articles 26 (paragraphs 4 and 5) of the OECD Model Tax Convention (no domestic tax interest and no bank secrecy)

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

[13] Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.

[14] The agreements signed with the five European non-EU countries under the EU Savings Tax Directive were amended to comply with DAC2 obligations. The other territories committed to participate in AEOI within the Global Forum/OECD framework.

[15] Council Directive (EU) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation

pricing[16] and EU Guidelines for APA[17] Member States committed to spontaneously exchange details of concluded unilateral APAs with the directly concerned tax administration. Nonetheless, the EU legislator considered that the exchange of this information via SEOI was hindered by practical difficulties, including the discretion permitted to the Member States to decide which other Member States should be informed[18]. Hence, the need of expanding the scope of AEOI to these agreements. As for DAC2 with CRS, the adoption of DAC3 served to implement in the EU the international standards adopted through OCED BEPS Action 5[19]. DAC3 measures entered into force from January 2017, and the first exchange took place shortly after, in September.

Box 1. Definition of ATR and APA

An Advance Tax Ruling[20]is defined as any agreement, communication or any other instrument or action with similar effects that can be relied upon, concerning the interpretation or application of a legal or administrative provision of national tax laws. ATR relate to **cross-border transaction** or to the question of **whether or not activities carried on in another jurisdiction create a permanent establishment.** ATR are made in advance of the transactions or of the activities in another jurisdiction, or in advance of the filing of a tax return covering the period in which the transaction or series of transactions or activities took place.

The Advance Price Agreement[21] definition refers to any agreement, communication or any other instrument or action with similar effects, determining in advance of cross-border transactions between associated enterprises, through an appropriate **set of criteria for the determination of the transfer pricing** for those transactions or determines the **attribution of profits to a permanent establishment**.

During the second half of the same year, DAC4[22] became operational and concerned AEOI of **Country-by-Country Reports** (CbCRs) **for Multinational Enterprises** (MNEs). This amendment aimed at tackling aggressive tax-planning practices often pursued by MNEs, following also the OECD BEPS Action 13 'Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting'. The deadline for the first exchange between Member States' tax administrations of CbCRs of MNE groups was set by mid-2018.

DAC5[23] addressed a field closely linked to tax transparency, providing tax authorities with **access to domestic beneficial ownership information** collected under anti-money laundering (AML) rules. The amendment entered into force in December 2016 giving Member States time to adjust their legislative framework to provide tax authorities the relevant data, procedure, and documents by the date of application, that was January 2018. DAC5 is the only DAC which does not provide for automatic or other kind of exchange of information among tax authorities, but grant them a right to access a specific information at a national level to facilitate the functioning of the DAC.

[16] Cfr. Resolution of the Council and of the representatives of the governments of the Member States, meeting within the Council, of 27 June 2006 on a code of conduct on transfer pricing documentation for associated enterprises in the European Union (EU TPD), 2006/C 176/01

[17] Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee on the work of the EU Joint Transfer Pricing Forum in the field of dispute avoidance and resolution procedures and on Guidelines for Advance Pricing Agreements within the EU {SEC(2007) 246} /* COM/2007/0071 final */

[18] Recital (4) DAC3

[19] BEPS Action 5 and DAC3, have, however a different scope of application: DAC3 applies to any cross-border ATR and APA, except for those exclusively related to natural persons, while Action 5 applies to six specific categories including those concerning exclusively natural persons. Cfr Section 9.2

[20] DAC, Article 2(14)

[21] DAC, Article 2(15)

[22] Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation

[23] Council Directive (EU) 2016/2258 of 6 December 2016 amending Directive 2011/16/EU as regards access to anti money laundering information by tax authorities

The fifth amendment to the Directive - DAC6[24], was introduced in 2018 covering the **mandatory disclosure by intermediaries and AEOI of cross-border arrangements**. DAC6 stems from OECD BEPS Action 12 'Mandatory Disclosure Rules', aimed at facilitating the uncovering of aggressive tax planning arrangements. Specifically, DAC6 requires EU-based intermediaries or under specific circumstances businesses, to report to tax authorities about cross-border arrangements that fulfil specific criteria (geographic scope and the so-called hallmarks). The deadline for the transposition of the Directive was set on December 2019, with the obligation to start exchanges by August 2020. However, due to the COVID-19 pandemic, Member States agreed to postpone the deadline for the exchanges until 2021.

The sixth amendment to the Directive – DAC7[25] was adopted in 2021. It covers AEOI by **reporting platforms operators** defined as software, websites or applications accessible by users and allowing sellers to be connected to users for the purpose of carrying out a relevant economic activity. Under DAC7, platform operators shall collect and verify information relating to persons selling through their intermediation and the consideration obtained therefrom. The rationale of this provision is that the digital platform economy 'makes the traceability and detection of taxable events by tax authorities very difficult'[26]. Also, DAC7 aims at harmonising national diverging reporting requirements for online platforms that have been introduced at national level (e.g. in Austria, France, Italy). In addition to the expansion of AEOI scope, DAC7 introduced:

- the definition of foreseeable relevance, its scope of application;
- an extension of the categories of income that must be exchanged under AEOI, introducing royalties;
- the introduction of a minimum of categories to be exchanged under DAC1 AEOI;
- the introduction of group requests and a definition thereof; and
- the possibility to carry out joint audits and a definition thereof.

These measures will apply from 2023 onwards, and the first AEOI will take place in 2024.

The latest amendment, DAC8[27] was adopted in October 2023 and covers **crypto assets** and **e-money**[28]. This legislative intervention was envisaged consistently with the OECD framework on crypto assets[29] and with the Commission's Action Plan for Fair and Simple Taxation[30] also considering the alignment with the definitions and authorisation requirements introduced by the recently agreed Markets in crypto-assets (MiCA) Regulation[31]. DAC8 introduces reporting obligations for crypto-asset service providers (both on domestic and cross-border transactions), financial institutions on e-money, and central bank digital currencies. Moreover. DAC8 introduced amendments to existing provisions on AEOI reporting requirements:

- the introduction of non-custodial dividend income under DAC1 AEOI;

[24] 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

[25] Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation

[26] Impact Assessment DAC7

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

[28] As defined by Directive 2009/110/EU electronic store of monetary value on a technical device

[29] OECD (2022) Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard

[30] Communication from the Commission to the European Parliament and the Council - An Action Plan for Fair and Simple Taxation Supporting The Recovery Strategy, Brussels, 15.7.2020, COM(2020) 312 final

[31] Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (Text with EEA relevance)

- the exchange of cross-border rulings concerning individuals if the amount the amount of the transaction or series of transactions of the advance cross-border ruling exceeds EUR 1 500 000 or if the advance cross-border ruling determines whether a person is or is not resident for tax purposes in the Member State issuing the ruling under DAC3;
- the exemption for lawyers bound by the legal professional privilege from notifying other intermediaries if they are not their client of their reporting obligations under DAC6[32];
- the outline of what shall be included in the summary of the content of the reportable cross-border arrangement under DAC6;
- the possibility of reporting the Identification Service identifier and the Member State of issuance as an alternative to the seller's taxpayer identification number under DAC7

Box 2. Previous assessments and evaluations of the Directive

In 2019, DAC was subject to an Evaluation[33] (2019 Evaluation), supported by an external Study[34], which covered the early years of implementation, up to DAC5. The Evaluation concluded that DAC was relevant, coherent with other interventions, and offers EU added value; it also proved, to some extent, effectiveness, while the evidence on its efficiency was limited. This was particularly due to the short amount of time elapsed between the exchange of data and the evaluation, which resulted in limited findings about the usage of such data and their effect on tax compliance.

Other European institutions also assessed the implementation of DAC:

- In 2021, the **European Court of Auditors** (ECA) published a special report on DAC[35], stemming from its audit of the system for exchange of tax information in the EU, which covered the 2014-2019 period. Its main conclusion is that 'the system for exchange of tax information has been well established, but more needs to be done in terms of monitoring, ensuring data quality and using the information received'. In particular, it notes that the information collected by Member States is not sufficiently complete and accurate, also because there is no audit or check on reporting entities. Furthermore, sufficient guidelines on data quality and usage and a common framework for monitoring the system's performance and achievements are lacking.
- In 2021, the **European Parliament** issued a Report on DAC, which was followed by a Resolution. The Report was based on a Study by the European Parliament[36], which in turn relied on research paper. Though acknowledging limitations to the evidence base of the paper, the Parliament highlights a number of shortcomings of the current framework. In particular, it notes that certain incomes and assets remain out of scope of DAC, and that the information provided by private operators and exchanged by Member States is often of poor quality. The Parliament welcomed the latest amendments, which expanded the scope of and reinforced the mechanisms of DAC, while at the same time calling for a strong focus on ensuring thorough implementation of the existing rules, including on anti-money laundering.

The following subsections are going to describe in greater detail the key provisions of DAC and its amendments, starting with provisions concerning the exchange of information, followed by other forms of cooperation.

2.1.1 Exchange of information

The exchange of information (EOI) concerning taxpayers operating in cross-border activities is a key component of ACDT. The EOI mainly entails bilateral interactions among the 'requesting

[32] in compliance with the Court of Justice of the European Union (CJEU) ruling on Case C-694/20. Cfr. Section Implementation

[33] Commission Staff Working Document, Evaluation of the Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC

[34] Report for the European Commission – DG TAXUD, Evaluation of Administrative Cooperation in Direct Taxation, by Economisti Associati

[35] Report on the implementation of the EU requirements for exchange of tax information: progress, lessons learnt and obstacles to overcome (2020/2046(INI)), Committee on Economic and Monetary Affairs, A9-0193/2021, 3.6.2021

[36] Cfr Note 3

authority' i.e., the liaison office or department of a Member State requesting information, and the 'requested authority', i.e., the liaison office or department of a Member State receiving the request. This exchange of information can take place in three different forms, regulated by DAC[37]:

- exchange of information on request (EOIR)
- mandatory automatic exchange of information (AEOI)
- spontaneous exchange of information (SEOI)

The exchange of information under DAC takes place using standard forms – mostly provided in the Annexes to the Directive or implementing acts- and electronic formats and schemas. To ensure the necessary level of confidentiality and security between tax authorities, EOIR and SEOI occur via the **Common Communication Network** (CCN). For AEOI, instead, the use of CCN depends on the type of DAC AEOI. Specifically, exchanges under DAC1, DAC2, DAC4, and, in the future, DAC7 are point-to-point communication, from one Member State to another, and occur via the CCN. Conversely, DAC3 and DAC6 AEOI are broadcast communications – from one tax authority to all others – uploaded on a dedicated **central directory**. Both the CCN and the central directories are developed and operated by the Commission.

Member States have to provide, on an annual basis, statistics on the volume of automatic exchanges for DAC1, DAC2, DAC4 (in the coming year also for DAC7), and information on the costs and benefits relating to AEOI. Member States shall also communicate details relevant for the evaluation of the effectiveness of administrative cooperation tools including a questionnaire for the Yearly Assessment of AEOI and statistical data relating to all the types of EOI foreseen by the Directive.

Exchange of information on request (EOIR)

EOIR is regulated by Articles 5-7 and 17-18 of the Directive. A tax authority can request to another tax authority for foreseeably relevant information that may concern data already available or obtained following administrative enquiries. The EOIR was already provided in the Mutual Assistance Directive, however, DAC improved this tool, introducing more stringent conditions on the timeliness of the interaction: a two-month deadline for sharing the information already in possession of the authority, and a six-month deadline otherwise. The six months deadline has been recently shortened through DAC7 to three months.

The requested authority shall disclose the information as long as: (i) the requesting tax authority has exhausted all its usual national sources of information; and (ii) the communication of the information requested is not contrary to national legislation. Also, a Member State may decline the EOIR when the exchange would lead to disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy.

When the requested authority cannot comply with the deadlines mentioned above or has grounds for not sharing the requested information, it should provide the grounds for the delay – which shall not be longer than six months - or impossibility to provide the information requested. The motivation shall be sent to the requesting authority immediately or at the latest within three months after receiving the request[38].

Mandatory automatic exchange of information (AEOI)

AEOI is regulated by Articles 8 and ff. of the Directive. AEOI refers to the exchange of volume of information without prior request available in the supplying country's tax files, using predefined formats, secured channels - CCN and the central directories, and at set intervals. As previously

[37] Cfr Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, Artt. 5 to 10

[38] The time limit for the acknowledgement of receipt of the request received, instead, is still the same, requiring the Member State to notify their receipt within seven working days.

mentioned, its scope has been expanded by all DAC amendments, except for DAC5. Therefore, AEOI can be classified in relation to the DAC amendment that introduced them first.

DAC1

The first AEOI introduced with DAC involves information concerning residents in other Member States on income and capital. In particular, Article 8 requests Member States to share the information on the following six categories as retrieved from national databases:

- Employment Income (IE)
- Director's Fees (DF)
- Life Insurance Products (LIP)
- Pensions (PEN)
- Ownership of and income from Immovable Property (IP)
- Royalties (ROY)

The Directive provides that the definition of the types of incomes and assets shall be the one under national legislation.

Royalties have been added, with the 2021 amendment (DAC7); therefore, AEOI on royalties will start only in 2024. The reason for the introduction of such income category, derived from intellectual property, lies in the potential profit shifting arrangements in this area of the economy[39]. A seventh category has been added through DAC8 covering non-custodial dividend income.

Tax authorities are required to communicate the information at least once a year and within six months after the end of the tax year during which the information becomes available, starting from 1 January 2014. To allow the identification of the relevant taxpayers, the information on income and assets must also enclose identification elements, such as: name, address, tax identification number (TIN).

Currently, Member States have to exchange the categories of income, with the associated identification elements, available under their national legislation and in their national database; hence, no additional collection of information is required. From 2024, Member States should make every possible and reasonable effort to **include the TIN** and starting from 2025 **exchange information on at least four categories**[40].

DAC2

AEOI under DAC2 is regulated by Article 8(3a) of the Directive and Annexes I and II. The information on assets held abroad and income therefrom to be exchanged is the following:

- account balance or value
- amounts of dividends and interests
- other financial incomes
- capital gains.

The information exchanged is to include identification-related details of the reportable person (name, address, TIN, etc.) identified as the Account Holder, the account number, and the name and ID number of the financial institution (e.g. banks, investment funds, insurance companies).

Unlike DAC1, information on financial accounts is actively collected by financial institutions, based on a standard format. It is then transmitted in electronic form to national tax authorities for its automatic exchange. The model and format for the collection of financial account information are

[39] Cfr, DAC7 Recital (5)

[40] Cfr. DAC7, Art(1) and Art.8 (2). With DAC8 the number of categories increased to five. These shall be first communicated to the Commission before January 2026 and then be ready to be exchanged with tax authorities for the taxable period starting on January 2026.

based on those developed in the OECD CRS, and further elaborated in the reporting requirements and due diligence rules specified in Annexes I and II to the Directive. The exchange takes place annually within nine months following the end of the year or the reporting period related to the specific information, starting from January 2016.

DAC3

Under DAC3, national competent authorities exchange automatically information related to APA and ATR. In particular, Article 8a provides for the communication of **basic features of cross-border ATR/APA,** including the identity of the beneficiary, a summary of the contents (with a description of the relevant business activities and transactions that could help assess the tax risk) and other details, such as the date of issuance or renewal, the duration and the amount of the transactions.

Cross-border rulings concerning only natural persons are explicitly excluded from the exchange. However, the 2023 amendment - DAC8, introduced AEOI also concerning natural persons when the amount of the transaction or series of transactions of the ATR/APA exceeds EUR 1 500 000 or if the cross-border ruling determines the tax residency of a natural person. These provisions will concern only cross-border rulings issued, amended, or renewed after January 2026. Another category not included in DAC3 AEOI are bilateral or multilateral ATR/APA with third countries where the disclosure to third parties is not established by the arrangement. However, ATR/APA with third countries can be communicated through SEOI.

The exchange of information on ATR/APA issued, amended or renewed after 31 December 2016[41] should occur without delay[42] and at the latest three months following the end of the semester during which the ATR/APA were issued, amended or renewed.

National authorities upload the required information on the dedicated central directory, which is set up and maintained by the Commission. The summary uploaded on the central directory can only be consulted by other Member States authorities, which can then request the full ruling if relevant. Instead, the Commission has only limited access[43], mostly for management and monitoring (including statistics) purposes.

DAC4

The fourth AEOI envisaged by the Directive concerns Country by Country Reports (CbCRs) filed by Multinational Enterprises (MNEs). Under Article 8aa, MNEs are required to collect and report key financial data following the operational dispositions outlined in Annex III to DAC. MNEs definition includes: (i) all companies or group of companies with two or more enterprises with different jurisdictions for tax residence, or (ii) enterprises resident for tax purposes in one jurisdiction and subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction. The obligation applies to MNEs with a consolidated turnover exceeding EUR 750 million. Below this threshold MNEs fall within the 'Excluded MNEs'. Entities which are not Ultimate Parent Entities but are resident for tax purposes in a Member State shall file the CbCRs as

[41] For ATR/APA issued, amended or renewed within a period beginning five years before 1 January 2017 the Directive provides two different regimes. Specifically ATR/APA issued, amended or renewed: (i) between 1 January 2012 and 31 December 2013, are to be shared only if they were still valid on 1 January 2014; (ii) between 1 January 2014 and 31 December 2016, shall be communicated irrespective of whether they are still valid. Finally, information on ATR/APA issued, amended, or renewed before 1 April 2016 to a particular person or group of persons with an annual net turnover of less than EUR 40,00,000 shall not be exchanged. For these ATR/APA the deadline was set before January 2018

[42] Introduced with DAC7

[43] Specifically, according to Article 8a(8) the European Commission shall have no access to: (i) the identification of the person; (ii) the summary of the ATR/APA; (iii) the description of the set of criteria used for the determination of the transfer pricing or the transfer price itself in APA and (iv) the identification of any person in the other Member States, if any, likely to be affected by the advance cross-border ruling or advance pricing arrangement (indicating to which Member States the affected persons are linked)

Surrogate Parent Entity, if the Ultimate Parent Entity resident in a third country is not obliged or is unable to file a CbCR in its jurisdiction of tax residence[44].

As stated in Art 8aa of the Directive CbCRs include aggregate information detailed for each jurisdiction in which the MNE Group operates on:

- amount of revenue
- profit (loss) before income tax
- income tax paid
- income tax accrued
- stated capital
- accumulated earnings
- number of employees, and
- tangible assets other than cash or cash equivalents.

MNEs should also provide the identification detail of each Constituent Entity of the group, the jurisdiction of the tax residency, and the nature of the main business activities. Annex III to the Directive provides the template of the CbCRs to be filled, which incorporates the XML Schema designed by the OECD[45] in the framework of BEPS Action 13.

As per DAC2 AEOI, the information is not directly collected by national tax authorities: CbCRs are compiled by the Ultimate Parent Entity or its Surrogate Parent Entity when appointed. The reports are then submitted to the tax authority of the jurisdiction in which its tax residency is established. The Directive requires Member States to allow MNEs to submit the required data within 12 months from the end of the relative reporting Fiscal Year. National tax authorities shall then submit the CbCR to other Member States where one or more Constituent Entities of the MNE Group have their tax residency or are subject to tax in relation to a business carried out through a permanent establishment. The deadline for AEOI is set within 15 months after the end of the Fiscal Year[46].

DAC6

Article 8ab regulates AEOI on reportable cross-border arrangements by intermediaries – or by the relevant taxpayer. A **reportable cross-border arrangement** is defined by: (i) the geographic scope, hence, the involvement of at least two countries[47]; and (ii) by the so-called hallmarks, i.e., features indicating the potential risk for task avoidance (see Box 3 below).

The Directive also states a further categorisation of cross-border arrangements, which are subject to some different reporting requirements discussed below, namely:

- 'marketable arrangement', i.e. that is designed, marketed, ready for implementation or made available for implementation without a need for substantial customisation;[48]

[44] The conditions are laid down in Section II of Annex III to DAC and include:
(i) the Ultimate Parent Entity of the MNE Group is not obligated to file a country-by-country report in its jurisdiction of tax residence.
(ii) the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the Member State is a party but does not have a Qualifying Competent Authority Agreement in effect to which the Member State is a party by the time specified in Article 8aa(1) for filing the country-by-country report for the Reporting Fiscal Year;
(iii) there has been a Systemic Failure of the jurisdiction of tax residence of the Ultimate Parent Entity that has been notified by the Member State to the Constituent Entity resident for tax purposes in the Member State.

[45] OECD (2019), Country-by-Country Reporting XML Schema: User Guide for Tax Administrations, Version 2.0 – June 2019, OECD, Paris.

[46] The first communication under DAC4 had a slightly longer deadline, i.e., within 18 months of the Fiscal Year starting on or after 1 January 2016.

[47] Either more than one Member State, or a Member State and a third country, depending on the residence and business operations of the parties involved.

[48] Directive, Article 3(24)

- 'bespoke arrangement', i.e. that is not a marketable arrangement.[49]

Box 3. Hallmarks

The hallmarks are criteria spelled out in Annex IV to DAC identifying the type of cross-border arrangements that must be reported. The hallmarks are divided into five categories – A, B, C, D and E. Each of these categories includes different indicators of a potential risk of tax avoidance:

A. General

- Confidentialy clause
- Success fee
- Strandardised documentation and/or structure

B. Specific

- A loss-making company acquired and the use of losses
- Conversion of income into other categories of revenue taxed at a lower level
- Round tripping of funds using conduits/entities without substance

C. Specific related to cross-border transactions

- Deductible cross-border payments to associated enterprises subject (when received) to a zero or almost zero tax rate, a full tax exemption, or a preferential tax regime
- Payment to an enterprise that is (i) stateless; (ii) in a non-cooperative jurisdiction
- Depreciation in more than one jurisdiction
- Relief for double taxation
- Transfer of assets with a material difference in the price used for tax purposes

D. Specific concerning AEOI and beneficial ownership

- EU legislation or any equivalent agreements on the authomatic exchange of financial account circumvented
- Non-transparent legal or beneficial ownership chains used

E. Specific concerning transfer pricing

- Unilateral transfer pricing safe harbour rules used
- Transfers of (rights to) hard-to-value intangibles
- Restructuring resulting in significant profit shifts following the transfer of functions associated and/or risks and/or assets between associated enterprises.

For, the first three categories (A, B, and part of C), the duty to report based is subject to the main benefit test, to establish whether the main benefit stemming from a cross-border arrangement is to obtain a tax advantage. Arrangements the main benefit of it is not tax advantage are not to be reported. For the remaining categories (part of C, D, and E) hallmarks trigger a reporting obligation without the application of such test.

The information to be reported includes: the identification of intermediaries and relevant taxpayers, details about the hallmarks, a summary of the content of the arrangement[50], and other information such as the value of the arrangement and the identification of the Member State of the relevant taxpayer(s) and any other Member States which are likely concerned[51]. Similarly to DAC3, the

[49] Directive, Article 3(25)

[50] DAC8 introduced further detail to the content of the summary which shall include a reference to the name by which the cross-border arrangement is formerly known, and the and a 'description of the relevant arrangements and any other information that could assist the competent authority in assessing a potential tax risk, without leading to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy' cfr. DAC8, Article 1, point (4) (b)

[51] Directive, Art. 8ab (14)

information is stored in a dedicated central directory and not all the information collected is accessible to the Commission[52].

The intermediaries or the relevant taxpayers must report cross-border arrangements to their tax authorities, which in turn upload them on the dedicated central directory, making the information available to the tax authorities concerned. According to the Directive, intermediaries are 'any person that designs, markets, organizes or makes available for implementation or manages the implementation of a reportable cross-border arrangement'. The definition includes both individuals and companies (accountants, banks, advisers, lawyers, trust companies, etc.). The Directive provides intermediaries with the right to a waiver from filing information on cross-border arrangement in some specific circumstances, including *inter alia* the legal professional privilege[53]. In these latter cases, the reporting obligation could fall on relevant taxpayers.

The Directive envisages for intermediaries to submit the relevant information to the competent authorities **within 30 days** counting from: (i) the day after the cross-border arrangement is made available for implementation; or (ii) the day after the reportable cross-border arrangement is ready for implementation; or (iii) when the first step in the implementation of the reportable cross-border arrangement has been made. On top of that, for marketable arrangements, intermediaries are required to submit a periodic report every three months updating with the new reportable information that has become available since the last report was filed.

AEOI is envisaged to take place within one month of the end of the quarter in which the information was filed. The first exchange of information under DAC6 occurred in 2021[54].

DAC7

DAC7 introduced Article 8ac, regulating AEOI of information reported by platform operators. Reporting platform operators are defined as software, websites or applications accessible by users and allowing sellers to be connected to users for the purpose of carrying out a relevant economic activity. This includes provision of certain services (rental of immovable property, transport and personal services) as well as sale of goods (e-commerce)[55]. Annex V to the Directive provides the criteria for the definition of sellers and reportable sellers. A Platform user is an individual or entity that is registered at any moment during the Reportable Period on the Platform. A seller is reportable when it is a resident in an EU Member State and carries out a relevant activity in an EU Member State or rents out immovable property located there. DAC7 imposes an obligation on platform operators to collect and verify information relating to persons selling through their intermediation and the consideration obtained therefrom. Specifically, platform operators will need to collect and verify inter alia the following information about sellers and their transactions:

- seller's personal information

[52] According to Directive Art. 8ab (17): (i) the identification of intermediaries and relevant taxpayers, (ii) the summary of the content, and (iii) the identification of any other person in a Member State likely to be affected by the reportable cross-border arrangement, is not disclosed to the Commission.

[53] The CJEU issued a judgment stating that the obligation for a lawyer to inform other intermediaries involved is not necessary and infringes the right to respect for communications with his or her client. *Cfr*. Case C-694/20.

[54] The time limit for the first AEOI was first set in August 2020. However, due to the pandemic situation Member States agreed to postpone it by February 2021 – for retroactive arrangements – and January 2021 – for new arrangements.

[55] The Directive's Annex V also establishes some exemptions for reporting obligation for certain suppliers, i.e.:

(a) Governmental Entity;

(b) Entity the stock of which is regularly traded on an established securities market or a related Entity of an Entity the stock of which is regularly traded on an established securities market;

(c) Entity for which the Platform Operator facilitated more than 2 000 Relevant Activities by means of the rental of immovable property in respect of a Property Listing during the Reporting Period; or

(d) Entity for which the Platform Operator facilitated less than 30 Relevant Activities by means of the sale of Goods and for which the total amount of Consideration paid or credited did not exceed EUR 2 000 during the Reporting Period.

- tax identification (TIN or VAT number)
- transaction amounts
- financial accounts used
- fees withheld by the platform operator, and
- address of the rented property & rental periods.

The information must then be reported to the Member State of main establishment, which in turn exchanges it with the other Member States concerned. The communication shall take place using the standard computerised format within **two months** following the end of the Reportable Period applicable to the Reporting Platform Operator. DAC7 measures apply from 2023 onwards, and the first exchange is expected to take place in 2024.

DAC8

The latest amendment to the Directive – DAC8[56] introduced AEOI covering crypto assets and e-money. The reporting entities under this AEOI are crypto-asset service providers as defined in the MiCA Regulation[57]. The service providers shall report on the crypto-asset transactions of customers in the EU to the tax authorities where they are registered[58] which will in turn automatically exchange information with the EU counterparts. The datapoints exchanged include:

- the name, address, Member State(s) of residence, TIN(s) and, in the case of an individual, date and place of birth of each Reportable User and for entities the same data for any possible Controlling Person
- the name, address, TIN and, if available, the individual identification number referred to in paragraph 7 and the global legal entity identifier of the Reporting Crypto-Asset Service Provider

The service provider should also report the following information for each type of crypto-asset of the reportable transaction:

- the full name of each type of crypto currency
- The total amount of money spent or received, the total number of units, and the number of transactions for buying cryptocurrency with regular money (Fiat Currency).
- The total market value, the total number of units, and the number of transactions for buying / selling cryptocurrency with other cryptocurrencies.

[56] Cfr. Note 27

[57] Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (Text with EEA relevance). Cfr Art. 3 (1) […] these include: any of the following services and activities relating to any crypto-asset:

(a) providing custody and administration of crypto-assets on behalf of clients;

(b) operation of a trading platform for crypto-assets;

(c)exchange of crypto-assets for funds;

(d)exchange of crypto-assets for other crypto-assets;

(e)execution of orders for crypto-assets on behalf of clients;

(f)placing of crypto-assets;

(g)reception and transmission of orders for crypto-assets on behalf of clients;

(h)providing advice on crypto-assets;

(i)providing portfolio management on crypto-assets;

(j)providing transfer services for crypto-assets on behalf of clients;

[58] A company or person that is allowed to operate by a country in the European Union according to the MiCA rules, or a company or individual who pays taxes in that country. This also includes a company that is set up according to the laws of the country, is officially recognized there, or must report its income to the country's tax authorities. Additionally, it covers companies that are run from within a European Union country.

The exchange of information shall take place using the standard computerised forms within nine months following the end of the calendar year. The first information shall be communicated for the relevant calendar year or other appropriate reporting period as from 1 January 2026.

Spontaneous exchange of information (SEOI).

Articles 9 and 10 regulate the SEOI, i.e. the unsolicited communication of foreseeable relevant information to another Member State. The SEOI is of voluntary nature, except for the five circumstances when the exchange is mandatory within one month after the information becomes available, namely: (a) the information has to do with a potential loss of, or (b) an increase in, tax liabilities in the other country; (c) business dealings between persons liable in two different Member States result into tax savings in one or both member States; (d) 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.[59] As for the EOIR, this tool was already provided in the Mutual Assistance Directive and DAC adjusted it introducing more stringent deadlines and the seven working days' time limit for a member State to notify the acknowledgement of receipt of the information received.

2.1.2 Other forms of administrative cooperation

DAC regulates, in Articles 11 and ff., other forms of cooperation, described below.

- **Presence in administrative offices and participation in administrative enquiries (PAOE).** According to Art. 11, a tax authority can request to be present in the offices of the administrative authority of another Member State or to participate to administrative enquiries therein. In particular, in compliance with the legislation of the latter, the requesting authorities can be allowed to carry out their duties in the hosting authority office and assist in person to or through the use of electronic means to administrative enquires carried out in its territory. Moreover, when appropriate, the hosted officials may examine records and interview individuals. The requested tax authority can agree or oppose the request, in the latter case based on a 'reasoned refusal'. Starting from the 2021 amendment, it has a 60-day deadline to respond to a request.
- **Simultaneous controls.** Simultaneous controls can be carried out by two or more Member States in their own territory on one or more taxpayers of common or complementary interest. Article 12 provides that each Member State can initiate simultaneous controls by independently identifying the concerned persons, followed by the communication to the other Member State, including, the identification-details, the reasons for the proposed controls and the timing. If approved, each Member State concerned will identify a representative with responsibility for supervising and coordinating the operations. As for the previous ACDT form, authorities can confirm or decline (with a reasoned refusal) the request within 60 days from the request.
- **Joint Audits.** The 2021 amendment - DAC7 - introduced common provisions for Member States the possibility to carry out joint audit, linked to one or more persons of common or complementary interest. The requesting authority can ask to conduct a joint audit in accordance with the laws of the Member State where the activity takes place. As for simultaneous control, authorities must send a confirmation or a justified decline within 60 days from the request. Joint audits differ from simultaneous control as they need to be conducted in a pre-agreed and coordinated manner. The hosting Member State shall then allow the other Member State to conduct jointly the administrative enquire, to examine the records related to the audit, and to access the evidence collected. Moreover, the hosting state should ensure the same rights and

[59] Cfr Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, Art. 9(1)

obligation to the taxpayer as if the audit was conducted only by its competent authorities. The findings of the joint audit shall be incorporated in a final report agreed upon both authorities. Within 60 days of its issuance, the report shall be communicated to the audited person together with the outcome of the audit.

- **Administrative notification.** Art. 13 provides any Member State with the possibility to ask for assistance to the notification of tax-related instruments and decisions applying in its territory to taxpayers located in another Member State. The request for notification shall include the subject of the decision and any other useful detail for the identification of the addressee. Requesting authorities shall resort to this tool only when unable to proceed under its own rules, or where such notification would give rise to disproportionate difficulties.
- **Feedback.** Member States can request feedback on the information provided via the EOI mechanisms regulated under DAC. As mentioned in Article 14 while for SEOI and EOIR the deadline for sending feedback is three months after the outcome of the use of the requested information, for AEOI this is a mandatory annual exercise.
- **Sharing of best practices and experience**. Member States are encouraged to share best practices and experience to improve the cooperation and possibly producing guidelines.

DAC5

In addition to EOI, Member States' tax authorities must have access to beneficial ownership information. The provision introduced with DAC5 required Member States to grant tax authorities access to selected information collected under AML legislations, held by financial institutions, such as data from the due diligence of customers and details on beneficial ownership.

2.2 Intervention Logic

The Intervention Logic describes the causal chain between the Directive's provisions and its objectives. Starting from the identifications of the problems to be addressed (needs), the intervention logic links the desired change (objectives), the resources used (inputs), the events occurred (activities), their immediate results (outputs) and the medium and long-term achievements (outcomes and impact). It also identifies the external factors that may influence the achievement of these objectives. The Intervention Logic is described here below and presented as a diagram in Figure 3.

2.2.1 Needs addressed

The Directive aims to tackle the challenges posed by globalization to the effectiveness and efficiency of Member States' fiscal systems, and on the smooth functioning of the Internal Market. In fact, while economic activities have become increasingly international, taxation, and particularly direct taxation, remains an eminently national matter. This materializes into two interrelated needs:

- The erosion of tax bases and aggressive tax planning which result from the increasing globalisation of people, capitals and companies; and
- The risk of an unharmonized policy response within the EU Internal Market.

First, this misalignment results in **an increasing difficulty for Member States to protect their national tax bases from erosion**, due to a reduced capacity to correctly assess taxes, thus creating an opportunity for tax fraud and evasion. As noted in the proposal for the original Directive, *'[the] development of the mobility of taxpayers, of the number of cross-border transactions and of the internationalisation of financial instruments […] makes it more and more difficult for Member States to assess taxes due properly'*.[60] This is further exacerbated by the growing complexity of tax

[60] DAC Proposal p.2

planning (‘*tax planning structure become ever-more sophisticated*’[61]), and by the increasing importance of the digital economy, which disentangle economic activities from their place of performance, fruition and taxation (‘*[t]he characteristics of the digital platform economy make the traceability and detection of taxable events by tax authorities very difficult*’[62]).

Secondly, in the absence of an EU instrument for cooperation, Member States actions would have resulted in **uncertainty, lack of transparency, and distortions, which would affect the functioning of the Single Market**.[63] This would also be true in terms of reporting requirement imposed on private businesses, with the further consequence of duplicating administrative costs, as spelled out in the Impact Assessment prepared for DAC7: ‘*[l]ack of a level playing field and different reporting requirements imposed by Member States at national level may distort the market allocation of services and goods provided via digital platforms and generate substantial costs for tax enforcement*.’[64] Finally, distortions would also be generated by a fragmented response to the introduction of international obligations and treaties: ‘*it is […] essential for the good functioning of the Internal Market that Member States transpose political commitments under BEPS into their national systems in a coherent and sufficiently coordinated fashion […] in order to maximise the positive effects*’.[65]

2.2.2 General and specific objectives

The Proposal for the first version of the Directive and the proposals and Impact Assessments for its amendments identify the general and specific objectives it is intended to pursue. Three main general objectives can be identified. The first is the **safeguard of Member States’ tax base and tax revenues**: ‘*[a] reinforced instrument for administrative cooperation in the taxation sector will ensure and maintain full national sovereignty over the types and level of taxes […] the main aim being to protect Member States' financial interests more effectively*.’[66] This objective is also referenced in other documents, e.g. in the proposal for DAC4 (‘*cooperation between Member States’ tax authorities is crucial in order to tackle tax avoidance and aggressive tax planning’*[67]) and for DAC6 (‘*this should allow the authorities to improve the speed and accuracy of their risk assessment and make timely and informed decisions on how to protect their tax revenues*’).[68]

The second general objective, which also constitute the legal basis for the Directive, is to **contribute to the smooth functioning of the Internal Market** (‘*The general objective of this policy initiative is to ensure the smooth functioning of the Internal Market and thereby contribute to the Internal Market's potential to create sustainable growth and employment*’[69]; ‘*The general objective of a potential initiative would be to improve the proper functioning of the Internal Market, which is currently undermined by the use of aggressive tax planning schemes*’[70]).

Finally, the third, interrelated, objective, is to **increase the transparency and fairness of the European tax systems** (‘*stepping up the fight against tax fraud and evasion is not only an issue*

[61] DAC6 proposal p.2

[62] DAC7 proposal p.2.

[63] The proposal for the Directive underlines how ‘[t]his situation creates uncertainty and runs counter to transparency, equality of treatment, fair competition and the smooth functioning of the Internal Market’. Cf. Proposal at p.2

[64] IA DAC7 p.21

[65] DAC4 proposal p.3.

[66] DAC1 proposal p.2.

[67] DAC4 proposal p.2.

[68] DAC6 proposal p.3.

[69] DAC3 SWD p.18.

[70] DAC6 IA p.33.

of revenue, but also of fairness')[71]. This is particularly an objective of later amendments of the Directive, which focus on corporate taxation. For instance, the proposal for DAC3 specifies that the '*initiative aims directly at increasing transparency on tax rulings between Member States*';[72] DAC6 proposal mentions that '*the aim is to increase transparency and access to the right information at an early stage*';[73] and DAC7 Impact Assessment specifies that '*this initiative aims to contribute to make EU systems fairer*'.[74]

These general objectives translate into **three specific objectives**, namely:

- Increase Member States' ability to combat tax fraud, tax evasion, and tax avoidance;
- Encourage spontaneous tax compliance through a deterrent effect;
- Ensure a uniform implementation of OECD actions to avoid fragmented approach.

2.2.3 Inputs

The resources deployed for the implementation of the Directive can be classified based on whether they are deployed by (i) EU institutions; (ii) Member States; or (iii) private stakeholders. The **input at EU level** includes the personnel and costs deployed by DG TAXUD for the preparation of the legislative initiatives and for monitoring their implementation; the costs incurred for the set up and management of the ACDT-related IT infrastructures, particularly for the exchange of information; as well as Fiscalis programmes to support and implement ACDT provisions.

The **resources mobilised by Member States** include the costs and personnel involved in the transposition; the costs to set up and operate the IT systems and other ACDT infrastructures; the personnel involved in the implementation of its various provisions (e.g. resources to collect and exchange information for AEOI under the various DAC); and the personnel costs for the reporting obligations.

Finally, the **resources deployed by private stakeholders** include:

- The costs incurred by financial institutions for the collection, treatment and transmission to the tax authorities of information under DAC2 (and possibly under DAC5);
- The costs incurred by multinational enterprises for the preparation of the CbCR under DAC4;
- The costs related to the transmission of data on cross-border arrangements under DAC6 (either managed internally by businesses, or via intermediaries);
- The costs incurred by on-line platform to collect, treat and transmit information related to DAC7.

2.2.4 Activities

The activities largely correspond to the provisions of the Directive, and can be summarised as follows:

- **AEOI**, regarding:
  - certain types of income and assets (DAC1 and DAC2);
  - certain tax rulings and pricing agreements (DAC3);
  - certain multinational enterprises' financials, taxes paid and number of employees (DAC4);
  - relevant cross-border arrangements (DAC6);
  - online transactions (DAC7).
- Other types of **EOI**, notably:
  - SEOI;

[71] DAC2 proposal p.2

[72] DAC3 proposal p.2

[73] DAC6 proposal p.3

[74] DAC7 IA p.21/22

  - EOIR.
- **Other forms of administrative cooperation**, including mainly:[75]
  - PAOE;
  - Simultaneous controls;
  - Joint Audits;
  - access to selected information collected under AML legislation (DAC5).

Finally, this list is complemented by the **activities financed by the Fiscalis programme** to support the implementation of the Directive, such as working groups, workshops, training and other communication activities.

2.2.5 Outputs, results, and impacts

The immediate results of the Directive have to do with the extent to which its provisions have been implemented in practice, and thus **correspond to the uptake of the provisions of the Directive**, i.e.

- The actual exchange of information under AEOIs;
- The uptake of the other types of information exchange (different from automatic exchange of information);
- The uptake of the other forms of administrative cooperation.

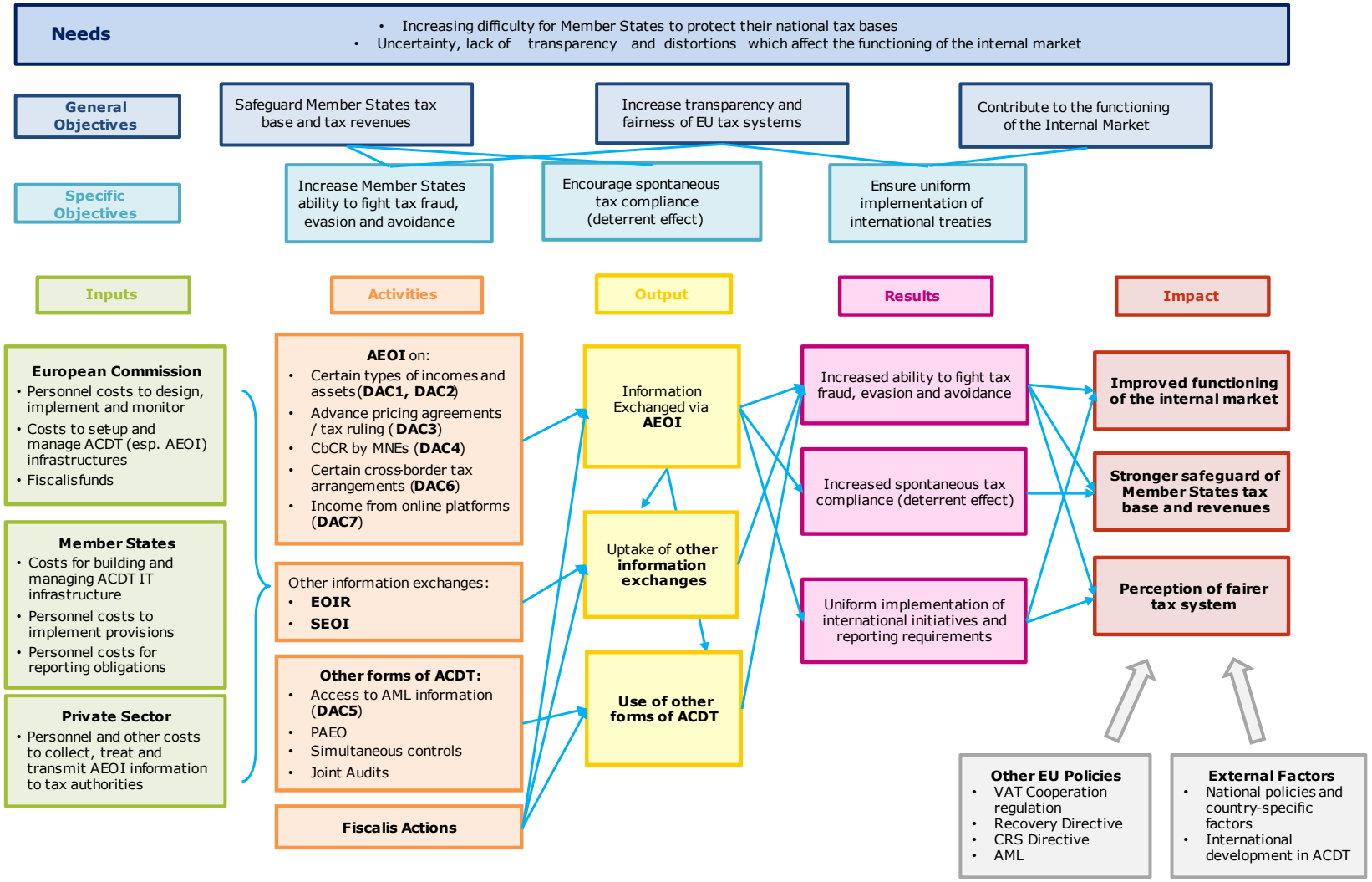
The medium-term and long-term effects of the Directive (corresponding to its results and impacts) **mirror its specific and general objectives**. In particular, the **results** include (i) the increased ability by Member States' to fight cross-border tax fraud, evasion, and avoidance in a coordinated manner throughout the Internal Market; (ii) the increased spontaneous tax compliance thanks to a deterrent effect; (iii) the uniform implementation of international initiatives and the alignment of the related reporting requirements. These outcomes are connected to the following three categories of **impact**: (i) an improved functioning of the Internal Market; (ii) the stronger safeguard of Member States' tax base and revenues; and (iii) the perception of an increase of the fairness of tax systems.

2.2.6 External conditions and other EU policies

The intervention logic also considers the influence of factors external to the Directive. This includes **other EU policies** that may reinforce the performance of the Directive, or, in case of overlapping, create redundancies and increase compliance costs. Potentially relevant policies include, for instance, the Regulation on Administrative Cooperation in VAT matters; the Asset Recovery Directive; the Corporate Sustainability Reporting Directive; Anti-tax Avoidance Directive and Anti-Money Laundering legislation. Other **external conditions** that may also interact, positively or negatively, with the performance of the Directive, have to do with developments at national or at international level. The former includes, for instance, national institutional factors, or the introduction of voluntary disclosure programmes or tax amnesties, while the latter have to do with administrative cooperation initiatives at international level, such as the introduction of new policies at OECD or G20 level, or the introduction of new bilateral treaties between the EU (or between Member States) and third countries.

[75] Other forms of administrative cooperation envisaged under the Directive include the assistance in the notification of taxpayers and the provision of feedbacks to sending Member States. These are not shown in the Intervention Logic diagram for brevity.

Figure 3. Intervention Logic



Source: Authors' elaboration

3. POLICY PROCESS

3.1 Transposition and implementation

This Section provides an overview of the transposition and implementation of DAC provisions into the national legal framework, thus answering to the Evaluation Question#1: *To what extent have the provisions of the Directive been transposed and implemented?* This section is complemented by Section 1 in Volume 2, which includes the list of the legal acts adopted by Member States to transpose DAC provisions as well as a detailed summary of the infringement procedures for each DAC.

Judgment criteria	Indicators
JC#1.1 Extent to which the Directive and its amendments have been timely and fully transposed into national legislation	• Timeliness of transposition and entry into force (by amendment) • Completeness of transposition (by amendment)
JC#1.3 Presence of issues in the transposition or implementation of the Directive	• Evidence of problems in the transposition of provisions • Evidence of issues in the uptake of the Directive provision (e.g. legal constraints; operational supporting factors or constraints) • National institutional framework for ACDT

The sources analysed for the assessment of JC#1.1 are mainly EUR-Lex and the infringement decisions database completed by a review of the infringement packages and the 'Monitoring the application of European Union law' Annual Reports adopted by the Commission. The information was further validated via the interviews with national tax authorities and Tax Justice Network, Corporate Tax Heaven Index 2021[76].

The information concerning JC#1.3 included the collection of feedbacks from the national tax authorities in the targeted consultation as well as the Yearly Assessment. Moreover, additional details were retrieved from the review of the minutes of the Working Group on Administrative Cooperation in the field of Direct Taxation (WG ACDT) and the Sub-Group on the Automatic Exchange of Information (SG AEOI). This was complemented by a desk review of the national legislation in selected Member States.

3.1.1 Transposition

As summarised in Figure 4, **the DAC transposition process has led to a total of 83 infringement procedures.** Only four cases were initiated due to non- or partial compliance, while **the vast majority of infringements concerned cases of non-communication**. At the time of writing, all infringement procedures have been closed, except for six DAC7 procedures[77]. Importantly, none of the 83 infringement procedures was referred to Court.

[76] Tax Justice Network (2022), Corporate Tax Heaven Index 2021 available at: https://cthi.taxjustice.net/en/

[77] European Commission (2023), July infringements package: Key decisions, Press corner 14 July 2023 available at: https://ec.europa.eu/commission/presscorner/detail/en/inf_23_3445

Figure 4. Overview of infringement procedures

DAC provision	Deadline for transposition	# of infringement procedures for non-communication	# of infringement procedures for non- or partial compliance
DAC1 AEOI	31 December 2014	4	None
DAC1 non-AEOI	31 December 2012	12	1
DAC2	31 December 2015	13	2
DAC3	31 December 2016	9	None
DAC4	4 June 2017	8	1
DAC5	31 December 2017	11	None
DAC6	31 December 2019	15	None
DAC7	31 December 2022	14 (6 open)	None

Source: Authors' elaboration based on the infringement decision database

Although most of the non-communication cases were closed shortly after the opening of the procedures, **the delay in communicating the successful transposition can be often related to an actual delay in adopting the national law**. When a Member States fails to communicate the successful and timely transposition, the Commission starts the infringement procedure by sending a first letter of formal notice, requesting further information to the country concerned. Usually, the timeline for providing the answer before the opening of the next infringement package is sufficient for allowing Member States which are going through the legislative process to complete the transposition. In other circumstances a second formal notice might be required. In the case of DAC, for all amendments but DAC6, at least one Member States has received a second letter of formal notice to comply with the transposition deadline, after which the law was successfully adopted in the national jurisdiction.

The transposition of the DAC1 AEOI provisions led to the lowest number of infringements, probably due to the long transposition time. Similarly, DAC5 transposition process led to only 11 non-communication cases which were closed shortly after, given the more limited scope of the review. On the contrary, the highest number of infringement procedures opened was recorded for DAC2, against almost half of the Member State; these procedures also required a longer period before being closed (between 6 and 12 months). Moreover, it is the only DAC for which two non-conformity cases were opened, two years after the implementation date: the first one against Czechia[78] for general lack of correct transposition; and the second one against Bulgaria[79], targeting a specific law which provided a broader exception for certain reportable persons, hence allowing certain types of entities to escape due diligence procedures. The infringement procedures were closed respectively in 2019 and in 2020.

The other two procedures for non- or partial compliance concerned DAC1 and DAC4. The former was opened in 2016 against Estonia for incomplete transposition, as the Estonian law only provided a general provision 'broadly referring to the application of EU laws'[80]. The infringement case was closed two years after[81]. The second one was opened in 2019 against Spain for non-conformity as

[78] European Commission (2018), June infringements package: key decisions, 7 June 2018

[79] European Commission (2018), November infringements package: key decisions, 8 November 2018

[80] European Commission (2017), SWD Monitoring the application of European Union law, 2016 Annual Report

[81] European Commission (2018) July infringements package: key decisions

a 'number of elements regarding the reporting obligations of multinational companies'[82] were not transposed into Spanish rules. The case was closed later in 2021.

3.1.2 Implementation

To complete the overview of the national institutional framework, alongside with the legal transposition of the Directive, the operational processes for the actual implementation of the tools and procedures provided by the Directive were analysed. For each exchange of information national authorities often need to go through preparatory steps - also with the support of the Commission, crucial for the effective exchange of information, and to adapt their internal organisation to the workload and competences required.

Implementation procedures

For DAC1 to DAC5, which had already been largely implemented at the time of the previous evaluation, the **procedures for the implementation of the exchanges under DAC1 to DAC4 did not undergo any particular change** during this Evaluation period, with the exception on the upgrade of IT tools and formats for the exchange of information. In particular, the electronic Forms Central Application (eFCA), a centralised web-based application was adopted to streamline the exchange process, reduce operational risks and facilitate the collection of statistics[83]. Also, since 2018, the Commission proposed the alignment of DAC2 message size and format to the CRS standard[84].

The **implementation of DAC6** was discussed within several sessions of the WG ACDT and SG AEOI to address mainly the IT operationalisation of the new provisions and to meet the needs of national administration during Covid-19. The preparatory dialogue with Member States concerned the development of the EU IT schema and the differences with the OECD Mandatory Disclosure Rules (MDR)[85], as well as possible trainings to support national implementation.[86]

The adoption of guidelines for the correct interpretation of definitions introduced by the DAC6 – such as the main benefit test and Hallmarks, was left to Member States. The optimisation of the implementation of DAC6 across the different Member States was, however, the topic of several Fiscalis workshops[87]. Specifically, national tax authorities (Dutch, Austrian, Finnish, Germany) ahead in the implementation process, led working groups on the different national application and interpretation, supporting those Member States who had not yet adopted any guidance to draw best practices for the collection of the reportable arrangements. According to the Yearly Assessment, as of 2022, all Member States – with the exception for Greece - have now established national procedures and processes to exchange data on cross-border arrangements, and to obtain DAC6 information where it is not initially provided/collected. Also, in 21 Member States[88], additional procedures were adopted to ascertain that intermediaries correctly fulfil reporting requirements.

Similarly to DAC6, the preparatory work for the **implementation of DAC7** was discussed in the SG AEOI, focusing on the co-operation with OECD for the common XML schema and User Guide and

[82] European Commission (2019), January infringements package: key decisions, 24 January 2019

[83] Cf. WG ACDT, Minutes Meeting 44, 44th Meeting – Brussels, 12 March 2019, and WG ACDT, Minutes Meeting 45, 45th Meeting – Brussels, 29th October 2019

[84] The addressing the topic during WG ACDT meetings, with more technical aspects being reviewed in the context of the SG AEOI. *Cf.* SG AEOI, Minutes Meeting 17.

[85] Cf SG AEOI, Minutes Meeting 15 and Meeting 17

[86] AEOI SG Minutes Meeting 18

[87] Fiscalis 2020 Digital Workshop '*DAC6 implementation differences*' FWS/153/001-003, Fiscalis Workshop '*DAC6 implementation differences, part two*', FWS/153/004-005, 2-4 and 9 March 2021,; Fiscalis 2021 Digital Workshop '*DAC 6 implementation differences, part three*' FWS/153/006-007,

[88] All except Austria, Croatia, Denmark, Ireland, Latvia and Malta.

on the technical questions for the operationalisation of the data collection and for corrective actions on specific XML elements/aspects (e.g. TIN, XML message correction mechanism).[89] In some Member States, the transposition process is not fully completed and work is still ongoing to clarify the data format and transmission methods. In some Member States there are still ongoing conversations with representatives from the private sector to clarify some procedures and or definition for the submission of the required data points under DAC7. One example - also reported during an ACDT WG, are certain legal issues on the exact reporting obligations in situations when one platform assumes an obligation to report for another online platform operator.

Besides introducing AEOI of information for platform operators as of 2022, 21 Member States reported their intention to expand the scope of information provided under DAC1, to comply with DAC7 provisions that also cover royalties[90] and the collection of identifiers, especially the TIN[91].

Central Liaison Offices

As required by the Directive all national authorities have appointed a **Central Liaison Office** (CLO), with the main responsibility for keeping contacts with counterparts in other Member States. Compared to the 2019 Evaluation, the organisation of national CLOs has undergone only minor changes. Most CLOs continue acting as supervisors of the overall application of the Directive (12 in 2022), while the remaining Member States have opted either for a CLO acting as operational unit, directly replying to relevant issues (8), or a mix of competences, playing both coordination and operational roles (7).

The number of CLOs dealing exclusively with administrative cooperation in direct taxation has slightly decreased: from 10 during the 2019 Evaluation to 8 in 2022. Most CLOs also manage other administrative cooperation tools. Specifically, the CLO leads VAT admin cooperation activities (in 18 Member States in 2022), tax recovery (8), and other matters such as customs (7). Only in few Member States the CLO also deals with excise duties (5).

The number of personnel working in the CLOs has stabilised over the last five years: most Member States employ from 1-5 staff members, circa one third from 6 to 10 staff members, and few countries organised their CLO with 11 to 20 officials. As of 2022, there are only two countries - Germany and Spain, with 20+ staff members. Finland - which had only one person competent not only for ACDT but for all international exchange functions, is now going through a renovation of CLO structure.

Issues in implementation

While no significant problems remain in the area of the transposition, **the actual implementation of the provisions is considered burdensome by national tax authorities**, especially due to the frequent amendments to the Directive. The pace of the revisions is partly dictated by international developments, hence driven by the need to ensure the harmonisation at Member States level of substantive law and uptake of international model rules. Nonetheless, most of the authorities contacted during the interviews, mentioned that each revision of the Directive, however small, required testing, which is time- and resource-consuming. Furthermore, the new DACs led to developing or adapting the IT architecture for the data collection and exchange, but also the design of national procedures to gather the data from third parties (i.e., intermediaries, platforms).

The pace of the revisions is perceived as impacting on the internal capacity of national tax authorities to use the existing data and tool, resulting in resource constraints. For smaller Member States, this might be a structural issue; however, larger Member States have reported the same

[89] SG AEOI, Cf. Meeting 25, Meeting 26

[90] Czech Republic, Denmark, Spain, Finland, Portugal

[91] Germany, Malta, Finland, Luxembourg, Romania, Slovenia and Slovakia

feedback especially when are other EU Directives with similar processes and requirements to be implemented (e.g., the implementation of CESOP[92] and DAC7 involve very similar processes and systems) or when there are specific national requirements[93].

A final general consideration reported by some Member States concern the **General Data Protection Regulation[94]** (**GDPR**) and data security (see Box 4). With the introduction of DAC6 and the exchange of the related information on the dedicated central directory, Member States were concerned on the procedures to safeguard personal information shared and the compliance with the retention period laid out in the GDPR. The Commission replied with a technical solution to comply with the disposition set by the Regulation and national provisions for the deletion of both DAC3 and DAC6 data[95].

Box 4. Data security

Data security

In 2019, the Bulgarian national revenue agency suffered a data breach. This caused a temporary pause to the exchange of information from specific Member States on data security grounds. Namely, Greece, Finland and Malta did not send information to Bulgaria in 2019.

As soon as the attack was detected, the information was shared in the ACDT WG: more technical details, including the response adopted by the Bulgarian tax authority were presented to other Member States.[96] Nonetheless, Greece did not share data with Bulgaria also in 2020, while other Member States resumed the exchange.

With respect to data security, in 2020 the European Commission has updated the IT structure for AEOI[97] and required Member States a 'Security Compliance Certificate' before the submission of DAC6 data.

Beyond these general considerations, other implementation issues are DAC and country specific:

- **DAC1.** Concerning AEOI, Cyprus - the Member State exchanging information on the lowest number of categories (see Section 4.1), is in the process of modifying its national legislation concerning the submission of employers' return, to extract income from employment and Directors' Fees information. On top of that, Finland, Portugal, and Slovenia have referred to additional efforts to exchange information on LIP[98]. With regards to non-AEOI, as of 2022, only in nine jurisdictions hosted tax authorities might face some procedural restrictions, such as not directly interviewing the taxpayer, but only in presence of the domestic authority.
- **DAC2**. Within the EU there are only two countries - Cyprus and Denmark – whose national legislations provide some limitations on the provision of TIN for the identification of the account holder.
- **DAC3**. Bulgaria is the only country which neither provides in its national legislation nor issues advance cross-border rulings and APAs within the meaning of the Directive. Bulgaria issues tax

[92] Central Electronic System of Payment information (CESOP); Council Directive (EU) 2020/284 of 18 February 2020 amending Directive 2006/112/EC as regards introducing certain requirements for payment service providers

[93] For instance, if taxpayer data are concerned, the laws need to be validated from the point of view of data protection and the whole process requires the preparation of detailed dossiers

[94] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance)

[95] The interactions with the ACDT and GRPR are further analysed in Section 9

[96] WG ACDT, 45th Meeting – Brussels, 29th October 2019; SG AEOI, 18th Meeting - Brussels, 30 October 2019; SG AEOI 20th Meeting – Brussels, 29 January 2020

[97] SG AEOI, 22nd Meeting – Online, 5 November 2020

[98] Yearly Assessment (2022)

opinions to individual taxpayers providing general clarifications with respect the interpretation and application of the tax legislation.

- **DAC5**. Although the Directive has been correctly transposed, access to the beneficial ownership registers would still require the adoption of internal procedures by national authorities in certain Member States (e.g., in Finland and Italy[99]). Moreover, given the linkages of DAC5 with the anti-money-laundering directive, the delays in the correct transposition of the latest amendments of the latter have impacted also the implementation of DAC5 in some Member States (see Section 4.8.5)[100].
- **DAC6**. Poland and Portugal national legislations cover a wider range of taxes than those required by DAC6. Specifically, in the case of Poland all taxes are covered except for custom duties, whereas in Portugal the reportable arrangements include all taxes except for custom and excise duties. Also, both countries included domestic transaction among the reportable arrangements. Poland stands out for including additional ten hallmarks. Nonetheless, AEOI concerns only the cross-border arrangements covered by the Directive. Also, to comply with a recent Court of Justice of the European Union (CJEU) judgment[101] some EU national legislation were adjusted or are in the process of being reviewed (see Box 5).

Box 5. Legal professional privilege

The Directive provides intermediaries with the right to a waiver from filing information on cross-border arrangement in some specific circumstances, including inter alia the legal professional privilege. The scope of the definition of legal professional privilege is not harmonised at EU level and has different nuances for tax professionals, depending on how the profession is organised nationally. As a result, the implementation of such rule has raised questions in some Member States (e.g., Belgium, Czechia, France, Latvia), which have referred to the CJEU for a preliminary ruling on the matter.

The CJEU stated that the obligation for a lawyer acting as intermediary to inform other intermediaries involved is not necessary and infringes the right to respect for communications with his or her client. However, lawyers would still have an obligation to directly notify the taxpayers of their reporting obligations in case there are no intermediaries. As a result, national legislation or implementing guidelines have been reviewed in some Member States (France, Luxembourg, the Netherlands). The CJEU judgment was also taken into consideration in DAC8 to align the Directive provisions to the judgment.

- **DAC7**. As a general comment, DAC7 required to coordinate work across many ministries, offices and the creation of an appropriate IT system. This made the implementation effort more burdensome. However, as mentioned above, the implementation work is still ongoing and it is too early to draw any conclusions.

Enforcement

The Directive requires that Member States lay down penalties to enforce DAC provisions which require collecting data from private parties. More in detail, the Directive provides that Member States shall lay down effective, proportional, and dissuasive penalties against the infringements of the provisions concerning the exchange of information with regards to DAC4, DAC6, and DAC7. Moreover, for DAC2, Annex I calls for rules and procedures to ensure due diligence by financial institutions, and effective enforcement provisions to ensure data reporting[102].

[99] Targeted consultation. With respect to Italy, beneficial ownership register has been made operational further to the adoption of Ministerial Decree of 29 September 2023 (published in the Italian Official Journal no. 236 of 9 October 2023)

[100] See Section 4.8.5

[101] Cfr CJEU Case C-694/20.

[102] DAC Article 25a.

In the initial proposal for DAC8 the Commission foresaw the introduction of a minimum level of penalties for the lack of reporting after two administrative reminders and when the information provided was deemed incomplete, incorrect, or false, substantially affecting the integrity and reliability of the data reported[103].

Member States have adopted different sanction systems. Sanctions from the eight fieldwork Member States are, summarised in Table 1 below[104].

Overall, **most Member States considered have adopted fixed or maximum sanction** for omitted, incomplete or incorrect reporting under DAC2, DAC4 and DAC6. Some Member States determined the amount of the penalty based on the economic advantage in terms of fees or taxes. For instance, in Ireland, the penalty against an intermediary for infringing DAC6 provisions is calculated based the amount of any fees received, or likely to have been received, or to the amount of any tax advantage gained, or sought to be gained [105]. Also, in Spain the penalty can reach the maximum equivalent to the amount of the fees received or the value of the tax effect derived from the agreement, depending on whether the offender is the intermediary, or the taxable person concerned. Among the countries considered, Spain has the most detailed tiered penalties system, binding the amount of the administrative penalty to the percentage of non-compliance for all DACs. So, for instance, if the fiscal residence under DAC2 is not correctly identified it will correspond to a range of 1-2% of error, i.e., EUR 200 per person.

Some **criticism has been raised by stakeholders on the proportionality of the sanctions**. Specifically, for DAC2 financial institutions complained about the lack of a proper correction mechanism for small errors, which could call for the same high penalties. Also on DAC6, there has been some criticism on the very different degrees of sanctions adopted by Member States, as both private and public stakeholders perceive them as not balanced and affecting the level-playing field within the EU. In this respect, Polish provisions can be considered as the most stringent compared to other such as Irish or Romanian penalties. In fact, besides providing a high administrative sanction for the omitted, incomplete, or erroneous reporting, under specific circumstances other additional penalties may apply, including imprisonment.

However, according to the stakeholders consulted, **sanctions related to the omission of erroneous reporting under the different DACs have been rarely or never applied**. More in detail, recently some financial institutions were sanctioned for incomplete or erroneous reporting. For DAC4 and DAC6, stakeholders have not reported the application of any sanction for the omission, incomplete, or incorrect reporting, which, for DAC6, can also be explained by its recent implementation.

[103] More in detail, for DAC2, DAC6, DAC7 and DAC8 the penalties were set at a minimum of EUR 150,000 for entities with a turnover of more than EUR 6 million. The integrity and reliability of the information would have been considered affected when the incomplete, incorrect, or false data corresponded to 25% of the total data reported by the taxpayer or reporting entity. Member States would, however, be allowed to apply more stringent sanctions for these types of infringements and will still have to apply effective, dissuasive and proportional penalties for other types of infringements.

[104] In particular, the penalties envisaged for DAC2, DAC4 and DAC6 of selected Member States are listed, while DAC7 is left out from the analysis considering their recent adoption and the ongoing transposition process

[105] Art. 817RH, par. 6 del Taxes Consolidation. The court should consider the amount of any fees received, or likely to have been received, by the person in connection with the reportable cross-border arrangement; – and in any other case, to the amount of any tax advantage gained, or sought to be gained, by the person from the reportable cross-border arrangement

Table 1. Overview of sanctions for selected Member States

Member State	DAC2	DAC4	DAC6
France[106]	Late filing of the declarations Fine of EUR 200 per account	Omission to report EUR 100 000	Omission to report: Up to EUR 10 000 for each report with a maximum of EUR 100 000 a year for the same intermediary / taxpayer
Germany[107]	Incorrect/incomplete/ Late self-certification Up to 10 000 Incorrect/incomplete/late reporting by the financial institutions Up to 50 000	Late/incomplete reporting Fine up to 10 000	Incomplete/incorrect/ late reporting: Up to EUR 25 000
Ireland[108]	Omitted/incomplete/ incorrect reporting: EUR 19 045 + daily penalty of EUR 2 535	Omitted/incomplete/ incorrect reporting: EUR 19 045 + daily penalty of EUR 2 535	Omitted/incomplete/ incorrect reporting: EUR 4 000 to 5 000 + daily penalties of EUR 100 to 500 per day
Italy[109]	Omitted/incomplete/ incorrect reporting: from EUR 2.000 to EUR 21.000	Omission to report: From EUR 10.000 to 50.000	Omitted/incomplete/ incorrect reporting: from EUR 2.000 to EUR 21.000
The Netherlands[110]	Omission of providing access to the TA: Up to EUR 22 500 Omission Incomplete/incorrect reporting: Up to EUR 900,000	Omitted/incomplete/ incorrect reporting: Up to EUR 900,000	Omitted/ incomplete/ incorrect reporting: Up to EUR 900,000
Poland[111]	Omitted/incomplete/ incorrect or late reporting PLN 1 million (~EUR 225 000)	Omitted/incomplete/ incorrect reporting: PLN 1 million (~EUR 225 000) Providing false information a penalty of up to 240 times the daily wage + other fines/ prohibition to	Omitted/incomplete/ incorrect or late reporting: Max 24 960 000 PLN (~ EUR 5 800 000) + criminal sanctions for natural persons

[106] DAC2: DAC4: DAC6 Maximum total amount per year per single taxpayer/intermediary to EUR 100 000.

[107] Finanzkonten-Informationsaustauschgesetz – FKAustG, During the retrospective period (25 June 2018 to 1 July 2020) no penalties should apply.

[108] Taxes Consolidation Act, 1997 (Number 39 of 1997), Section 817RH.

[109] DAC2: Art 10, comma 1bis, Legislative Decree n. 471/1997; DAC4: Art 1, comma 146, Law 208/2015; DAC6: Art 10, comma 1, Legislative Decree n. 471/1997.

[110] Wet op de internationale bijstandsverlening bij de heffing van belastingen (WIB), Article 11

[111] Act of March 9, 2017 on the exchange of tax information with other countries, Artt. 89 ff.

Romania[112]	Omitted/incomplete/ incorrect/late reporting: between lei 2 000 (~EUR 400) and lei 5 000 (~EUR 1000) per reportable account Omission of providing information/access to the TA: between 5 000 (~EUR 1000) and 10 000 (~EUR 2 000) per reportable account	Omission to report: from lei 70 000(~EUR 12 000) to lei 100 000 (~EUR 20 000) Incomplete/incorrect or late reporting: from 30 000 lei (~EUR 6 000) to 50,000 lei (~EUR 10 000)	Omission or late reporting: from 20 000 (~EUR 4 000) to 100 000(~20 200 lei) Intermediary's failure to notify another intermediary or the relevant taxpayer: from 5 000 (~EUR 1 000) to 30 000 lei (~EUR 6 000).
Spain[113]	Incomplete/incorrect or late reporting: The sanctions have to do with the range of errors that you report wrongly, 1%-2% are 200 euros.	Omitted/incomplete/ incorrect/late reporting EUR 1 000 per data item, or EUR 10 000 per 'group' of data items. The formal penalties are capped at the least of 10 percent of taxable income or one percent of net revenue + 15 % of the assessment in case of transfer pricing.	Omitted/ incomplete/ incorrect or late reporting: Up to the equivalent of the fee of the intermediary

3.2 Taking account of external recommendations

This section focuses on **whether the recent recommendations by EU institutions on DAC have been taken into account**, via legislative initiatives (JC#2.1) or non-legislative actions (JC#2.2).[114]

Judgment criteria	Indicators
JC#2.1 Extent to which the recommendations of the ECA and EP report have resulted in legislative actions by the Commission	• Legislative actions taken by the European Commission responding to ECA / EP recommendations
JC#2.2 Extent to which the recommendations formulated by the ECA and EP report have been implemented via non-legislative actions	• Actions and initiatives implemented by the European Commission responding to ECA / EP recommendations

In recent years, DAC has been assessed by two European institution: the European Court of Auditors (ECA) and the European Parliament (EP):

- In 2021, the **European Court of Auditors** (ECA) published a special report on DAC[115]. The report resulted from its audit of the system for exchange of tax information in the EU, which covered the 2014-2019 period and included also a visit in five Member States. Its main conclusion is that '*the system for exchange of tax information has been well established, but more needs to be done in terms of monitoring, ensuring data quality and using the information received'*. In particular, it notes that the information collected by Member States is not sufficiently complete and accurate, also because there is no audit or check on reported data

[112] Law 207/2015 on the Fiscal Procedure Code, as amended and supplemented, TITLE XI, art. 336

[113] Spanish General Tax Law, Title IV, 22nd and 23rd Additional Provision of General Tax Law.

[114] Recommendations to Member States are treated in this section in so far as the Commission took action to facilitate the improvements requested at Member State level; these are also treated in Section 5 below.

[115] Report on the implementation of the EU requirements for exchange of tax information: progress, lessons learnt and obstacles to overcome (2020/2046(INI)), Committee on Economic and Monetary Affairs, A9-0193/2021, 3.6.2021

and reporting entities. Furthermore, sufficient guidelines on data quality and usage and a common framework for monitoring the system's performance and achievements are lacking.

- In 2021, the **European Parliament** issued a Report on DAC, which was followed by a Resolution. The Report was based on a Study carried out by the European Parliament Research Services, which in turn relied on research paper drafted by an external consultant[116]. Though acknowledging limitations to the evidence base, the Parliament highlights a number of shortcomings of the current framework. In particular, it notes that certain incomes and assets remain out of scope of DAC, and that the information provided by private operators and exchanged by Member States is often of poor quality. The Parliament welcomed the latest amendments, which expanded the scope of and reinforced the mechanisms of DAC, while at the same time calling for a strong focus on ensuring thorough implementation of the existing rules, including on anti-money laundering.

The main recommendations from these two institutions are summarised in Table 2.

Table 2. Main recommendations from ECA and the EP

Addressed to the European Commission	
1.	Make it mandatory for Member States to report all DAC1 income categories
2.	Enhancing due diligence requirements for DAC2 provisions
3.	Enlarge the coverage of DAC: expand the scope of mandatory information exchange to include cryptocurrencies, non-custodial dividend income and advance cross-border tax rulings issued for natural persons; increasing the coverage of income forms, assets, accounts,
4.	Simplifying the exchange of information for other purposes and compliance requirements
5.	Developing guidelines on implementing the DAC legislation
6.	Direct and effective actions to address the lack of quality of data sent by Member States, as identified in its 2019 Evaluation of the DAC: • expand its monitoring activities to cover issues that go beyond the transposition of the DAC legislation, such as on the spot visits in Member States and penalties; • further develop its guidance for Member States, performing risk analysis and using tax information received.
7.	Reliable common framework for measuring the benefits of the system for exchange of tax information
Addressed to the Member States	
8.	Increasing the availability of taxpayer identification numbers
9.	Introduce procedures for the systematic risk analysis of information received from other Member States
10.	Improve the quality and completeness of DAC1 and DAC2 data: • report all DAC1 income categories; • set up and apply procedures for the audit of DAC2 reporting institutions; • establish a system of quality and completeness checks of DAC1 and DAC2 data; • include qualitative aspects in their annual bilateral feedback on incoming information
11.	Perform further analysis of unmatched DAC1 and DAC2 data, to match it against relevant taxpayers and use the resulting information to assess the related taxes

Source: Authors' elaboration on ECA and EP recommendations.

The European Commission followed up the recommendations received, albeit, in few cases, the proposed provisions were not retained by the Council. The follow-up consisted in (i) legislative initiatives, undertaken in DAC8; (ii) direct and supporting non-legislative actions.

[116] Cfr Note 3

Legislative initiatives.

As mentioned above, the Commission proposed a revision of DAC, the so-called DAC8, published in December 2022, and adopted in October 2023. It tackles a number of aspects highlighted by ECA and the EP with most of previous recommendations eventually incorporated[117].

With DAC8, the scope of DAC will be expanded to include non-custodial dividends and crypto asset transactions, and it will explicitly cover additional payment tools, such as e-money and central bank digital currencies. DAC8 also increased the number of mandatory categories for DAC1 reporting to five (up to the current four). In addition, DAC3 will be expanded to cover ATRs/APAs granted to natural persons which are high-net worth individuals.

DAC8 also makes the inclusion of TIN mandatory for certain AEOI exchanges, and namely DAC1 and DAC3; different from the proposal, the obligation is not in place for DAC2 records. DAC8 also empowers the Commission to create a tool to allow verification of TINs.

Finally, DAC8 allows Member States to use the information received for other purposes, including for the enforcement of international sanctions. It also includes two provisions of principle supporting two recommendations targeted to the Member States: ensuring the effective use of data received from AEOI and monitoring the effectiveness (i.e., benefits) of DAC.

Non-legislative actions

With respect to the suggestions put forward by ECA and the EP, the Commission carried out two kinds of activities: direct actions to meet the recommendations which were addressed to it, and supporting actions for Member States to meet their respective recommendations.

As for direct actions, in the period of the Evaluation, the Commission did not issue guidance or guidelines on the implementation of DAC, and especially on its most recent amendments (DAC 6 and DAC7). As it will be discussed further during the study, the lack of guidance for certain provisions (especially those for which no guidance is adopted at OECD level) remains a weak point of this legislative framework.

Differently, the Commission expanded its monitoring activities beyond mere transposition, adopting the solution suggested of organising Member States visits. As announced in December 2021, the Commission has organised a visit programme, aimed at covering all Member States and assessing the implementation of the earliest DACs – from DAC1 to DA4. The objective of these visits is to identify best practices and areas of improvement concerning the quality of the data shared and the use of the information received.[118] The visits will be carried by the Expert Team 'VISDAC', including both Commission and national experts. The visits have started in 2023 and should be concluded by 2024. Those Member States which have already received a visit have a positive opinion of the interaction ('interesting and constructive, quite a work to prepare, but good experience and positive dialogue'[119]).

In addition to that, the Commission launched a number of projects, financed by Fiscalis or DG REFORM's technical support instrument (TSI), in the area in which ECA and the EP called for improvements, and namely:

- In the area of improving data quality and use of DAC, the Commission established an Expert Team on Data Analytics,[120] to identify best practices and develop a data analytics tool.

[117] Cfr Note 27 above.

[118] Minutes of the Working Group on Administrative Cooperation in the Field of Direct Taxation (WG ACDT) 50th Meeting – Virtual Meeting, 7th December 2021

[119] Targeted consultation

[120] Minutes WG ACDT, 51st Meeting – Virtual Meeting, 3rd March 2022

- On monitoring performance, the Fiscalis Project Group 119 on DAC performance measurement was concluded, and a follow-up considered.[121] This led to Fiscalis Project Group 038 on Measuring the impact of the DAC, meant to propose a set of actual indicators to be implemented by the Member States to improve the measurement of the efficiency of the administrative cooperation. Further guidance and instructions in this respect was also provided to Member States in the various reporting tools, starting from the Yearly Assessment.
- DG REFORM presented a flagship Technical Support Instrument (TSI) support for 2023, targeted to the enhancement of DAC data quality, data usage (including risk analysis), and performance monitoring. The support consisted in a review by external consultants of national AEOI systems, including IT systems and data flows, identification and sharing of best practices, and delivery of recommendations for improvement.
- Concerning the quality of data, a Fiscalis project is undergoing on the improvement of DAC3 summary.[122]
- The EU AIAC Community to improve the knowledge, awareness, and share best practices in the area of simultaneous controls, PAOEs and joint audits.[123]

3.3 Summing Up

The Directive and its amendments have been overall properly implemented. Despite a very large number of infringement procedures (90), mostly concerning delays in notification, the transposition of DAC into national legislation has not posed any major issues, and none of the infringement procedures opened throughout the years has ever been referred to CJEU so far. The delays in the transposition can be mostly explained by the complex procedures and technical challenges due to the introduction and expansion of AEOI.

As for the implementation of DAC – i.e. the process for setting up the institutional framework and procedures to operate with DAC tools, stakeholders considered it burdensome and mentioned potential risks. In particular, **two general concerns emerged among tax authorities**:

1. the pace of revisions - which is partly dictated by international developments / agreements, affecting their internal capacities to adapt new tools and
2. the need for the adoption of procedures to safeguard personal information exchanged and the compliance with the retention period laid out in the GDPR in the Central Directories.

Other implementation issues are relevant only to some Member States, due to national legal limitations. For instance, DAC1 AEOI information on incomes are not available to all Member States. In this respect, the Commission has made some harmonisation efforts, establishing a minimum of categories to be exchanged by each Member State (also following the recommendations of the ECA and EP), and it raising the bar further with DAC8. One additional example of the important role of the Commission in preventing implementation issues, is DAC6. Specifically, the presence of common guidance acknowledged and endorsed by the 27 Member States, would have prevented the differences in the implementation of the provisions across Member States and the need to review national legislations / implementing guidelines.

The European Commission has followed up or is following up on most of the ECA and EP recommendations through the adoption of DAC8 (e.g., expanding the scope of DAC) and non-legislative actions (e.g., setting up Member States visits). In particular, DAC8 incorporates a number of provisions addressing the recommendations received.

[121] *Ibidem*

[122] Minutes WG ACDT, 52nd Meeting – Virtual Meeting, 10th October 2022

[123] Minutes WG ACDT, 48th Meeting (Virtual), 24th June 2021

4. UPTAKE OF THE DIRECTIVE

This section assesses the uptake of the Directive, i.e. the extent to which its provisions and tools have been enacted and employed by tax authorities. In doing so, this Section answers to Evaluation Question#1 - To what extent have the provisions of the Directive been transposed and implemented?, with particular regard to JC#1.2 (Uptake of the Directive Provisions) and, in part, JC#1.3 (Presence of issues in the […] implementation of the Directive, while the other part of this JC is dealt with in Section 3.1 above).

Judgement Criteria	Indicators
JC#1.2 Uptake of the Directive provisions	• Volume and flows of AEOI, by Member States per year • Engagement in EOIR and SEOI by Member State per year • Engagement in other forms of ACDT by Member State per year
JC#1.3 Presence of issues in the […] implementation of the Directive	• Evidence of issues in the uptake of the Directive provision (e.g. legal constraints; operational supporting factors or constraints)

The analysis provided in this Section is based on the statistics collected by the Commission on DAC provisions, both submitted by Member States (namely AEOI Statistics for DAC1, DAC2, and DAC4; and CACT Statistics for all non-AEOI tools) and extracted from the central directories (AEOI Statistics for DAC3 and DAC6). The analysis of the statistics is complemented with qualitative and quantitative information from the questionnaires compiled by Member States, and from interviews with tax authorities.

Even though the focus of the assessment is on the period 2018 to 2022, two aspects are worth mentioning. First, whenever relevant and possible, the analysis has been expanded to cover also the previous period, i.e. since the beginning of exchanges, in order to, on the one hand, ensure consistency (particularly for DAC1 and DAC2 AEOI), and, on the other hand, to establish a benchmark and study time trends. Second, data for 2022 is, for many provisions, either preliminary or entirely lacking.[124] For this reason, in a number of cases the analysis only covers 2018 to 2021. Unless otherwise specified, the analysis covers EU27 countries. A more detailed overview of the methodological approach to the analysis of DAC1 and DAC2 statistics is provided in Volume 2.

4.1 DAC1 AEOI[125]

Between 2018 and mid-2022[126], Member States exchanged information under DAC1 referring to around 36.7 million taxpayers and to incomes worth over EUR 239.5 billion. On an annual basis, over 2018-2021[127], Member States exchanged, on average, over 4,500 messages per year, relating to **more than 8.6 million taxpayers, and with an average value of approximately EUR 54.8 billion.** The volume of exchanges per year shows a substantial increase since the last evaluation

[124] As regards DAC1 and DAC2 AEOI, at the time of the analysis, only early data relating to 2022 has also become available from some Member States. This was included in figures highlighting total volumes relating to the whole DAC period but was excluded from analyses where the currently lower availability may impact any conclusions drawn.

[125] This Section provides an overview of the main trends in the exchange of DAC1 information overall. A detailed overview of the trends for each of the five categories of income is included in Volume 2 – Section 4.

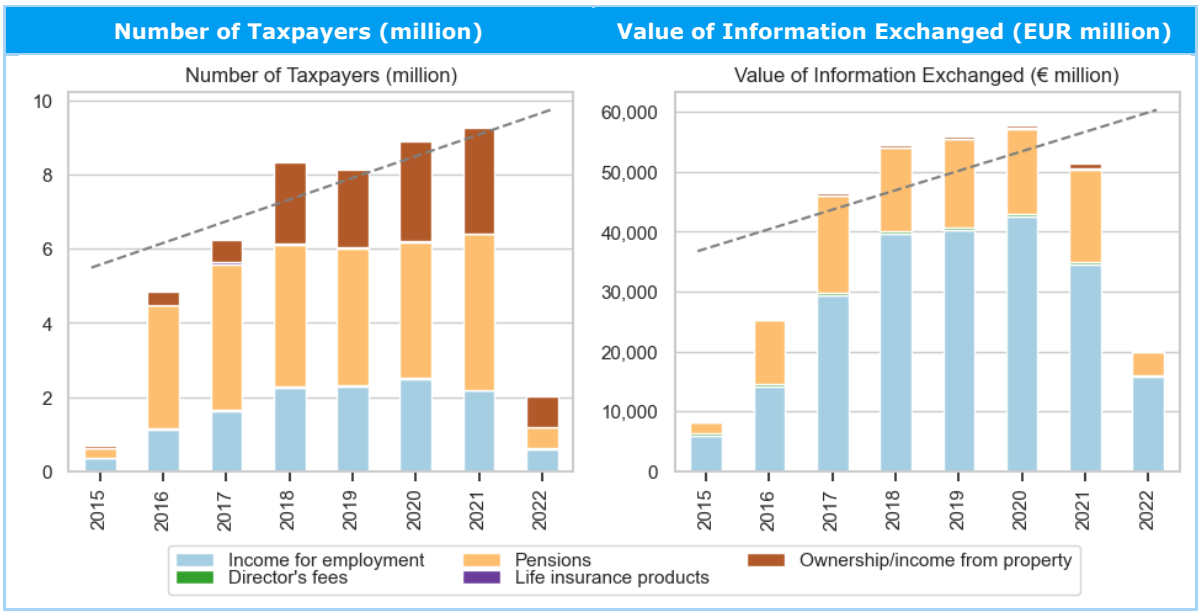
[126] Data for 2022 and, to a lesser extent, 2021 is incomplete. The latest message included in the dataset was sent on 31st July 2022. However, data provision varied by Member State with data for messages sent in 2022 only available from 15 Member States. Data for nine Member States only covered messages sent up to 2021. Data for one Member State covered messages sent up to 2020. Data for one Member State was only available up to 2019.

[127] 2022 data is incomplete and was only available for a subset of Member States. Therefore, it was excluded from the annual averages so as not to bias the figures.

study[128], as for both the value of information exchanged and the number of taxpayers (see Figure 5).[129]

Consistently with the previous study, over the period from 2018 to 2022 the exchanges relating to IE and PEN were found to be the most important, accounting for 70% of taxpayers and 98% of value. Exchanges related to IE accounted for around 27% of taxpayers but 72% of value, while PEN exchanges accounted for around 44% of taxpayers and 26% of value. Exchanges related to IP accounted for 29% of taxpayers, but for less than 1% of value[130]. Exchanges related to DF and LIP accounted only for a very small proportion (1% or less) of both taxpayers and values.

Figure 5. Changes in levels of DAC1 Exchanges by Message year[131], 2015-2022



Note: Data for 2022 and to a lesser extent 2021 is incomplete. The dotted line shows the trend over time. Note the trendline was constructed excluding values from 2015 and 2022 due to the limited data available for these years.
Source: Authors' elaboration of AEOI Statistics

Figure 6 shows the top 10 sending and receiving countries in terms of the number of taxpayers covered (top) and the value of the information exchanged (bottom). Consistently with the previous evaluation study, **Germany and France are the top sending countries** in terms of number of taxpayers, accounting for around 40% of taxpayers. Together with Italy, the Netherlands and Portugal, information shared by **the top 5 sending countries account for around 64% of taxpayers**. This rises to around 88% when considering the top 10 sending countries. France,

[128] The 2019 evaluation study found that Member States had exchanged, between 2015 and mid-2017, around 11,000 messages referring to nearly 16 million taxpayers and to incomes/assets worth more than EUR 120 billion.

[129] For consistency with the previous study the analysis used, for employment income and director's fees, the amount and recipient quantity (from IES-110) for the value of information exchanged and the number of taxpayers; for life insurance products, the event info amount for value and policy quantity for taxpayers (from LIPS-110); for pensions, the event info amount for normal payments only for value (from PENS-140), and the recipient quantity (from PENS-110) for taxpayers; and, for ownership/income from property, the income party amount, where the specific income type was rental income only, for the value (from IPS-170), and party quantity (from IPS-110) for taxpayers.

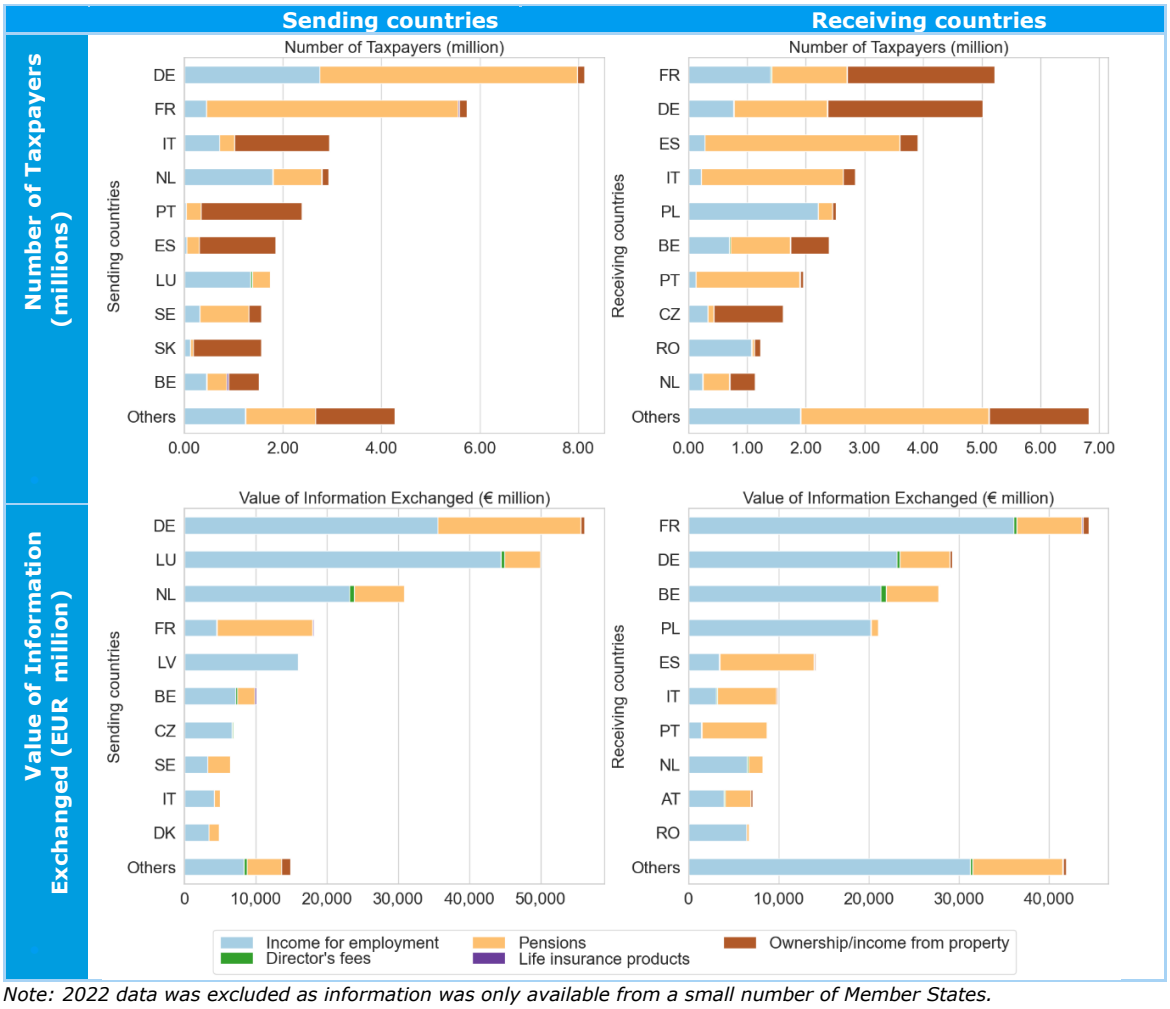
[130] The data exchanged for property also include the value of assets / transactions, with the total value of transactions covered, between 2018 and 2022, amounting to around EUR 60.1 billion. However, for consistency with the previous evaluation, in the analysis we only consider rental income from property in the main analysis. Separate analysis on property transactions is provided in Volume 2.

[131] The message year is the year in which information is exchanged between Member States. It is different from the tax year, which is the year to which the information refers.

Germany, Spain, Italy and Poland are the top 5 receivers of information accounting for around 56% of taxpayers, rising to over 80% when considering top 10 receiving countries.

Considering the value of the information exchanged, Germany and France remain important senders and receivers of information, while Luxembourg, only ranked seventh among sending countries in terms of taxpayers, ranks second in terms of value. Other countries in the top 10 sending countries include the Netherlands, Latvia, Belgium, Czechia, Sweden, Italy, and Denmark. Together **the top 5 sending countries account for 78% of value**, rising to 93% for the top 10. France, Germany, Belgium, Poland and Spain are the top 5 receivers in terms of value, accounting for 62% of information exchanged (80% for the top 10).

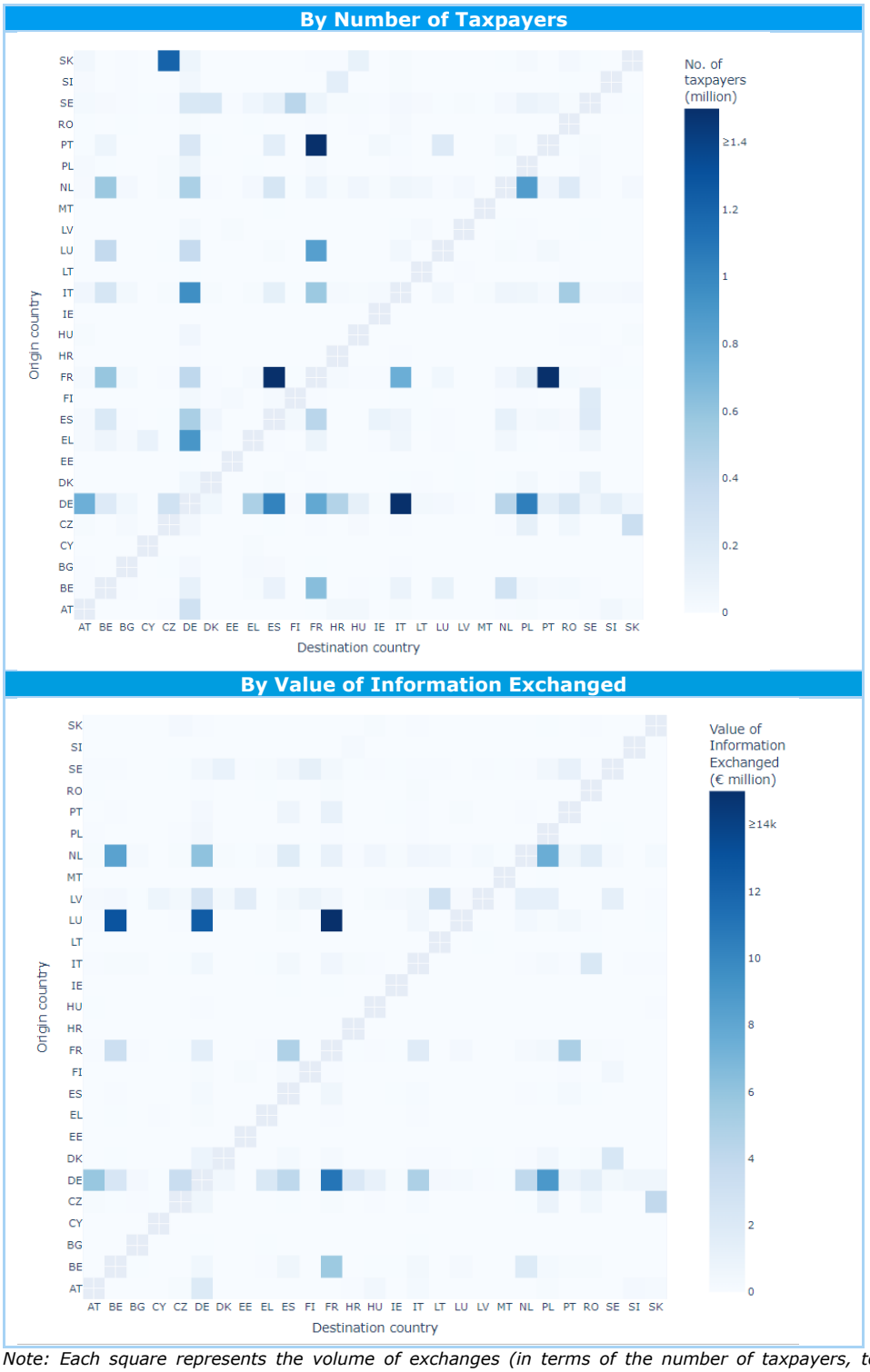
Figure 6. Top 10 Sending/Receiving Countries of information under DAC1, 2018 – 2021



Note: 2022 data was excluded as information was only available from a small number of Member States.
Source: Authors' elaboration of AEOI Statistics

Exchanges are highly concentrated also in terms of bilateral flows. Considering all DAC1 categories, **the most significant bilateral flows in terms of number of taxpayers are from or to France and Germany**, accounting for eight of the top ten. The other two large flows in the top ten originate from Slovakia (to Czechia) and the Netherlands (to Poland). **Luxembourg, Germany and the Netherlands dominate bilateral flows when considering the value of the information**. In the top 5 bilateral flows, three are from Luxembourg and two from Germany. From the sixth to tenth most relevant flow, three are from the Netherlands, while Belgium and Germany account for one each (see Figure 7).

Figure 7. Bilateral Exchanges of Information between Member States, 2018 – 2021

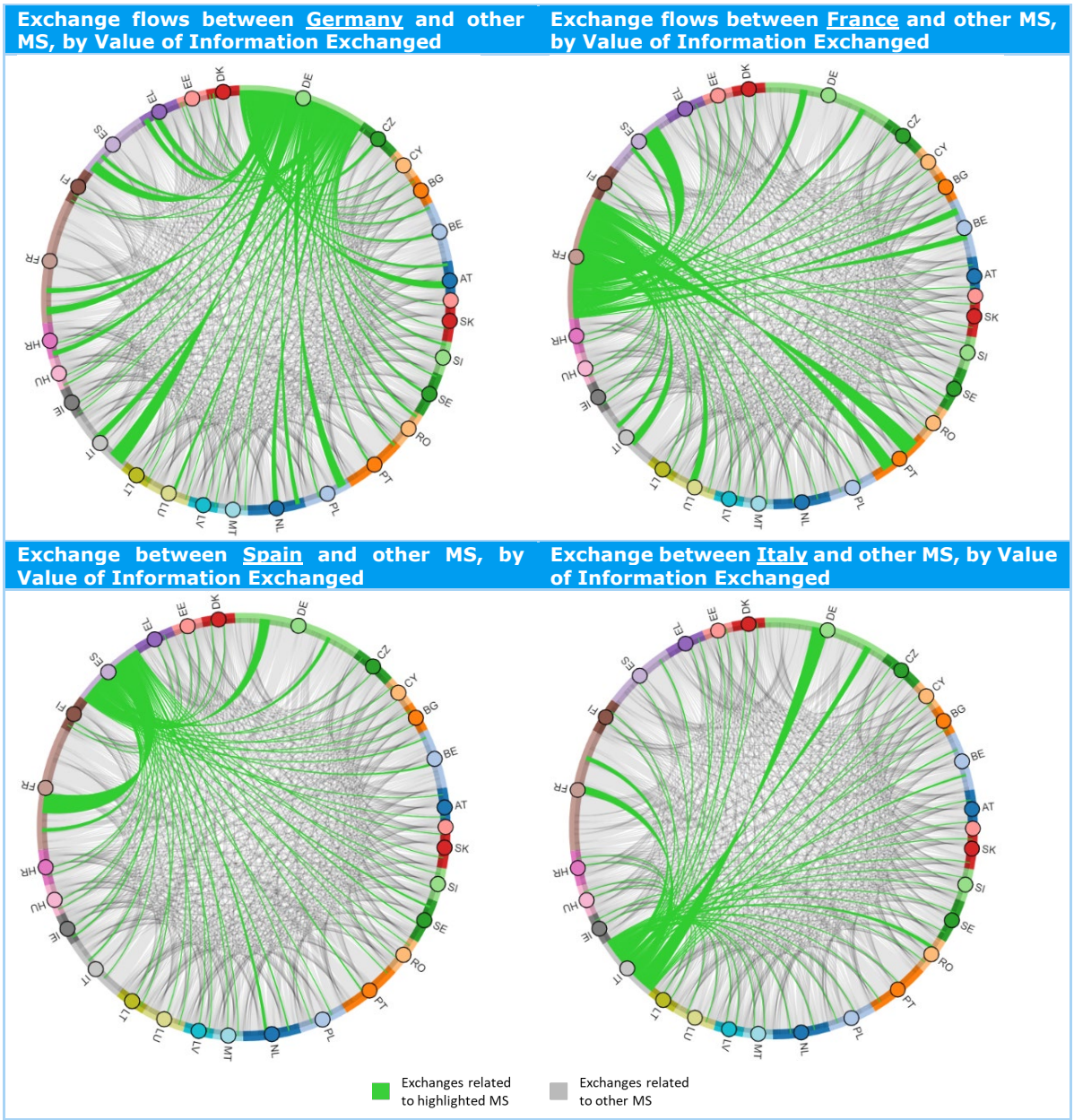


Note: Each square represents the volume of exchanges (in terms of the number of taxpayers, top, and the value of the information exchanged, bottom) from the origin country (on the Y-axis) with the destination country (on the X-axis). Darker shades represent larger volumes, lighter shades represent lower volumes. 2022 was excluded as information was only available from a small number of Member States.
Source: Authors' elaboration of AEOI Statistics

Figure 8 visualises the value of the bilateral exchanges of information from selected Member States and to all other Member States. This allows to have an immediate grasp of the relative importance of each Member State and all the bilateral flows. The chart shows all Member States on the outside

of a circle, with the size of the slice of the circle corresponding to the importance (in terms of value) of the Member State's flows. The lines within the circle show the exchanges between Member States, with green line highlighting flows of the selected Member State.

Figure 8. Bilateral Exchanges of Information, 2018 – 2021, between selected top sending/receiving Member States and other Member States based on the Value of Information Exchanged

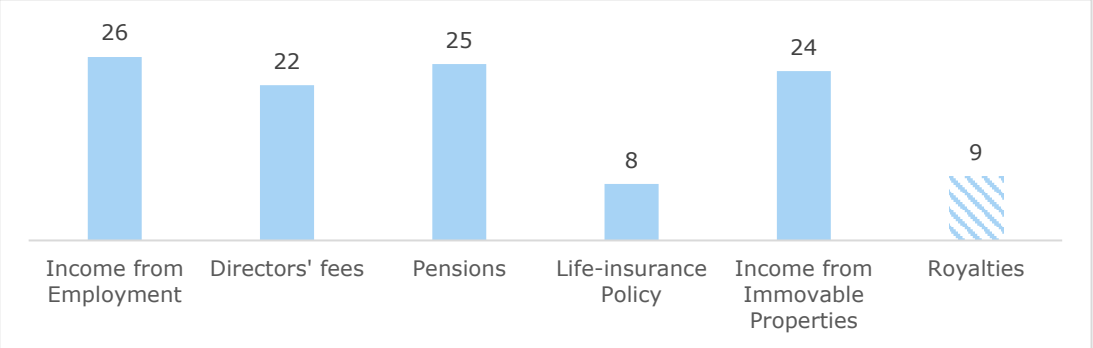


Note: Lines represent information exchanged in terms of the Value of Information Exchanged between Member States. Green lines show, for select Member States, the flow of information between these Member States and all other Member States. 2022 was excluded as information was only available from a very small number of Member States.
Source: Authors' elaboration of AEOI Statistics

As described in detail in Section 2.1.1 above, DAC1 AEOI requires tax authorities to exchange information on the five categories of income (IE, DF, PEN, IP, LIP). Since 2024, tax authorities can also share information available on royalties, and exchange it on a voluntary basis. At present, and since the launch of DAC1 AEOI, exchanges are subject to availability, i.e. Member States are not mandated any additional data collection activities for this type of exchanges. Starting from 2025, however, tax authorities are required to exchange information on at least four of the six categories.

Nearly all Member States are able to exchange data on income from employment (26 in 2022), **pensions** (25), **immovable property** (24) and **directors' fees** (22). This has not changed significantly over the evaluation periods, with only three countries increasing the number of income categories available.[132] One third of Member States already hold information on royalties.

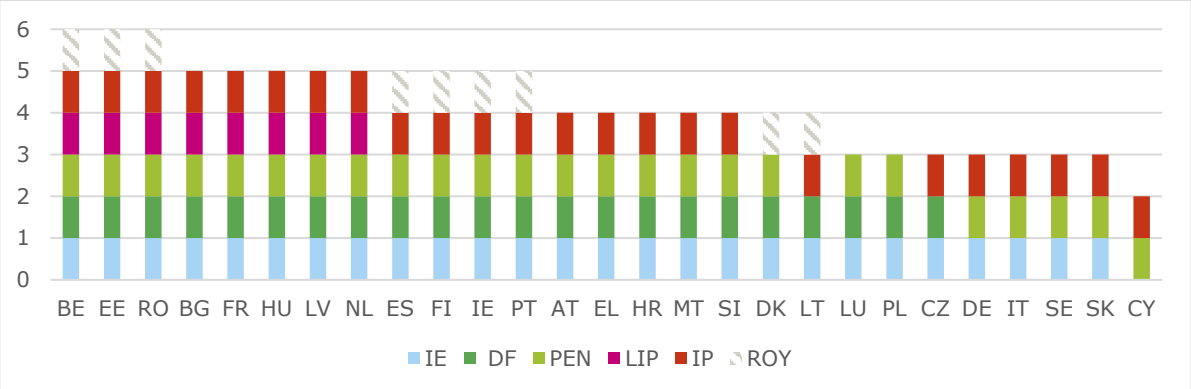
Figure 9. Number of Member States able to exchange information on DAC1 income categories (2022)



Source: Author's elaboration on Yearly Assessment

All in all, as of 2021, eight countries were able to send information on all five original income categories, and another nine on four of them (notably, in all cases, all categories but life insurance policies). In contrast, seven countries have available, and thus exchange, information only for three categories and Cyprus only for two (see Figure 10 below). This would mean that, as of the time of this study, these eight countries would not be able to comply with the requirements of DAC7, which mandates a minimum of four categories exchanged starting from taxable period 2025[133]. It is also worth noting that, even though information is exchanged by Member States, statistics on the messages sent by certain countries may not be available for certain years. A complete overview of the availability of statistical information is provided in Volume 2.

Figure 10. Categories of information available per country (2022)



Source: Author's elaboration on Yearly Assessment

[132] In particular, Slovenia started sending information on directors' fees in 2020; Cyprus started sending information on immovable properties in 2021, and Finland started exchanging information on life-insurance policies in 2022.

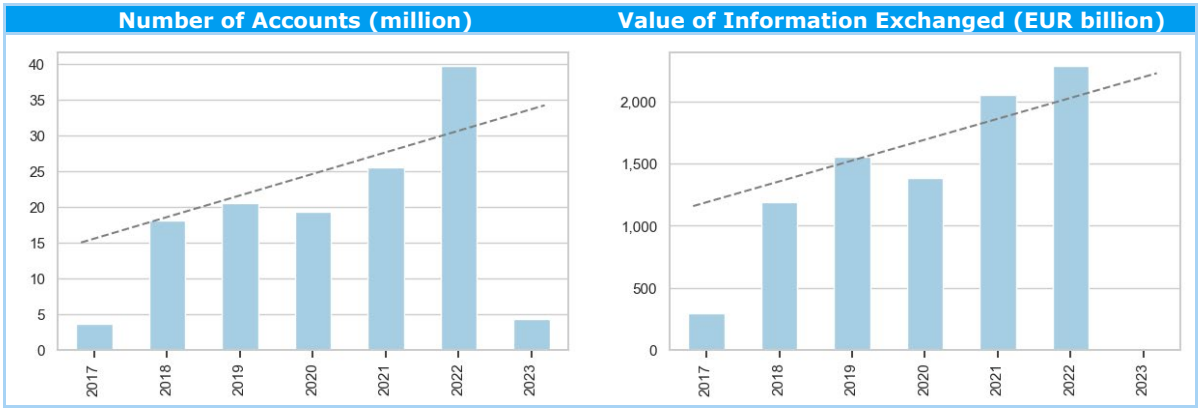
[133] As mentioned in Section 2 and Section 3.1.2, in 2024 Member States will need to communicate which categories they will start exchanging concerning taxable period starting 1 January 2025.

4.2 DAC2 AEOI

Between 2018 until the early 2023[134], **Member States exchanged information concerning some 127 million accounts relating to financial information with a total value of EUR 8,473 billion**[135]. This marks a substantial increase in the information exchanged, with the value of DAC2 information exchanged in 2022 being nearly double (around 92% higher) than in 2018.

In addition to the value of the account balances, which is the variable used for the analysis in this Section, DAC2 exchanges cover several categories of financial information. In line with findings in the first evaluation study, exchanges relating to gross proceeds from redemptions and sales of financial assets was, in terms of value, the category of financial information exchanged corresponding to the largest amount a part from the value of the accounts, corresponding to EUR 4,061 billion since 2018. Other financial information on which messages were exchanged include interest (amounting to some EUR 223 billion since 2018), dividends (EUR 55 billion), and other unspecified payments related to the accounts (EUR 856 billion).

Figure 11. Changes in levels of DAC2 Exchanges by Message year[136], 2017-2023



Note: Data for 2023 and to a lesser extent 2022 is incomplete. The dotted line shows the trend over time. Note the trendline was constructed excluding values from 2017 and 2023 due to the limited data available for these years.
Source: Authors' elaboration of AEOI Statistics

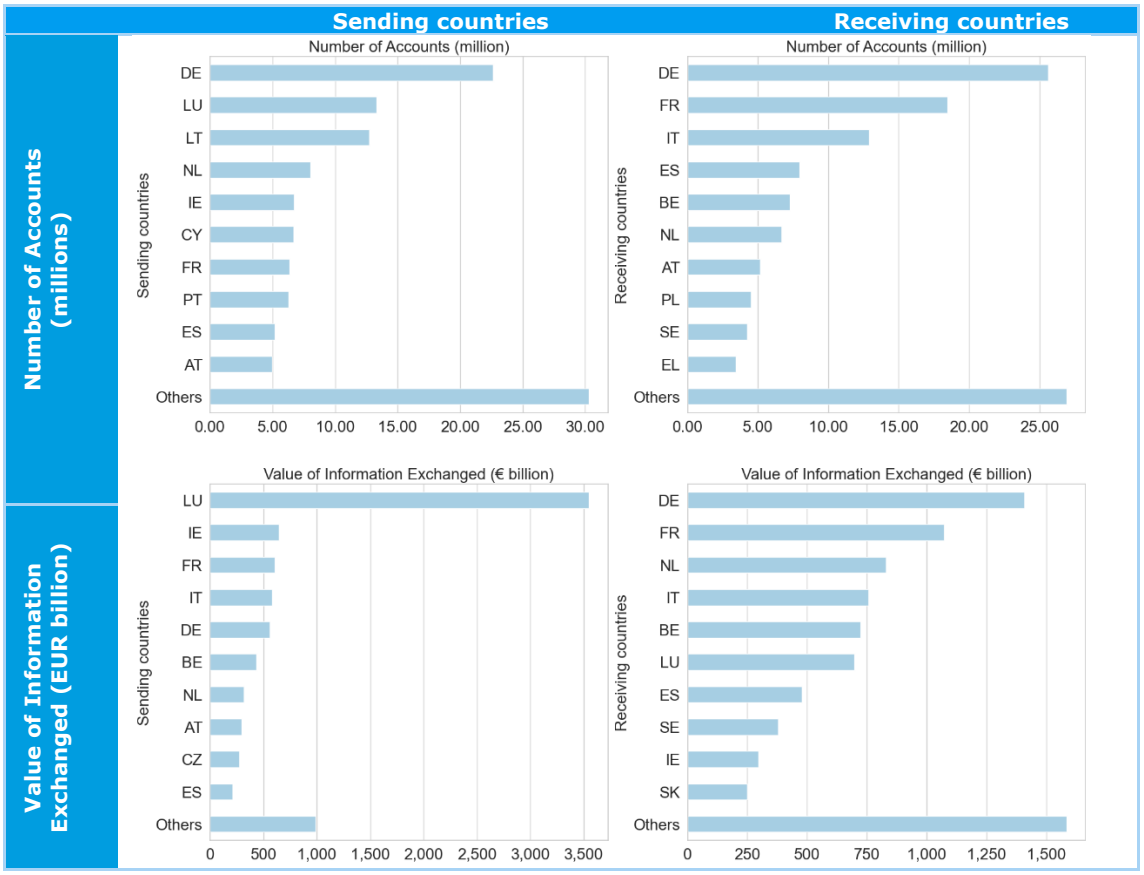
When examining bilateral exchanges, **outgoing flows of financial information are dominated by Luxembourg**. This is consistent with the findings of the previous evaluation, which only captured exchanges between September 2017 to early 2018. However, the relative importance of information shared by Luxembourg has decreased compared to the initial months of exchanges: in the previous evaluation Luxembourg accounted for 18% of the accounts and nearly 85% of the sending value while, over the 2018-2022 period, Luxembourg accounted for 10% of accounts but only 40% of sending value. This is due to the value of information exchanged by countries other than Luxembourg having increased substantially, with a number of Member States now exchanging high-value financial information.

[134] All Member States participated in DAC2 exchanges over the period considered. The information provided for most countries covered the period up until the end of 2022. Information provided by Lithuania also covered exchanges in early 2023. It should be noted that, while all 27 Member States exchanged information under DAC2, no data on the Value of the Information Exchanged was available for Estonia. For consistency with DAC1, messages sent in the final few months of 2017 were excluded from these totals.

[135] The total value refers to the account balances provided by the amount total variable in DAC2-100. Accounts are provided by the account total variable in DAC2-100. Individual breakdowns are provided by the crs501-crs504 total variables also in DAC2-100.

[136] The message year is the year in which information is exchanged between Member States. It is different from the tax year, which is the year to which the information refers.

Figure 12. Top 10 Sending/Receiving Countries of information exchanged under DAC2, 2018-2022



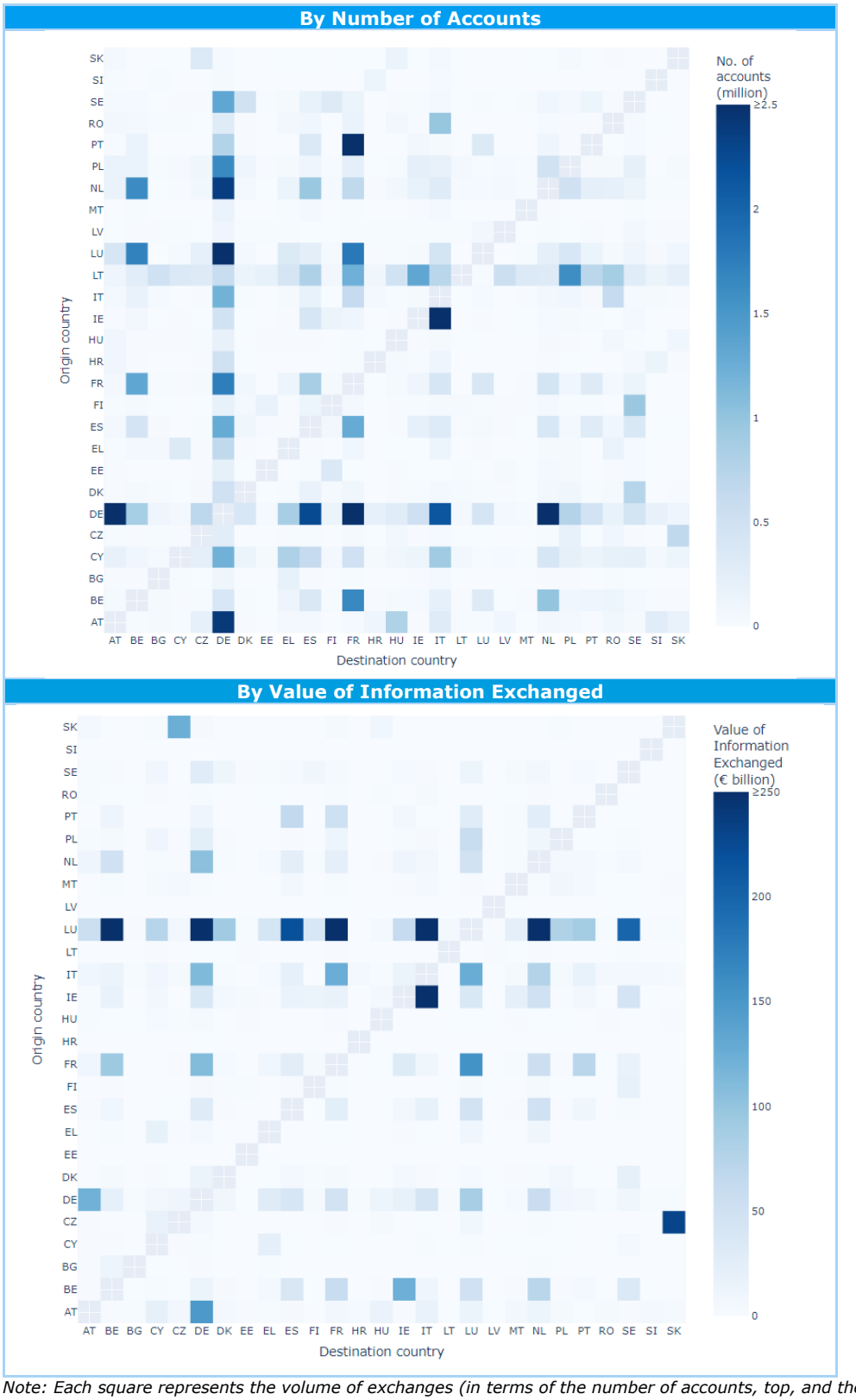
Note: Data for 2017 and 2023 was excluded as data was only available for a small number of member States.
Source: Authors' elaboration of AEOI Statistics

Germany is the largest sender in terms of number of accounts (17% of accounts, but only 6% of value).[137] The Netherlands accounted for 6% of accounts, and 4% of sending value. Other Member States in the top ten all accounted for between around 4% and 5% of accounts each. Regarding incoming information, Germany and France were leading the ranking both in terms of incoming accounts (accounting for around 20% and 14% respectively) as well as in terms of the value of information received (16% and 12%). However, in contrast to outflowing information, incoming information, by value, is more evenly distributed across Member States.

Unsurprisingly, **bilateral flows are concentrated on Luxembourg**, originating seven of the top ten flows by value. The other flows in the top ten originate from Ireland (to Italy), Czechia (to Slovakia), and France (to Luxembourg). The bilateral flows are less concentrated in terms of accounts. Luxembourg only accounted for one of the top ten flows, while Germany accounted for five of the top ten. The other flows originate from Ireland, Portugal, Austria, and the Netherlands (Figure 13).

[137] Lithuania was also among the top senders in terms of number of account (around 10%), while the country only accounted for less than 1% of the value. The correctness of data was also confirmed by the tax authority. One contributing factor could be the fact that one of Europe's largest on-line banks, Revolut, is based in the country.

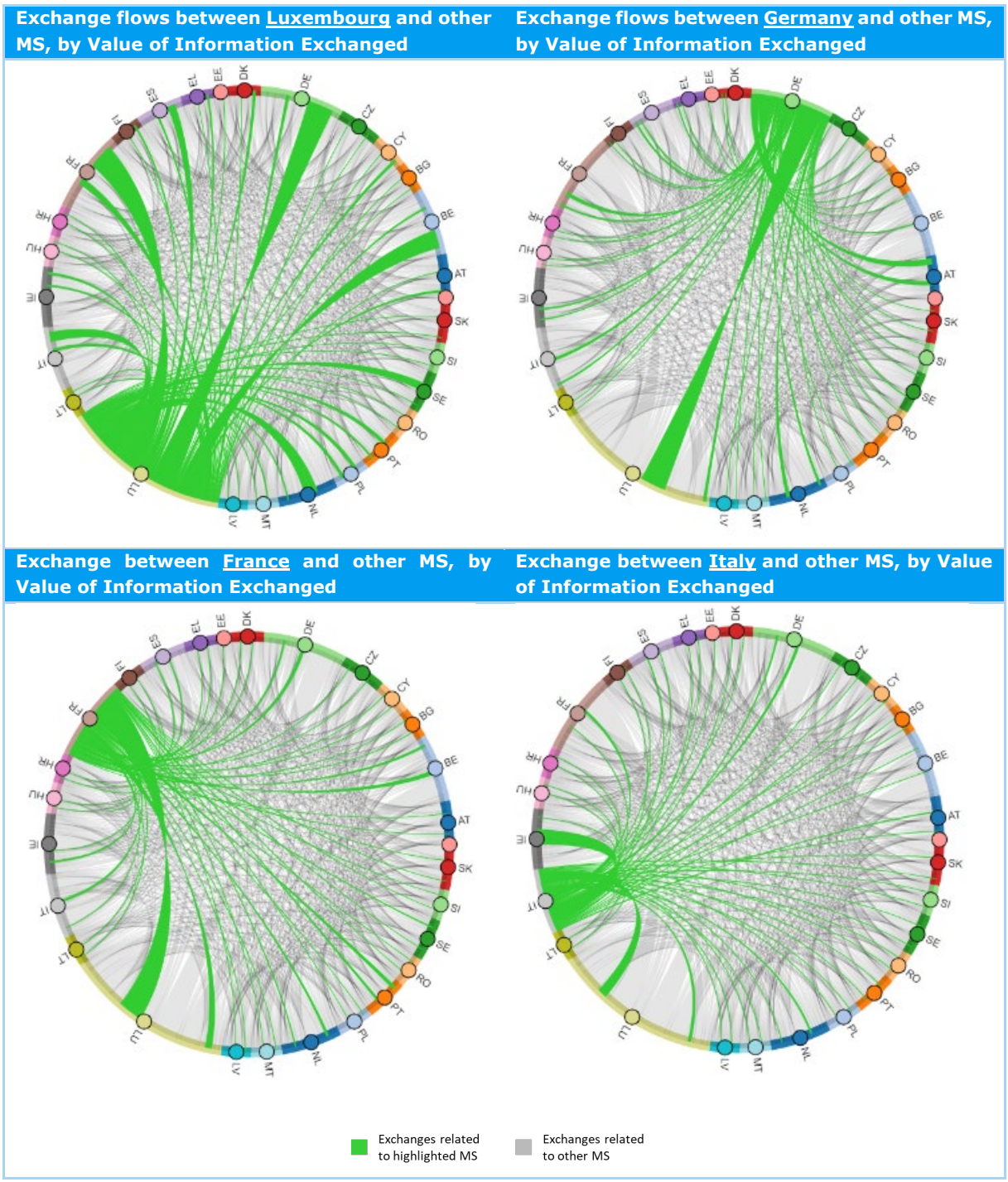
Figure 13. Bilateral Exchanges of Information between Member States, 2018-2022



Note: Each square represents the volume of exchanges (in terms of the number of accounts, top, and the value of the information exchanged, bottom) from the origin country (on the Y-axis) with the destination country (on the X-axis). Darker shades represent larger volumes, lighter shades represent lower volumes. Data for 2017 and 2023 was excluded as data was only available for a small number of member States.
Source: Authors' elaboration of AEOI Statistics

Figure 14 visualises the value of the bilateral exchanges of information under DAC2 between selected Member States and all other Member States.

Figure 14. Bilateral Exchanges of Information, 2018-2022, between selected top Sending/Receiving Member States and other MS based on the Value of Information Exchanged

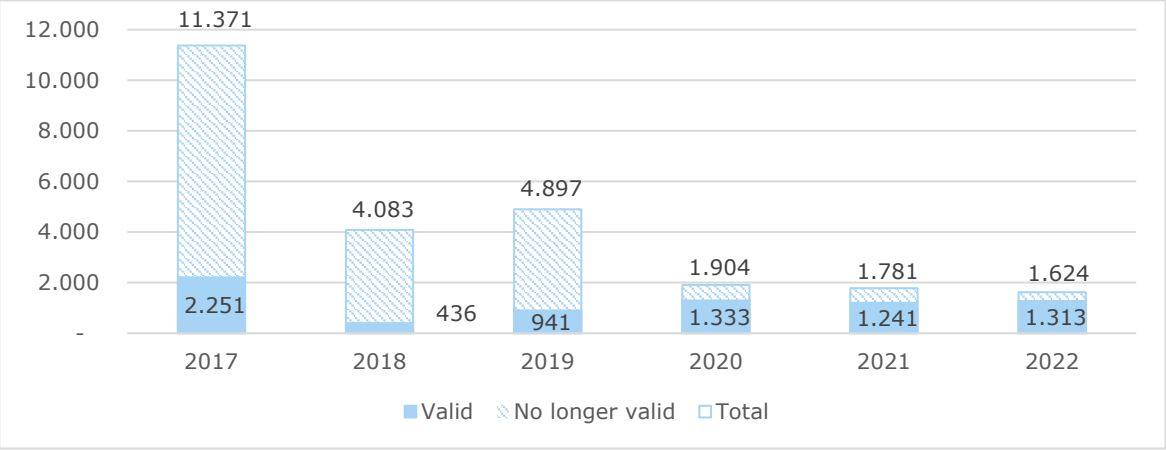


Note: Lines represent information exchanged in terms of the Value of Information Exchanged between Member States. Green lines show, for select Member States, the flow of information between these Member States and all other Member States. Data for 2017 and 2023 was excluded as data was only available for a small number of member States.
Source: Authors' elaboration of AEOI Statistics

4.3 DAC3 AEOI

Between 2017 and 2022, **25,660 ATRs/APAs were uploaded in the EU dedicated central directory**, **7,515 of which were still valid as of June 2023**. The number of rulings shared under DAC3 was in the 4,000 – 5,000 range in 2018 and 2019, and then decreased during the 2020-2022 period, ranging around 1,600 – 2,000 rulings per year (see Figure 15). The number of rulings uploaded during the first year of mandatory reporting (over 11,000) is considerably higher, as it included the backlog of ATRs/APAs issued from 2012 onwards still in force at that time.

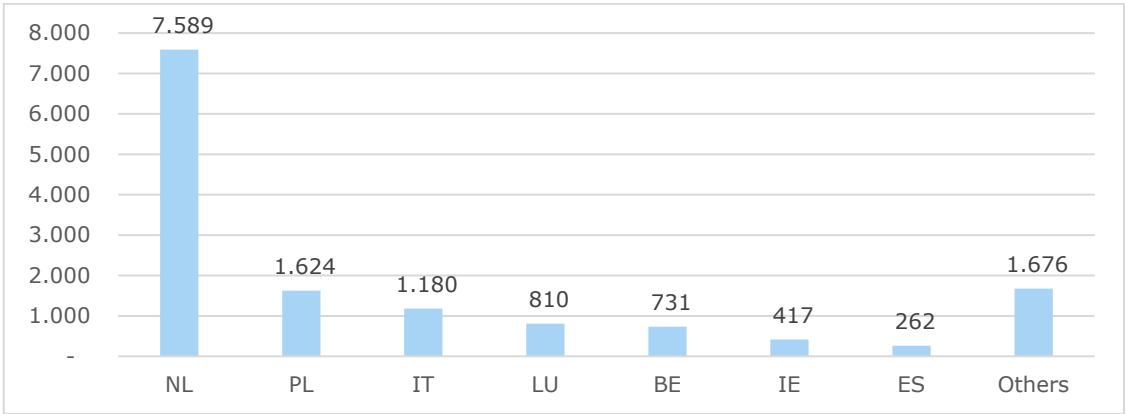
Figure 15. Number of ATRs/APAs uploaded per year



Source: Authors' elaboration on DAC3 Statistics.

DAC3 exchanges are highly concentrated, with a handful of countries uploading the overwhelming majority of rulings. Over the 2018 – 2022 period, the Netherlands alone accounted for over half of the rulings shared (7,589), followed by Poland (1,624, or 11% of all rulings), Italy (1,180, i.e. 8% of the total) and Luxembourg (810, roughly 6% of the total). Only seven countries, shown in the chart in Figure 16, uploaded, on average, 50 or more rulings per year. Notably, several large Member States such as Germany and France are not among those. No less than 11 countries have uploaded in total less than 100 ATRs/APAs each between 2018 and 2022, and two countries (namely Bulgaria and Greece) did not upload any ruling.

Figure 16. Number of ATRs/APAs sent per Member State (2018-2022)

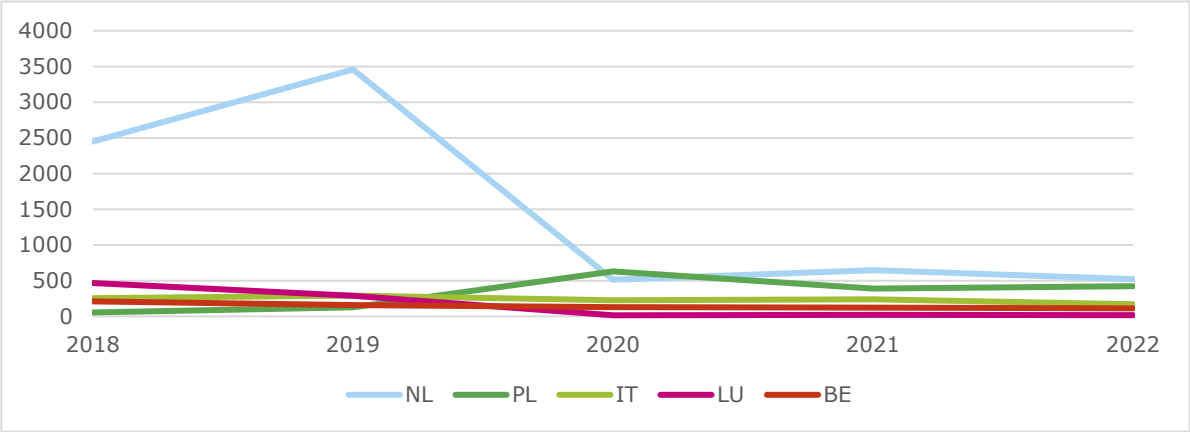


Source: Authors' elaboration of DAC3 Statistics

Figure 17 includes an overview of the trend of the top five senders of DAC3 AEOI between 2018 and 2018. While the Netherlands remain the top sender as of 2022, its relative contribution to the total number of rulings exchanged decreased, from 60-70% in 2018 and 2019, to 32% in 2022.

This stark decrease appears related to the introduction of a Decree, in force as of 1 July,[138] which redefined substantially the criteria for receiving an ATR/APA, in particular by imposing more stringent access conditions. Notably, the decline in the number of rulings uploaded by the Netherlands is the main contributor to the overall trends shown in Figure 15 above. Luxembourg also experienced a decrease in the number of rulings uploaded, from 467 in 2018, to 289 in 2019, and to 15-20 per year after that. As for the Netherlands, the declining trend in the number of ATR/APA exchanged by Luxembourg was influenced by legal changes concerning the procedures to request and issue rulings.[139] The other three largest senders, instead, show a different trend, with broadly stable or growing exchanges. For instance, Poland only uploaded 55 rulings in 2018, growing to be the second largest sender starting in 2020, with a peak in 2020 with over 600 rulings uploaded.

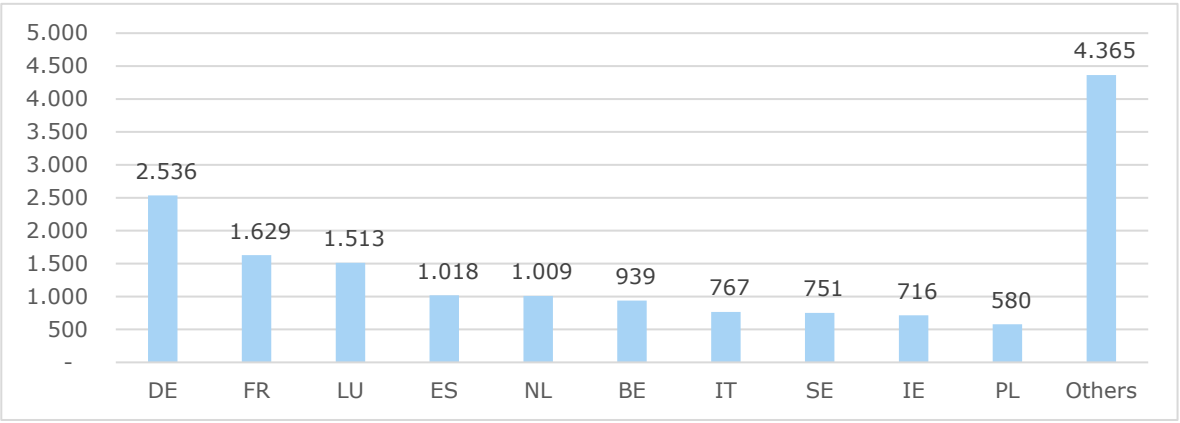
Figure 17. 2018-2022 trend in number of ATRs/APAs uploaded (top 5 senders)



Source: Authors' elaboration of DAC3 Statistics

The geographical distribution of rulings in terms of Member States concerned is less concentrated. Germany is the country most frequently concerned, with over 2,500 ATRs/APAs, followed by France and Luxembourg with some 1,500/1,600 each, and Spain and the Netherlands, concerned by some 1,000 rulings each.

Figure 18: Number of ATR/APA concerning each Member State (2018-2022)



Note: excludes 'own' Member State; each ruling can concern more than one Member State.
Source: Authors' elaboration of DAC3 Statistics

[138] Decision on pre-consultation rulings of an international nature, 16/06/2019 (https://wetten.overheid.nl/BWBR0042342/2022-06-18/0/afdrukken+informatie), amended again in 2021 and 2022.

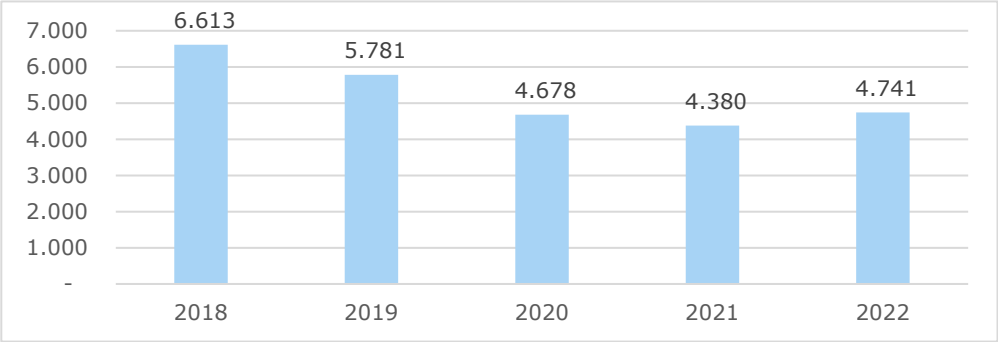
[139] In particular, the Law of 19 December 2014 (Loi du 19 décembre 2014 relative à la mise en œuvre du paquet d'avenir – première partie - 2015) provided for the payment of fees for the issuance for rulings,

4.4 DAC4 AEOI

DAC4 statistics are collected yearly by Member States; they cover the 12 months between July of the previous year and June of the current year[140]. The information concerns both the exchanges of CbCRs between Member States and number of reports received by national tax authorities from ultimate parent entity. When the ultimate parent entity is resident in a third country or is not obliged to file a CbCR in its jurisdiction of tax residence, the obligation to file the CbCR falls to those MNE's entities resident for tax purposes in a Member State as surrogate parent entity. This to facilitate the collection of CbCRs for MNEs not headquartered in the European Union.

Figure 19 below provides an overview of the number of CbCRs collected by Member States from their reporting entities. According to available evidence, Member States **collected an average of approximately 5,200 CbCRs per year**, corresponding to a total of just over 26,000 CbCRs between mid-2017 and mid-2022. The number of reports received by tax authorities by their UPE based in their countries declined between 2018 and 2020, and has remained in the 4,300-4,700 range since.

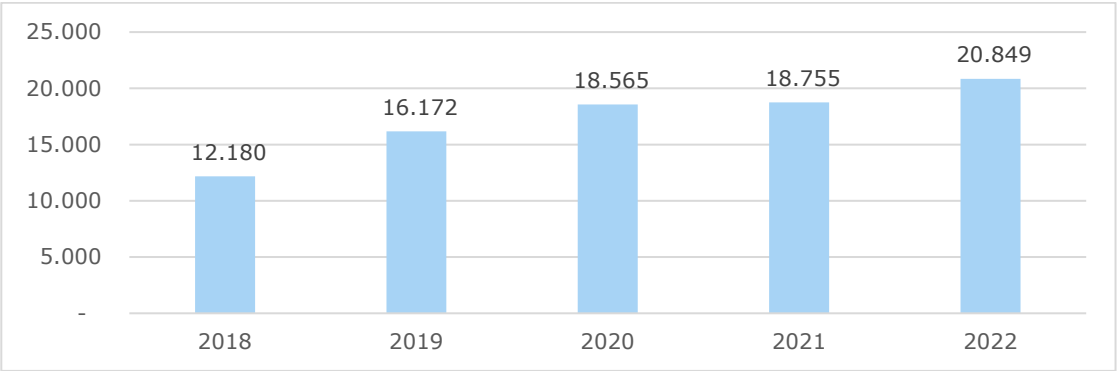
Figure 19. Number of CbCRs collected yearly by Member State



Source: Authors' elaboration on DAC4 Statistics

Each CbCR collected by tax authorities can be shared with one or more of the other Member States, depending on which countries are concerned by the reporting entity's activities. Starting from the first exchange in mid-2017, some **86,500 exchanges of CbCRs have occurred among EU Member States**. Exchanges show an **increasing trend over the years**. During the first 12 months of implementation of DAC4, Member States exchanged just over 12,000 CbCR, while over 20,000 reports were shared between mid-2021 and mid-2022.

Figure 20. Number of CbCRs sent to another Member State

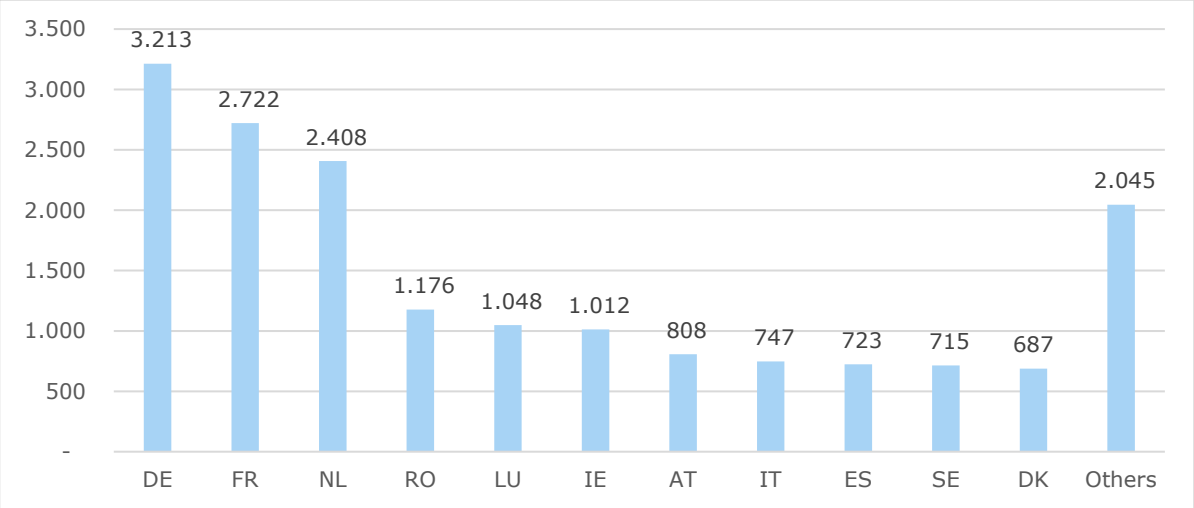


Source: Authors' elaboration on DAC4 Statistics

[140] In this section, the year of reference corresponds to the end of the reporting period, i.e., 2018 for reporting year June 2017 - July 2018; 2019 for the reporting period June 2018 - July 2019, and so on.

Considering the average total number of CbCRs sent to other Member States, three countries, i.e. **Germany, France, and the Netherlands, account for nearly half of total exchanges**. Compared to other DAC provisions, however, the distribution of DAC4 exchanges by originating countries is somewhat less concentrated (see Figure 21 below). While only the three top senders share over 2,400 reports, another three (Romania, Luxembourg, and Ireland) send an average of 1,000 reports per year, and another six have average yearly totals in the 650-800 range.

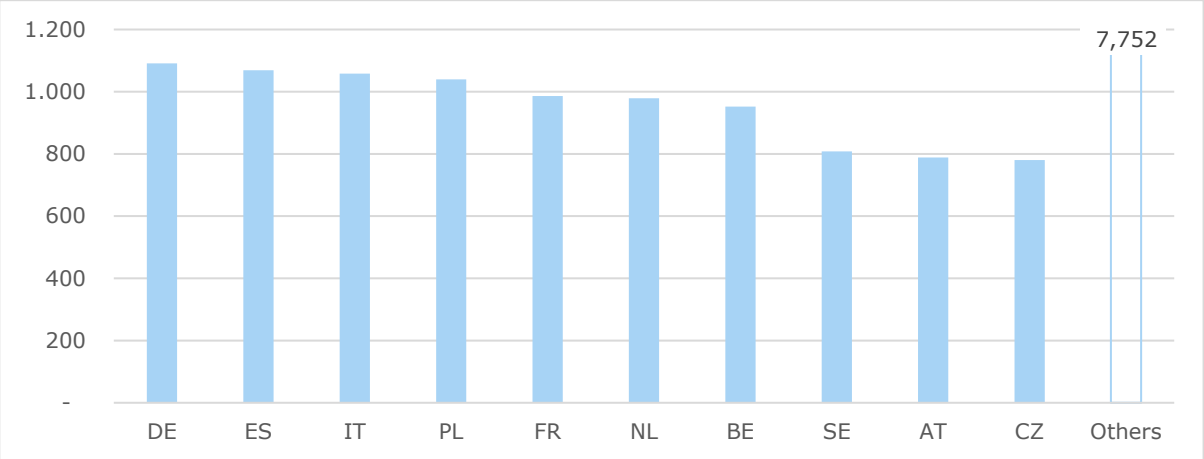
Figure 21. CbCRs sent per Member State (2018-2022 average)



Source: Authors' elaboration on DAC4 Statistics

The distribution in terms of receiving countries is rather flat, with six/seven countries receiving an average of around 1,000 CbCRs per year from other Member States, another 11 receiving between 500 and 800, and the remaining between 160 and 390. Germany is the country receiving the most reports (an average of 1,091 per year), closely followed by Spain (1,069), Italy (1,068), and Poland (1,040).

Figure 22. Number of CbCRs received (2018-2022 average, top 10 countries)



Source: Authors' elaboration on DAC4 Statistics

The **highest bilateral flows tend to occur among neighbouring countries**, reflecting the tendency of MNEs to expand in proximity markets. This is the case for nine out of the ten top bilateral exchanges, with the only exception being the CbCRs sent from Germany to Italy (see Table 3 below).

Table 3. Top 10 bilateral flows of DAC4 AEOI

Sending country	Receiving Country	#CbCRs (2018-2022 average)
Germany	Poland	253
Germany	Austria	251
Netherlands	Germany	241
France	Belgium	224
France	Spain	220
Germany	Netherlands	212
Germany	France	207
Germany	Italy	205
France	Italy	204
France	Germany	202

Source: Authors' elaboration on DAC4 Statistics

Box 6. Issues with DAC4 Statistics

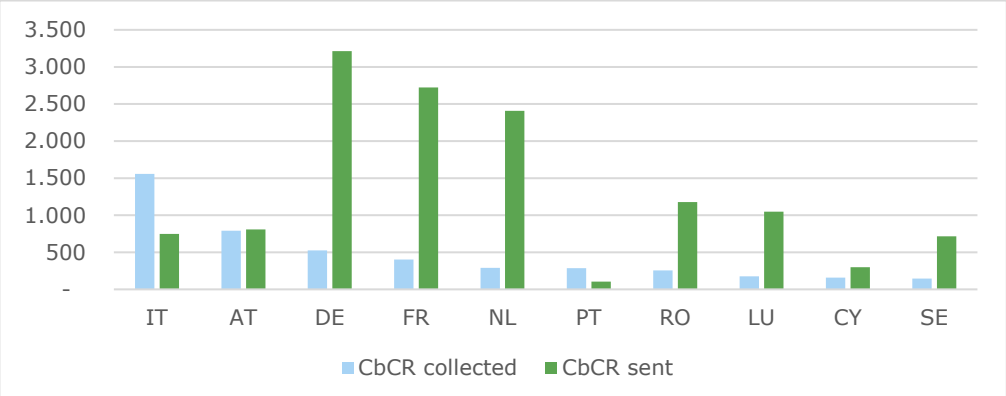
For some Member States, the nu**mber of CbCRs collected from reporting entities appear somewhat inconsistent,** especially when compared to the statistics concerning DAC4 exchanges. In fact, according to DAC4 statistics, Italy is the country collecting the largest number of CbCRs (an average of over 1,500 per year), followed by Austria (790 CbCRs). The three top senders of CbCRs, i.e. Germany, France, and the Netherlands, follow these two countries, with annual figures in the 300-500 range.

Since each report can refer to multiple Member States, the number of CbCRs received by UPE residing in the national territory should be lower than the number of CbCRs sent to other Member States, or, at most, equal to it. Instead, **in at least a couple of cases, the number of CbCRs collected is, on average, larger than the number of CbCRs exchanged**. This is case of Italy and Portugal, while the two figures are broadly in line w in the case of Austria. In the other cases, the number of CbCRs sent is significantly higher than that of CbCRs collected, as would be expected.

The relatively higher number of CbCRs collected by Italy and Austria are also **at odds with the geographical distribution of MNE groups by controlling countries**, as will be described in more detail in Section 5.1.2 below.

All in all, this points to the presence of issues in the collection of DAC4 Statistics concerning the collection of CbCRs for some Member States. As will be discussed further below, issues with the quality of DAC4 statistics are not unknown to the Commission, and the topic has been repeatedly discussed in the framework of the SG AEOI. Discussions with some of the tax authorities concerned have not led to the identification of any specific explanation for these apparent discrepancies.

Comparison between the number of CbCRs collected and exchanges of CbCRs (2018-2022 average, top 10 collecting Member States)

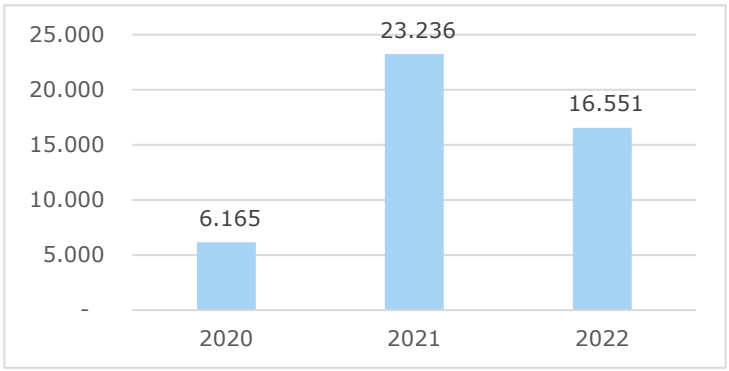


Source: Authors' elaboration on DAC4 Statistics

4.5 DAC6 AEOI

Between the launch of DAC6 in mid-2020 and the end of 2022, **around 46,000 arrangements have been uploaded** on the dedicated central directory by Member States. In 2020 only a handful of Member States already took part in DAC6 exchanges, since most Member States applied the option for deferral introduced as a consequence of the Covid-19 pandemic. However, starting from 2021, all Member States have uploaded reportable arrangements in the dedicated central directory. In 2022, Lithuania was the only country that has not exchanged any arrangement.

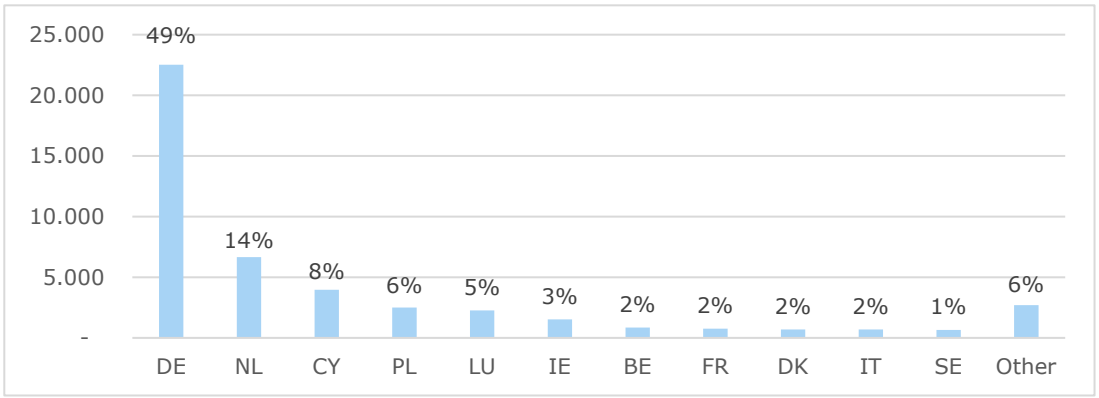
Figure 23. Number of arrangements uploaded each year



Source: Authors' elaboration on DAC6 Statistics – 'General Report' file

DAC6 exchanges are **highly geographically concentrated in terms of originating countries.** Germany alone disclosed some 22,500 arrangements between 2020 and 2022, i.e. nearly half of the total, followed by the Netherlands (14%) and Cyprus (8%). The top six countries uploaded more than 1,000 of arrangements, cumulatively accounting for 86% of all disclosed arrangements.

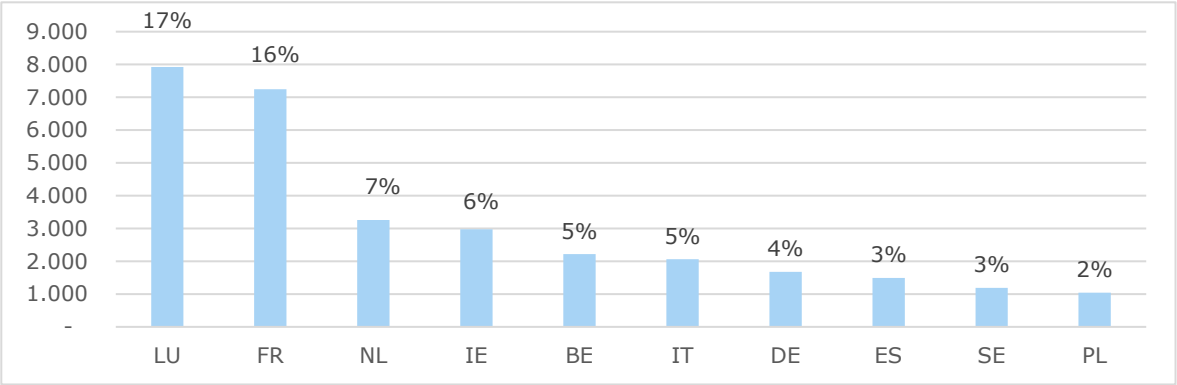
Figure 24. Number of arrangements by originating Member States (2020-2022)



Source: Authors' elaboration on DAC6 Statistics – 'General Report' file

From the perspective of concerned Member States, the distribution is much less skewed. Luxembourg and France are the countries most frequently concerned, being interested respectively by some 7,900 (17%) and 7,200 (16%). In both cases, the bulk of the arrangements (over two thirds) originated from Germany, while Luxembourg was also concerned by a significant number of arrangements originating from the Netherlands (roughly 13%). Another four countries, namely the Netherlands, Ireland, Belgium, and Italy, are concerned by 5% to 7% of the arrangements, while all other Member States are interested by 4% or less.

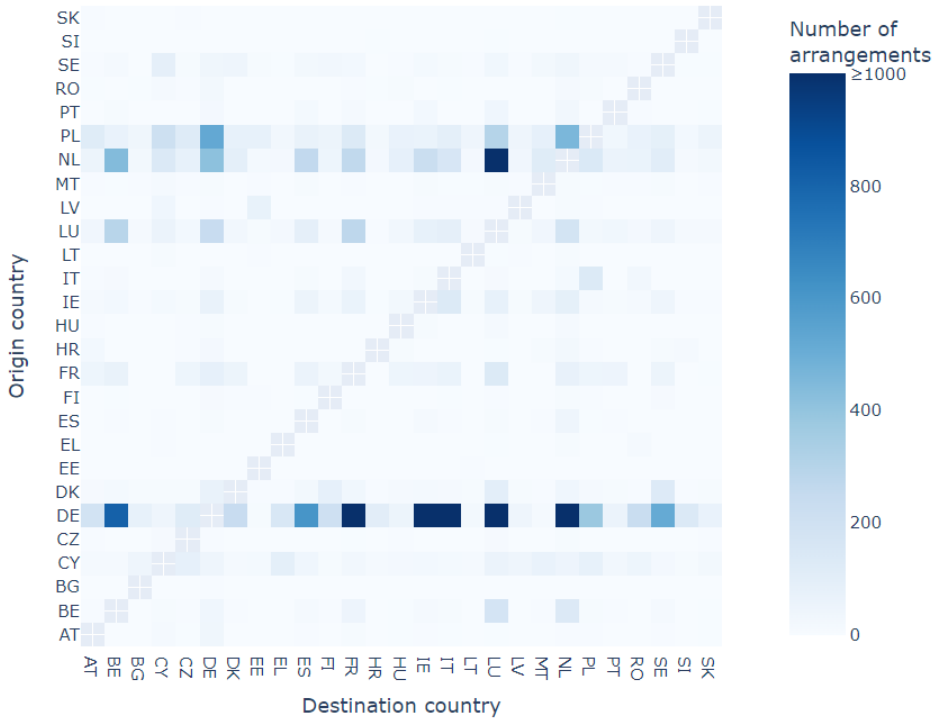
Figure 25. Number and share of arrangement concerning Member States (2020-2022, top 10)



Note. excludes 'own' Member State; the % represent the share of arrangements that concern each Member State; since an arrangement can concern multiple Member States, the % cannot be cumulated and do not sum to 100%.
Source: Authors' elaboration on DAC6 Statistics – 'General Report' file

Figure 26 shows the bilateral flows between EU Member States. In line with the analysis by originating country, DAC6 bilateral flows[141] are highly concentrated around Germany, which accounts for eight of the top ten bilateral flows within the EU, with the main interactions occurring with France (nearly 5,300 arrangements between 2020 and 2022), Luxembourg (over 4,800), Ireland (some 2,300) and the Netherlands (close to 1,700). Among the top 10 bilateral flows, the only two not originating from Germany concerned arrangements from the Netherlands to Luxembourg (1,092) and from Poland to Germany (525).

Figure 26. Bilateral flows of arrangements between EU Member States (2020-2022)

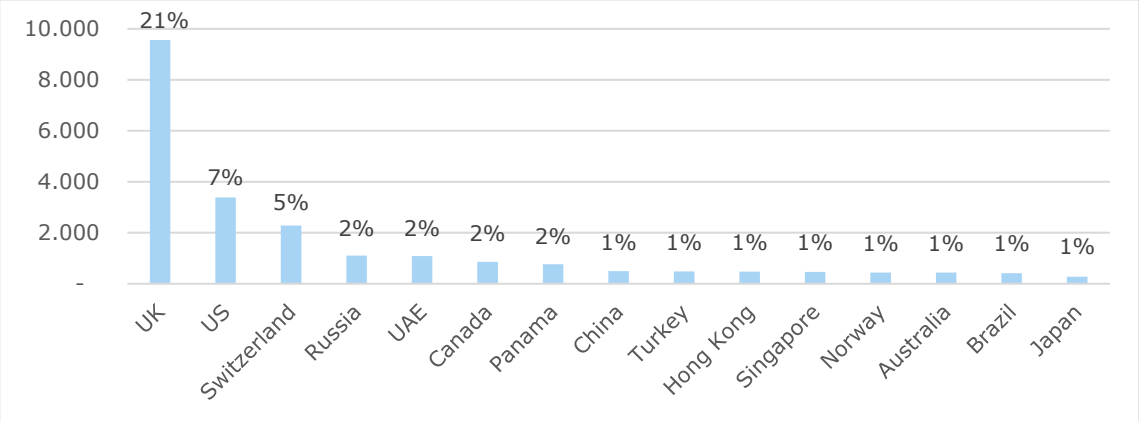


Note. excludes 'own' Member State
Source: Authors' elaboration on DAC6 Statistics – 'General Report' file

[141] For DAC6, bilateral flows are intended as the number of arrangements originated by a certain country and concerning another country.

Figure 27 below shows the non-EU countries most frequently identified as concerned by DAC6 exchanges. **The UK is first third country identified as concerned** in the arrangements uploaded in the dedicated central directory, with over 9,500 arrangements (i.e. roughly one fourth of the total). This includes roughly 1,000 arrangements each concerning the Virgin British Islands and the Cayman Islands. The UK is followed, at a distance, by the US (some 3,400 arrangements, about 7% of the total) and Switzerland (close to 2,400 arrangements, i.e. 5%). Another four countries (Russia, the UAE, Canada, and Panama) are concerned by 700/1,100 arrangements each (approximately 2% of the arrangements exchanged), while all other countries are comparatively less mentioned.

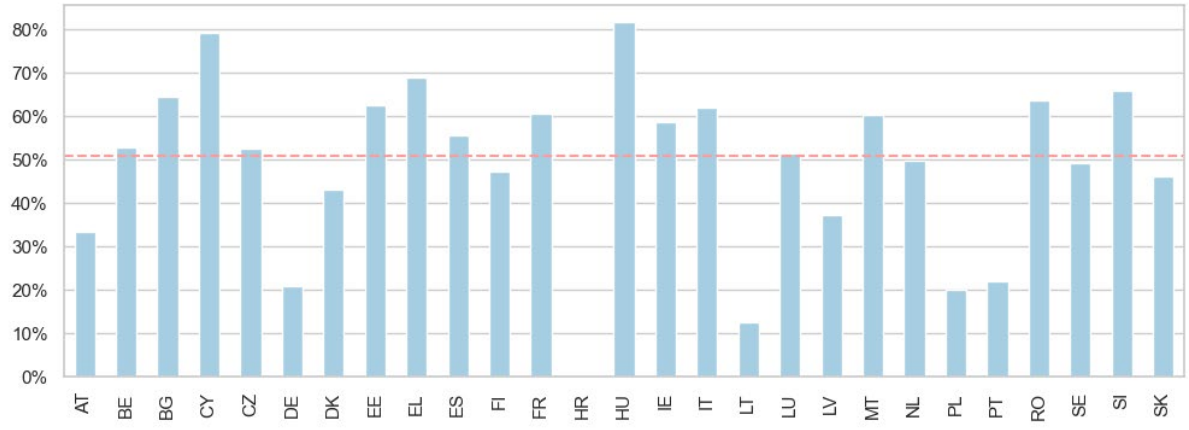
Figure 27. Number and share of arrangement concerning non-EU countries (2020-2022, top 15)



Source: Authors' elaboration on DAC6 Statistics – 'General Report' file

Around half of all arrangements shared only concern extra-EU countries (i.e., arrangements concerning only the reporting MS and countries outside the EU, but no other EU MS). However, this share differs substantially across Member States, ranging from almost none (Croatia) to over 80% (Hungary) (see Figure 28 below). However, for the majority (18 out of the 27 MS) of Member States, the share was relatively high at between 40% and 70%. For just under half of Member States (13 of the 27 EU MS), the most concerned non-EU country was the UK. For five MS, this was Switzerland, and for three MS it was the US.

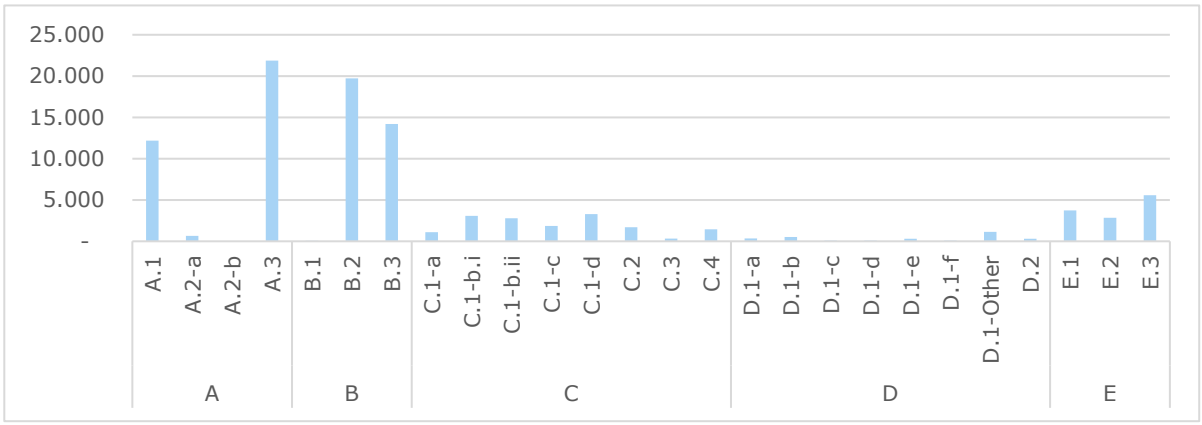
Figure 28. Share of bilateral flows from EU Member States concerning only extra-EU countries (2020-2022)



Note: the dotted line represents the EU average; excludes 'own' Member State.
Source: Authors' elaboration on DAC6 Statistics – 'General Report' file

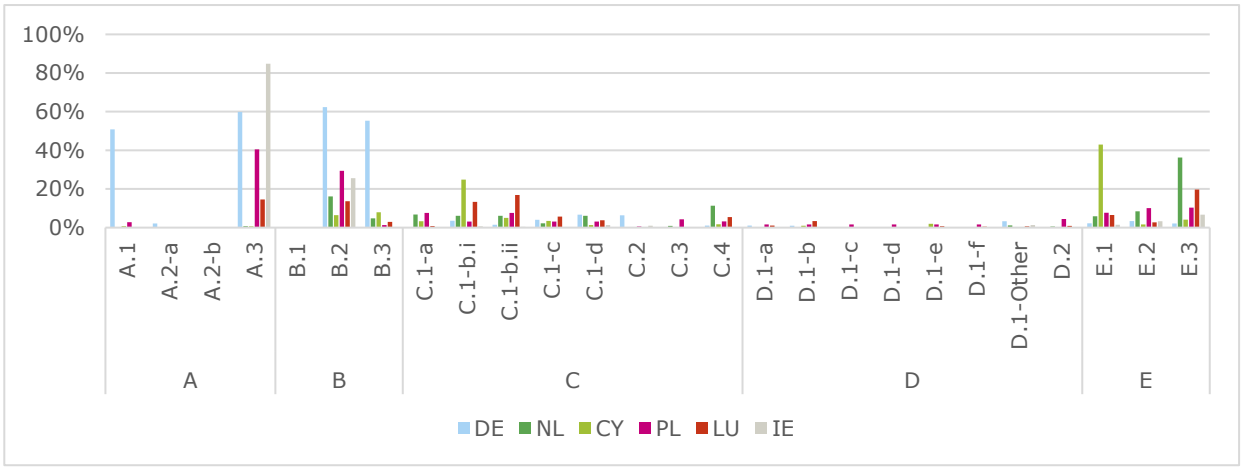
Each arrangement can be associated with one or more hallmark from Annex IV of DAC. Hallmarks A (particularly A.1 and A.3) and B (particularly B.2 and B.3) are the most commonly associated with each disclosure[142] (see Figure 29). However, **the utilization of hallmarks is quite different in each country**. Hallmarks A.1 and B.3 are used almost uniquely by Germany, while other countries tend to refer more to other hallmarks: for instance, over 80% of the arrangements disclosed by Ireland make reference to hallmark A.3, while Cyprus most frequently refers to hallmarks C.1-b.1 and E.1 (see Figure 30).

Figure 29. Number of Disclosures by Hallmark



Source: Authors' elaboration on DAC6 Statistics – 'Predefined report' file

Figure 30. Share of disclosures associated with each hallmark for the top 6 countries originating DAC6 exchanges



Source: Authors' elaboration on DAC6 Statistics

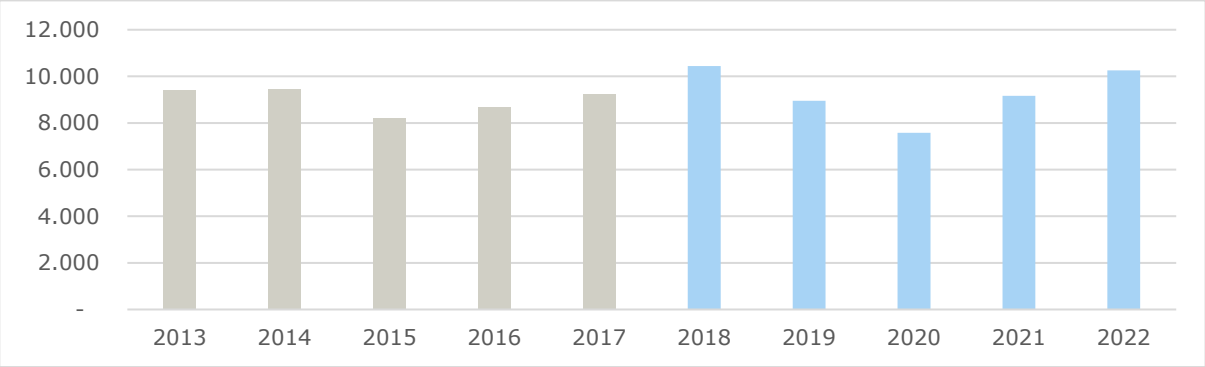
4.6 Exchange of information on request

Exchange of information on request (EOIR) is a tool regularly used by Member States. EOIR is used to request foreseeably relevant information that may concern data already available to requested tax authority or obtained following administrative enquiries. According to CACT statistics, between 2018 and 2021, nearly **46,400 requests for information were sent, followed up some 45,350 replies**. The yearly number of requests sent to other Member States varied between a minimum of just above 7,500 in 2020 and over 10,000 in 2018 and 2022. As between 2013-2017, **the 2018-2022 period shows an irregular trend**. Over the period under review, the number of requests

[142] At the time of preparing this Report, the statistics concerning the hallmarks are only available for disclosures, and not for arrangements. Each arrangement can be disclosed more than once (also by different countries).

sent peaked in 2018, then decreased to a minimum in 2020, most likely due to a general slowing of tax authorities' activities during Covid-19, and then increased again. The trends in EOIR often are a consequence of specific events at national level. For instance, the higher values in 2018 and 2022 reflect the above-average number of requests sent by Netherlands and Croatia, in 2018, and Belgium, in 2022.

Figure 31. Number of requests for information sent

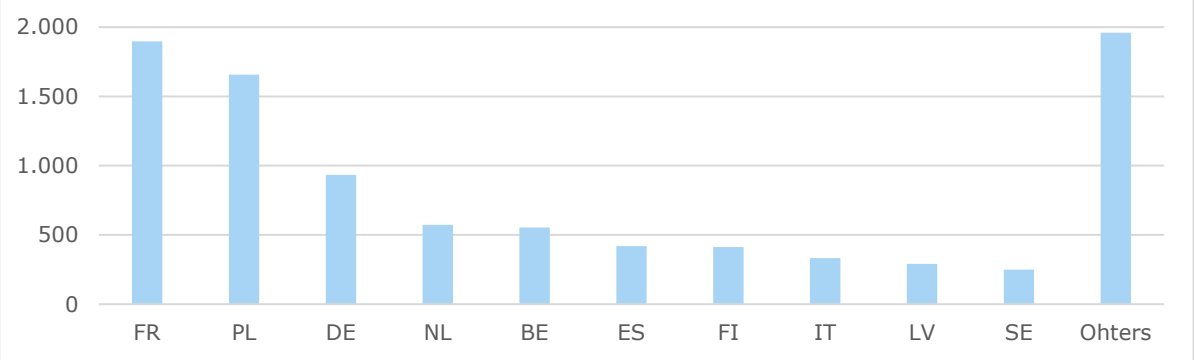


Note: 2013-2017 EU+UK.
Source: Authors' elaboration on CACT Statistics and 2019 Evaluation

In line with the findings of the previous evaluation, EOIR on individual taxpayers most often concerned banking information, general tax information, residency status, and employment income, while requests concerning legal persons most often focus on general tax information, business transaction, accounting information and ownership information.[143]

EOIR are concentrated among few Member States. The top requesting Member States are France and Poland, with yearly averages above 1,800 and 1,600 respectively, alone accounting for nearly 40% of all requests sent. Germany, the Netherlands, and Belgium send on average between 500 and 1,000 requests per year, although with different trends. Germany remained broadly stable, sending 850-1,000 requests per year; the average number of requests sent by the Netherlands is highly influenced by the figure for 2018 (nearly 1,500 requests), while it remained at much lower levels after that (an average of 340 requests); Belgium had a somewhat opposite trends, with requests in the 350-400 range between 2018 and 2021, and a much higher value (nearly 1,300 requests) in 2022. **Some Member States have made only marginal use of this provision**. Malta and Cyprus sent only a couple of requests between 2018 and 2021, while Ireland and Luxembourg sent, on average, less than 25 requests per year.

Figure 32. Number of requests for information sent per country (2018-2022 average)

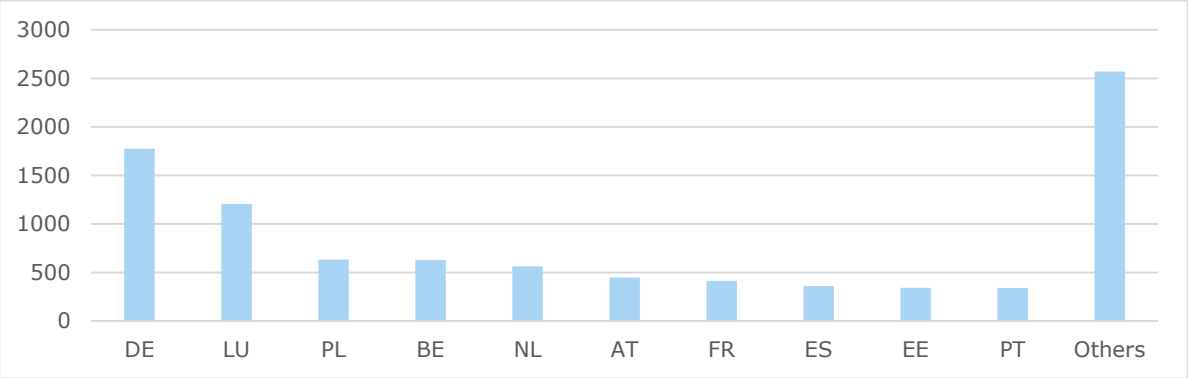


Source: Authors' elaboration on CACT Statistics

[143] Questionnaire on the Functioning of the Directive.

The concentration is even more marked when bilateral flows are considered: on average, **the top three bilateral flows accounted for 20% of all requests sent**, with the largest one, from Poland to Germany, representing over one tenth of the total (1,030 requests on average), followed by the requests sent by France to Luxembourg (559 on average) and from the Netherlands to Luxembourg (283). In general, requests were often directed to a neighbouring country, with nine of the top 10 average bilateral flows occurred among bordering Member States. The countries interested by most requests were Germany and Luxembourg (cumulatively receiving nearly one third of all requests), followed by Poland, Belgium, and the Netherlands (see Figure 33).

Figure 33. Number of requests for information received per country (2018-2022 average)



Source: Authors' elaboration on CACT Statistics

EOIRs have **near full rates of reply**. On average, during 2018 – 2022, the replies sent correspond to 98% of the requests.[144] The option to refuse to provide information ex DAC Art 17[145] was scarcely used from 2018 to 2020, with an average of 3 refusals per year. The number of refusals rose in 2021 and 2022 to 42 and 51 respectively, with France sending the highest number of refusals (32 overall), followed by the Netherlands (18) and Luxembourg (11). According to the Questionnaire on the Functioning of the Directive, another 21 refusals not on the grounds of Art. 17 were sent during the 2018 – 2022 period, mainly due to the inability to provide information (e.g. because the taxpayer was not resident in the responding country at the time of the request). All in all, however, **refusals remained a marginal occurrence**, representing just above 1% of all the requests sent.

4.7 Spontaneous exchange of information

Spontaneous Exchanges of Information (SEOI) occurs voluntarily whenever useful information becomes available to a tax authority, and it is useful to competent authorities of other Member States. Only in five circumstances SEOI is mandatory, namely if the information has to do with:

- a potential loss of tax liabilities in the other country,
- an increase in tax liabilities in the other country;
- business dealings between persons liable in two different Member States result into tax savings in one or both member States;
- a saving of tax may result from artificial transfers of profits within groups of enterprises;

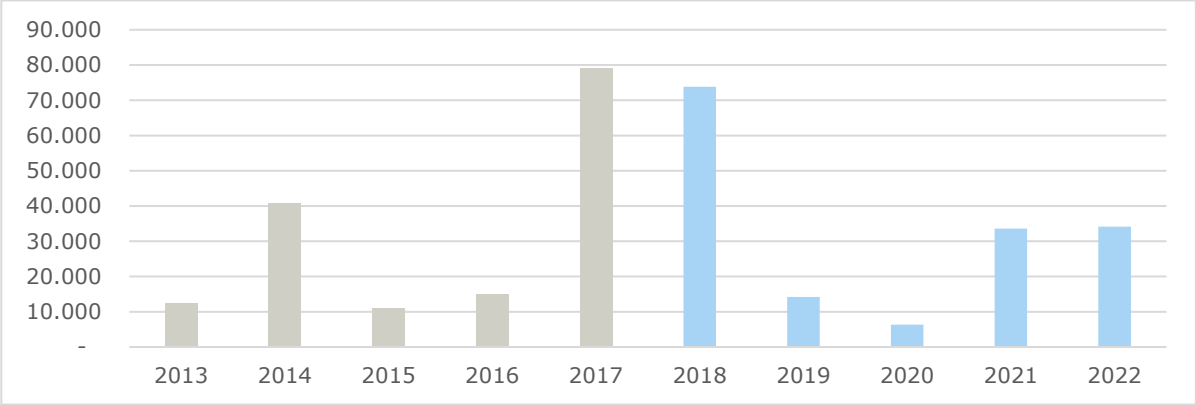
[144] The response rate was below the average on 2018 (88%) and 2022 (91%) and above in 2020 (121%). The number of responses can be higher than 100% for instance if some of the responses were not provided in the same calendar year as the request, or in case one request is dealt with through multiple replies.

[145] I.e., on the ground of legal reasons including the disclosure of commercial, industrial or professional secret, or of information whose disclosure would be contrary to public policy.

- 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.[146]

A total of **over 160,000 SEOI** were sent by EU Member States between 2018 and 2022. The yearly trend in SEOI remained highly variable, consistently with the previous evaluation, ranging from as 6,300 SEOI in 2020, to over 70,000 in 2018 (see Figure 34).

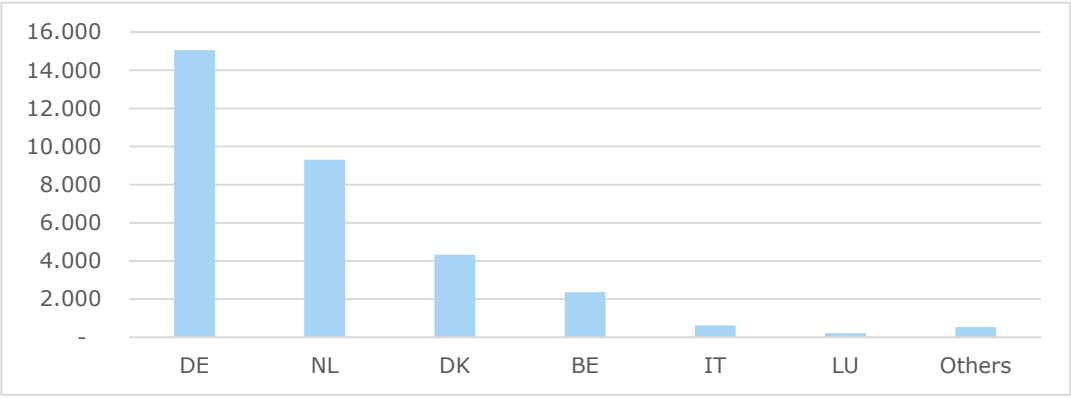
Figure 34. Number of SEOI sent



Note: 2013-2017 EU+UK.
Source: Author's elaboration of CACT Statistics and 2019 Evaluation

National differences in the use of SEOI are extremely pronounced. Between 2018 and 2022, the SEOI sent by Germany, the Netherlands and Denmark accounted for 88% of the total. Belgium is the only other country sending on average more than 2,000 SEOI per year, followed by Italy and Luxembourg. All other Member States sent an average of 100 or less SEOI per year, with eight sending 10 or less, and Malta not sending any. Cumulatively, these 21 countries account for less than 2% of all SEOI between 2018 and 2022.

Figure 35. Average number of SEOI sent per country (2018-2021)



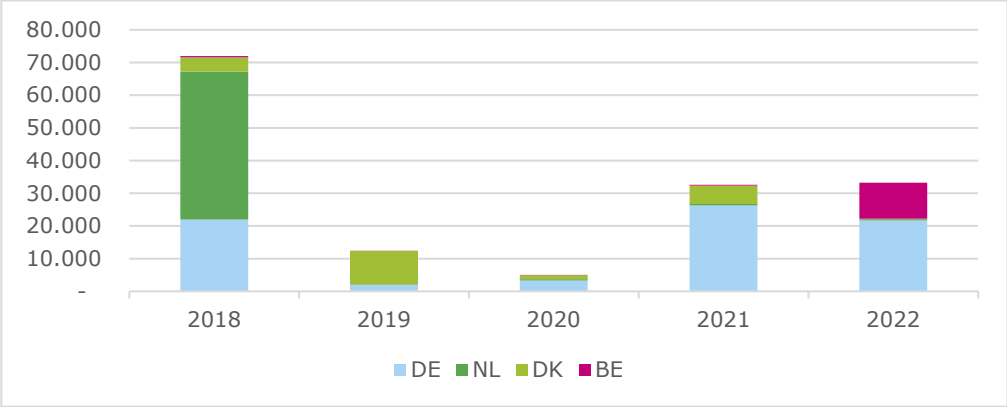
Source: Author's elaboration on CACT Statistics

Out of the six top originators of SEOI, Italy and, to some extent, Luxembourg, are the only country that maintain broadly similar levels across time. On the contrary, other Member States show major

[146] Cfr Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, Art. 9(1)

variability. Germany ranges between some 2,000 SEOI in 2019 to as many as 26,000 in 2021; the Netherlands sent a record 45,000 SEOI in 2018, while stabilizing at 150-400 after that; Denmark sent between 1,200 and 10,000 up to 2021, and then only 130 in 2022; while Belgium had the opposite trend, sending 80-350 SEOI up to 2021, and then over 11,000 in 2022 (see Figure 36). These national trends are often attributable to single bilateral flows of information: in 2018, the Netherlands sent virtually all SEOI to Germany based on a bilateral agreement, which was also captured by the 2019 evaluation. Almost 90% of all SEOI sent by Germany were instead directed towards France alone, mostly as a consequence of information acquired in bulk by tax offices in bordering regions,[147] while Denmark's trend mostly overlaps with SEOI sent to Poland. Finally, the record in SEOI sent by Belgium is mostly attributable to a flow of SEOI to France in 2022.

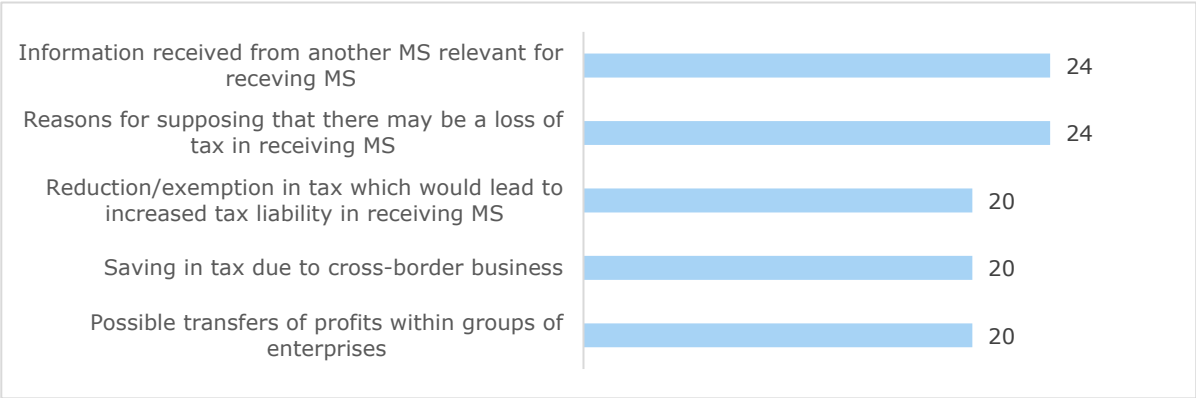
Figure 36. Top 4 senders' contribution to SEOI trends



Source: Author's elaboration on CACT Statistics

Information received through SEOI mostly concerned employment income, business transactions, and other categories of income, as well as payments or other tax and banking information. SEOI are most often sent when a country receives information from another Member State that could in turn be relevant for another country, or because the sending Member State has reasons to suppose that there may be a loss of tax in the receiving Member States. Less often, SEOI are sent on the grounds of tax break possibly leading to increased tax liability in the receiving country, or on the detection of a cross-border business resulting into saving in tax.

Figure 37. Number of Member States receiving SEOI on specific grounds

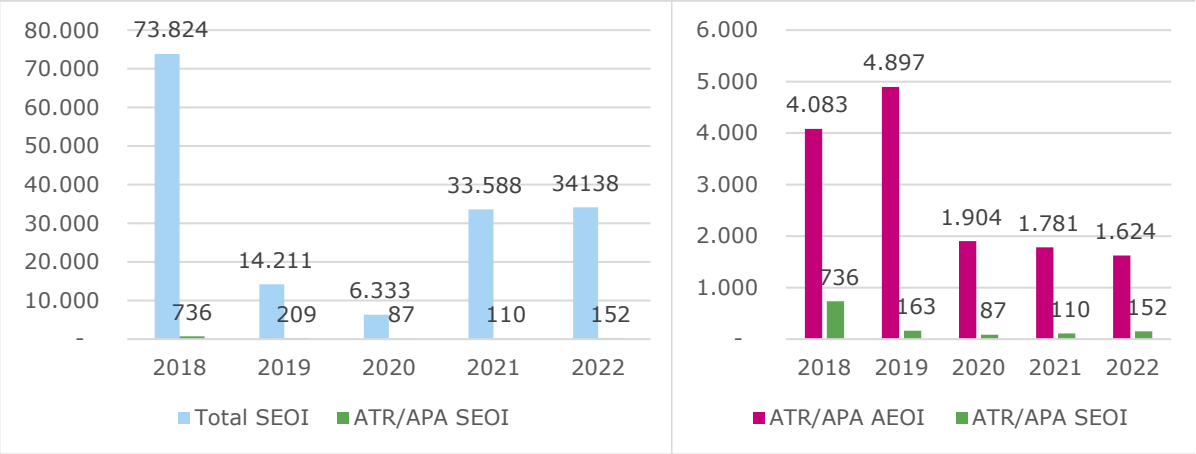


Note: number of Member States reporting any answer other than 'Never' in at least one year between 2020 and 2022
Source: Authors' elaboration on the Questionnaires on the Functioning of the Directive.

[147] According to the German tax authorities, the exchanges can in a large part be reconducted to information on income tax withheld

Finally, Member States use SEOI also to exchange information on cross-border ATR/APA involving third countries, when the agreement does not permit the disclosure to third parties under DAC3 AEOI, provided that the international tax agreement under which it was negotiated permits its disclosure, and the competent authority of the third country gives permission for the information to be disclosed. Overall, this type of information constitutes a negligible part of the exchanges under SEOI (see Figure 38), and are a fraction (8% on average) of the cross-border ATRs/APAs concerning only EU Member States, shared under DAC3 AEOI.

Figure 38. SEOI concerning ATR/APA



Source: Author's elaboration of CACT Statistics and DAC3 statistics

4.8 Other forms of administrative cooperation

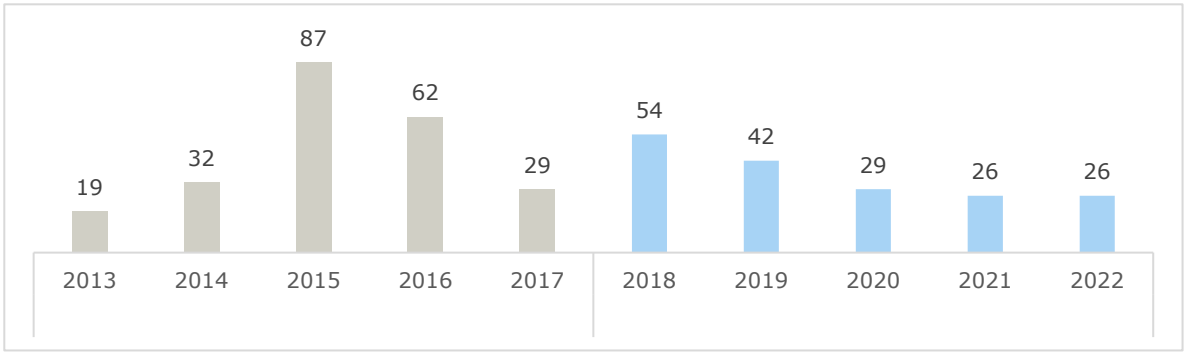
4.8.1 Presence in administrative office and participation in administrative enquires

Over the 2018-2022 period a total of **177 presence in administrative office and participation in administrative enquires (PAOEs) occurred**. The Directive allows Member States to request either to be present in the offices where the hosting tax authorities carry out their duties (presence in administrative offices), or to be present during controls and checks carried out in the territory of the requested Member State (presence in administrative enquiries) or both. The evidence collected suggests that, in most cases, Member States tend to combine the two aspects of a PAOE during the same visit.

The number of PAOEs organized and carried out yearly decreased since 2018, especially in comparison to 2015 and 2016. The **figures are particularly low starting from 2020**, also reflecting the effect of Covid-19, which hindered the possibility to travel and to be present in offices (*'the presence in administrative offices did not take place [in 2021] due to Covid-19'*; *'year 2020 was really challenging due to Covid-19 and we had only one 'live' PAOE'*,[148]). In some cases, PAOEs took place virtually because of the impossibility of in-person travels.

[148] From Questionnaires on the Functioning of the Directive

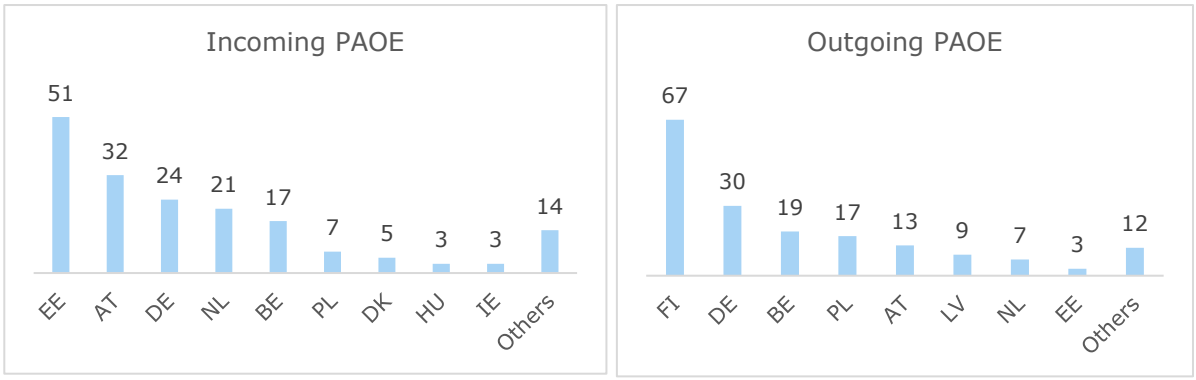
Figure 39. PAOE trend



Note: 2013-2017 EU+UK.
Source: CACT Statistics and 2019 Evaluation

As for the other non-AEOI tools, PAOE are not employed evenly by Member States. **Finland is, by far, the country initiating most PAOEs**, having visited the premises of other Member States' tax authorities 67 times, corresponding to over one third of all PAOEs. Germany is a far second in the number of outgoing PAOEs, with 30 visits over the five years. In terms of incoming PAOEs, 51 visits took place in Estonia (43 of which by Finnish officers), and another 32 in Austria (28 from Germany). It thus emerges that PAOEs are most often among neighbouring countries, and that repeated PAOEs represent most of the exchanges. Another three countries, notably Germany, Netherlands, and Belgium, received between 17 and 24 incoming PAOEs. **Several Member States were only marginally involved in PAOEs**. In particular, no less than four countries (Cyprus, Greece, Romania, and Slovakia) neither visited nor were visited in the framework of PAOEs; and another four did not initiate any PAOE and were only visited once or twice by officers of other Member States. All in all, only half of the Member States (13) were involved in three or more PAOEs, considering both incoming and outgoing visits.

Figure 40. Total incoming and outgoing PAOEs per country (2018-2022)

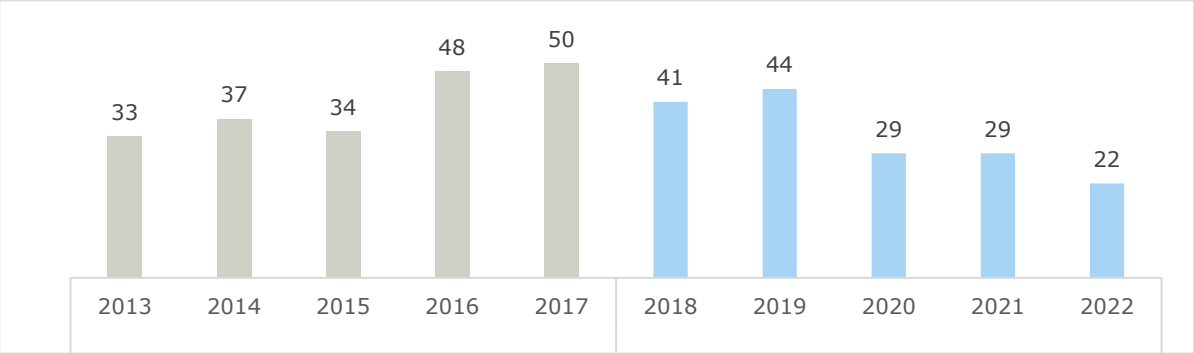


Note: outgoing PAOE are derived by the statistics on incoming PAOE
Source: Author's elaboration on CACT Statistics

4.8.2 Simultaneous controls

Over 2018-2021**, a total of 165 simultaneous controls were initiated, and its use was highly concentrated in few Member States.** Similarly to PAOEs, the number of simultaneous controls initiated has varied during the years of implementation of the Directive. During the period concerning this evaluation, a slight increase can be noticed in 2019, then during the following three years the number of simultaneous controls more than halved, likely reflecting an overall slowdown of audit activities and international cooperation due to Covid-19.

Figure 41. Trend of number of simultaneous controls initiated

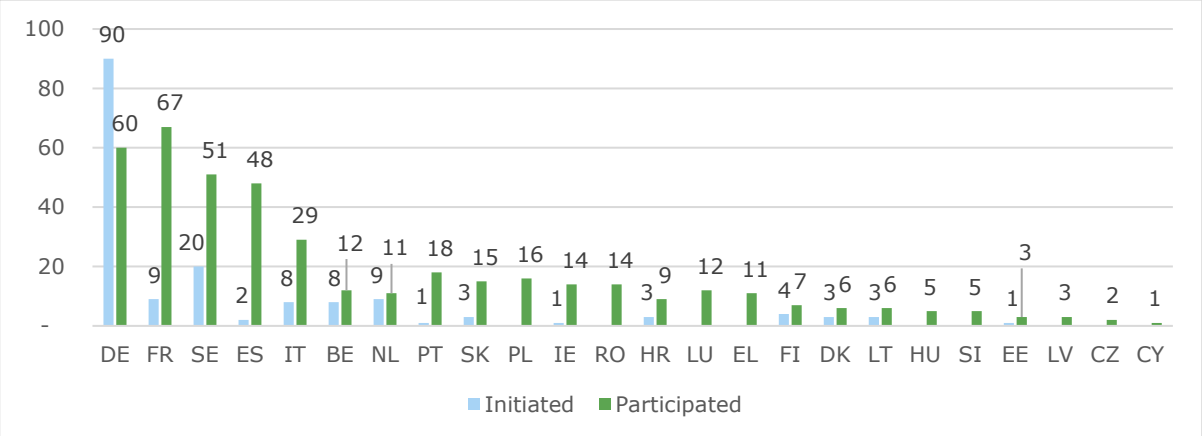


Note: 2013-2017 EU+UK.
Source: CACT Statistics, targeted consultations, and 2019 evaluation

Germany is the country that initiated in total the highest number of simultaneous controls (90), accounting for 55% of the total. Sweden is a distant second with a total of 20 controls initiated, followed by the Netherlands and France (9), Italy and Belgium (8). Another nine countries have initiated less than 5 simultaneous controls over the five years under review, while almost half of the Member States (12) have never done so between 2018 and 2022.

Simultaneous controls can be conducted by two or more interested/concerned countries. The comparison between the number of simultaneous controls initiated and participated in is shown in Figure 42 below.[149] Even though relatively few countries initiate simultaneous controls, **the number of Member States involved in this type of cooperation is in fact relatively high**, with only three (Austria, Bulgaria, and Malta) never involved. This is consistent with the fact that refusals to participate in simultaneous controls are relatively rare. According to Questionnaire on the Functioning of the Directive, over the 2018-2022 refusals ranged from 3 to 7 per year (around 10% of simultaneous controls), some related to lack of relevance, others related to legal restrictions.

Figure 42. Total simultaneous controls initiated and participated per country (2018-2022)



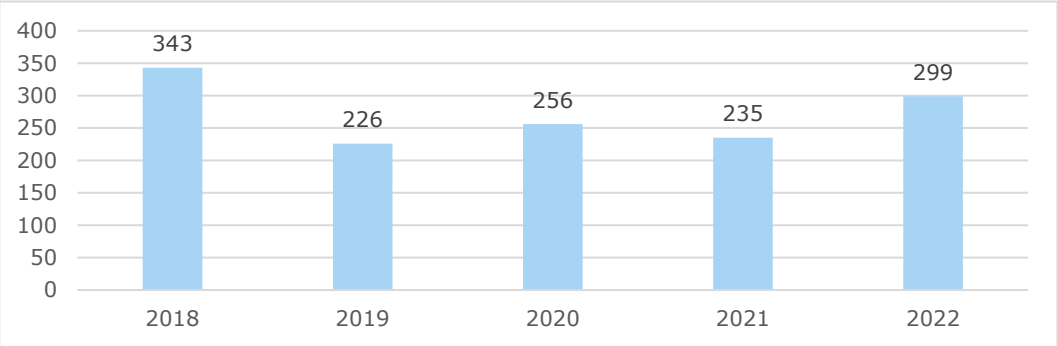
Source: Author's elaboration on CACT Statistics, targeted consultations

[149] Consultations with tax authorities suggest that Member States may adopt slightly different approaches to counting simultaneous controls, with some counting the number of entities controlled, while others consider the number of proposals (which would correspond to one Fiscalis 'number', each of which may concern more than one entity). Furthermore, some countries consider the number of simultaneous controls initiated as the number of controls proposed, irrespective of whether they eventually take place, while others seemingly only count the ones that are carried out. This is by no means a trivial difference: according to one tax authority, up to one third of the proposed simultaneous controls do not take place.

4.8.3 Requests for notification

Article 13 provides Member States with the possibility to ask for assistance to the notification of tax-related instruments and decisions applying to taxpayers located in another Member State[150]. Between 2018 and 2022 Member States sent between 230 and 340 requests per year. The Member States that sent out the highest number of requests are four large States, cumulatively accounting for two thirds of the total: Poland sent a total of 305 requests, Spain 263, Italy 228 and Germany 213. Another relatively frequent user of requests for notification is Czechia. Other large countries, including notably France, never or seldom employ this provision. Large recipients of requests of notifications include Germany, France, and Poland, as well as Slovakia and Czechia.

Figure 43. Trend of requests for notification sent

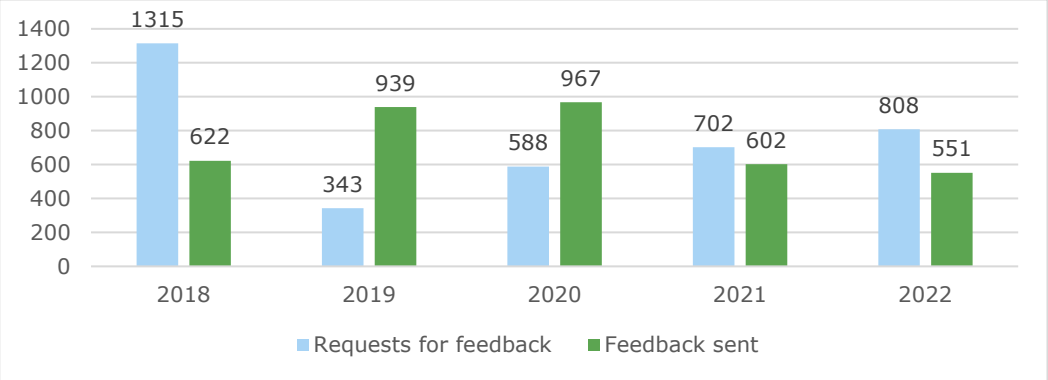


Source: Author's elaboration on CACT Statistics

4.8.4 Requests for bilateral feedback

Additionally to mandatory annual feedback on AEOI, Member States can request other tax authorities to provide feedback on EOIR and SEOI sent. Figure 44 below provides an overview of between 2018 and 2022. The number of feedbacks include both those provided voluntarily and those that must be sent after AEOI and non-AEOI exchanges are carried out. Member States must send feedback for AEOI yearly. For non-AEOI instead Member States can send a request for feedback within a three-month deadline after the outcome of the use of the requested information is known[151] (see Figure 44).

Figure 44. Number of requests for feedback and feedback sent



Source: Author's elaboration on CACT Statistics

[150] Data on the number of requests for notification for years 2013 – 2017 were not retrievable from previous evaluation.

[151] These different deadlines explain why the requests for feedback do not match annually the number of feedbacks sent and vice versa.

4.8.5 DAC5

DAC5 requires Member States to grant access to beneficial ownership information held by other institutions to tax authorities. The institutional set-up of beneficial ownership registries across EU Member States is quite diverse. In most cases, a unique beneficial ownership registry exists, while in some countries (e.g. Cyprus and Romania), information on beneficial owners is kept in several registries based on the type of legal entity. The feedback collected from tax authorities during the targeted consultation suggests that, overall, the national institutional frameworks for beneficial ownership registries had been adapted – in some cases very recently - in order to comply with Anti-Money Laundering (AML) legislation. This meant that, **in most cases, the transposition of DAC5 did not result in any material change** in the institutional settings (‘*The implementation of DAC5 did not constitute a significant change in the powers of the national tax authority’; ‘We scrutinised our institutional set-up and concluded that information was available also before DAC5, so there was no need to do anything additional*’).

In some countries, however, due to issues with the transposition and application of AML legislation, access to the beneficial ownership registry does not appear to be fully implemented yet. In some cases, the incorrect transposition of the latest amendment of the AML Directive (AMLD4 and AMLD5) have temporarily caused suspensions of registers of beneficial owners.[152] This was for instance the case of Italy, where the necessary implementing measures to make the Register operational have only recently been adopted[153]. In other cases, the national legislation has provided some exceptions to the registration to the beneficial owner registry limiting the scope of the information to be consulted. For instance, under Bulgarian national law, trust and company services providers are neither licensed nor subject to registration.[154] Also, Romanian authorities exempted several categories of corporate and other legal entities from the obligation to declaring their beneficial owners (their ‘*real owners*’) to a central register[155]. The Commission has opened infringement procedures against those Member States who have incorrectly transposed the AMLD and some of these issues are still open[156]. However, according to tax authorities consulted during the targeted consultation this created only small inconveniences for the transposition of AML, but **none of the Member States reported any malfunctioning or limitation to access the relevant information** under DAC5 on these grounds.

4.9 Summing up

All the tools foreseen by the Directive have been employed by Member States over the 2018-2022 period, although with differences over time, across instruments, and among countries. The **exchange of information under DAC1 and DAC2 AEOI shows positive trends**, in terms of number of taxpayers, accounts and amounts concerned. The number of categories for which

[152] In this regard it might be worth mentioning the recent CJEU judgment on AMLD4. The Court ruled that access to the beneficial ownership information should be limited only to individuals with legitimate interest on data protection and privacy grounds. After the judgment, some already operational registers were temporarily suspended (such as Austria, Belgium, Cyprus, France, Germany, Ireland, Luxembourg, Malta and the Netherlands) but the majority of them adjusted their access requirement in a short timeframe. cf. Joined Cases C-37/20 and C-601/20, Judgment of the Court (Grand Chamber) of 22 November 2022 (requests for a preliminary ruling from the Tribunal d’arrondissement de Luxembourg – Luxembourg) – WM (C-37/20), Sovim SA (C-601/20) v Luxembourg Business Registers.

[153] Reference is to the Ministerial Decree of 29 September 2023 (published in the Italian Official Journal no. 236 of 9 October 2023) that made the Register operational, thus making the provisions of the Ministerial Decree no. 55 of 11 March 2022 effective. The deadline for the first communications to the Register will expire on 11 December 2023.

[154] June infringement package: key decisions, 1 June 2023, Brussels; available at: https://ec.europa.eu/commission/presscorner/detail/EN/inf_23_2707

[155] July Infringements package: key decisions, 15 July 2022, Brussels; available at: https://ec.europa.eu/commission/presscorner/detail/EN/inf_22_3768

[156] E.g., against Cyprus (INFR(2023)2063), Bulgaria (INFR(2023)2038), Italy (INFR(2023)2029), Romania (INFR(2020)2358) and Spain (INFR(2022)2151)

information is available under DAC1 has only marginally increased. The exchanges of CbCRs under DAC4 AEOI also show an upwards trend, suggesting an increased ability among Member States to collect reports from UPEs and share them with other tax authorities. DAC3 exchanges have stabilized over the last three years on lower levels compared to the first years of exchanges; although it is too early to tell, since exchanges have only recently started, DAC6 AEOI seems to show a similar trend over time.

As regards non-AEOI cooperation mechanisms, the trends identified by the previous evaluation are broadly confirmed for the 2018-2022 period. EOIR and SEOI both have irregular trends over time, mostly depending on national decisions, but remain highly praised and, particularly in the case of EOIR, used regularly by tax authorities, and have returned to pre-Covid levels in 2022. PAOEs and simultaneous controls have also been employed by most tax authorities; however, their use has been low since 2020. Interactions with tax authorities suggest that this may be due to a combination of factors, including first and foremost the Covid pandemic, as well as lack of resources and scarce awareness and habit regarding their use.

The analysis of trends in the uptake of the various DAC provisions highlights **major differences in the extent to which Member States are involved** in each type of cooperation. The involvement in AEOI reflects the structural characteristics of each country, such as its size (particularly for DAC1); whether the country is a financial centre (especially for DAC2); and/or hosts numerous MNEs (for DAC3, 4, and 6). On the contrary, the employment of non-AEOI tools is much more influenced by decisions and preferences in terms of audit policy, as well as the availability of resources to tax authorities. **Large countries**, which are generally among the top senders and receivers of AEOI, also tend to be highly involved in non-AEOI tools, although in some cases mostly on a receiving hand. For instance, France and Poland seldom or rarely initiate PAOE and simultaneous controls and send very few SEOI. Certain **mid-sized countries** (namely the Netherlands and Belgium) are extremely active in administrative cooperation, including both AEOI and non-AEOI provisions. Other countries have a central role as originating countries of AEOI, while being comparatively much less active in initiating non-AEOI cooperation. This is the case of important financial centres, such as Luxembourg and Ireland (both among the top senders and/or receivers of DAC2, DAC3, DAC4, and DAC6 information), and, limited to DAC6, Cyprus. Relatively intense exchanges and interactions occur among **neighbouring countries**, such as Sweden, Finland, and Estonia or Czechia and Slovakia. Small countries are generally less involved in DAC exchanges, particularly when it comes to 'reinforced' cooperation mechanisms such as PAOE and simultaneous controls, which entail a comparatively higher level of effort and resources.

5. RELEVANCE

The assessment of the relevance of the Directive refers to Evaluation Question*#3: To what extent are the objectives of the Directive still aligned to the needs and priorities of Member States and how was the alignment affected by the subsequent amendments?*, and covers two main aspects, i.e. the extent to which the objectives of the Directive correspond to the needs of the Member States; and the extent to which the Directive is fit for its purpose. The alignment with the needs and priorities of the Member States corresponds to JC#3.1 and is discussed in Section 5.1; while the appropriateness of the tools and provisions foreseen by the Directive, covered by JC#3.2, is examined in Section 5.2.

Judgment criteria	Indicators
JC #3.1 Extent to which the objectives of the Directive and of its amendments are aligned to Member States needs	• Absolute magnitude of the issues at stake (e.g. estimates of incomes and assets generated in Member States other than the one of residence; estimates of cross-border tax evasion and avoidance) • Relative magnitude of the issue at stake (e.g. ratio between country nationals' income and incomes exchanged under DAC1 AEOI; comparison between DAC4 exchanges and MNE headquarters in Europe) • Stakeholder perception of the alignment between the Directive objectives and the needs of EU tax systems
JC #3.2 Extent to which the tools and provisions of the Directive are appropriate and in line with its objectives	• Stakeholder perception of the fitness of the Directive to its objectives • Stakeholder perception of the appropriateness of the main features of the Directive (scope, definitions, etc.) • Evidence of issues in the design of the tools and mechanisms of the Directive

The analysis of JC#3.1 is based on a combination of feedback from stakeholders and review of secondary sources (including literature as well as statistical datasets). Instead, the assessment of JC#3.2 is largely based on stakeholders' views, including both the feedback collected periodically by the Commission through its questionnaires, and the targeted consultations carried out for this study.

5.1 Alignment with the needs of Member States

This Section aims to ascertain the extent to which the main challenges the Directive aims to address, i.e. the erosion of tax bases and aggressive tax planning which result from the increasing globalisation of people, capitals and companies, are perceived as a priority for stakeholders, for Member States, and for the EU as a whole. The assessment is carried out through a review of both documentary sources and stakeholders' views, both regarding these overarching challenges (Section 5.1.1), as well as on the main drivers that are directly addressed by the Directive (Section 5.1.2).

5.1.1 Issues at stake – Overarching challenges

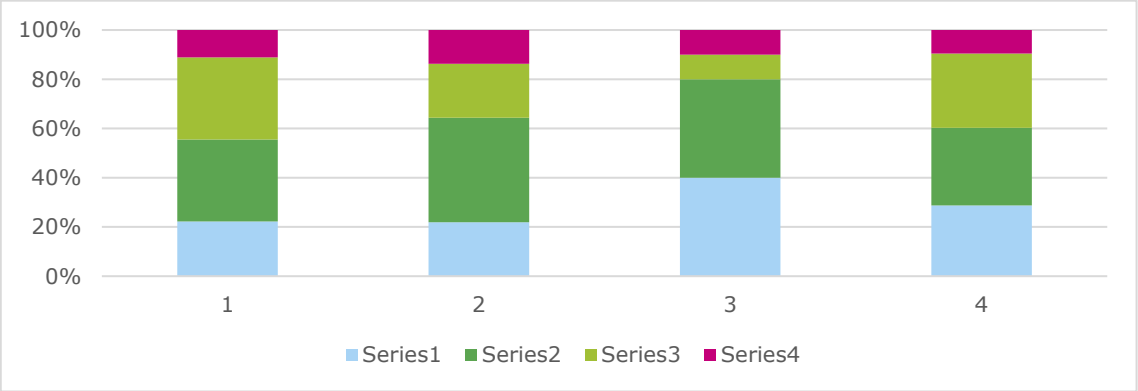
Providing a reliable estimate of tax fraud, evasion, and avoidance is intrinsically complex, given the hidden nature of these phenomena. A recent study estimated **international tax evasion by EU**

individuals at EUR 51 billion per year, or approximately 0.34% of GDP.[157] These figures relate to the tax revenues lost due to wealth hidden in international financial centres by high- or ultra-high net wealth individuals. The study underlines how hidden wealth in international financial centres has mostly to do with incomes earned and assets held in countries different from the one of residency: '*the general population earns and reports income and assets domestically, which is difficult to hide from tax authorities*'.[158]

Estimates regarding **corporate tax avoidance and profit shifting are extremely variable**, although most studies agree that they are responsible for losses in the order of 6-8% of corporate tax income. According to a literature review covering a number of studies and reports dated between 2014 and 2020, even excluding extreme estimates, estimates of the lost corporate income from tax revenues worldwide range from USD 90 to 240 billion with an average of about USD150 billion (roughly 6% of worldwide corporate tax revenues).[159] A 2018 study estimated that the impact of tax base erosion and profit shifting on corporate tax losses amounted to EUR 36 billion globally each year (i.e. nearly 8% of total corporate tax revenues).[160] At EU level, these estimate would correspond to EUR 22 – 29 billion yearly[161].

Around nine tenth of respondents agreed that the key issues targeted by the Directive represented a problem for society, with **around two thirds considering them moderate or major problems**. Figure 45 below provides an overview of the feedback provided by tax authorities[162] as well as by tax intermediaries. In particular, tax authorities see aggressive tax planning as a comparatively more acute problem. While the opinion of intermediaries is, unsurprisingly, less stark concerning aggressive tax planning, the majority of these respondents also confirmed that both issue represent a major or moderate problem.

Figure 45. Stakeholders' feedback on magnitude of problems at stake



Number of respondents: tax authorities=10; Intermediaries=73
Source: Targeted consultations

Stakeholders' views were less homogeneous regarding the extent to which they believe these issues have improved or worsened over the last five years. Overall, about half of the respondents believed that **the erosion of the tax base and aggressive tax planning have decreased**, although tax

[157] Monitoring the amount of wealth hidden by individuals in international financial centres and impact of recent internationally agreed standards on tax transparency on the fight against tax evasion, report prepared by Ecorys for DG TAXUD, 2021.

[158] Ecorys report, p. 168.

[159] The Role of Conduit Countries and Tax Havens in Corporate Tax Avoidance, A. Lejour, 2021.

[160] How Large is the Corporate Tax Base Erosion and Profit Shifting? A General Equilibrium

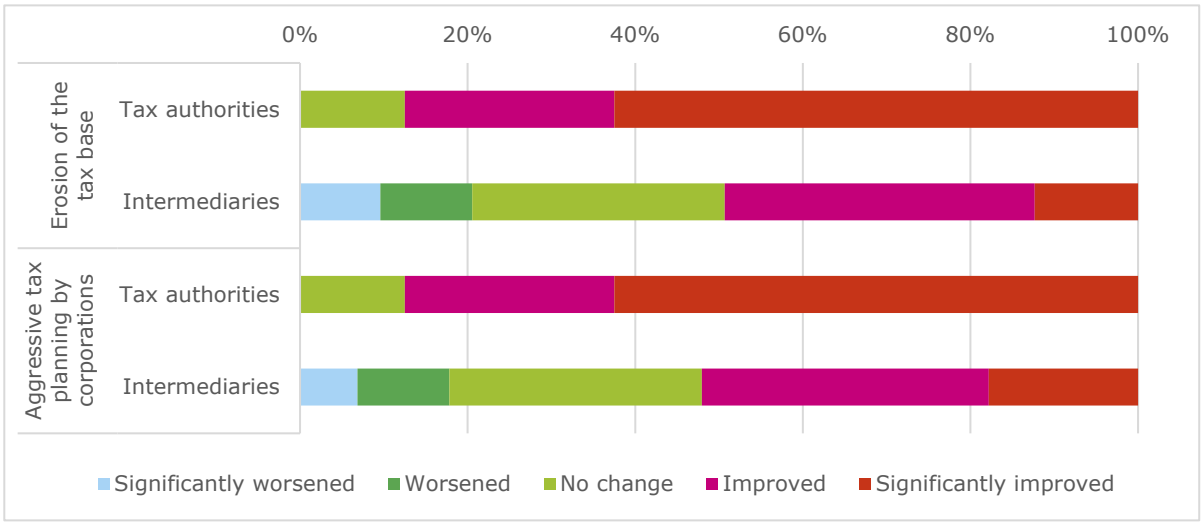
Approach, Álvarez-Martínez, M.T., et al., cesifo Working Papers, January 2018.

[161] Calcuated based on the 2018-2021 average of corporate income and profit taxes at EU level (retrieved from EUROSTAT), considering the 6% - 8% range.

[162] It is worth noting that four out of the 14 tax authorities interviewed for the Evaluation declined to respond to this question, in the absence of an official position of their national authorities, and/or of sufficient data to provide a solid reply.

authorities have a much more positive view than intermediaries. Respondents often underlined how improvements result from a global shift in public opinion awareness and sensitivity on the topic, as well from the various international initiatives tackling tax avoidance and evasion, undertaken both at OECD and at EU level, including DAC itself.

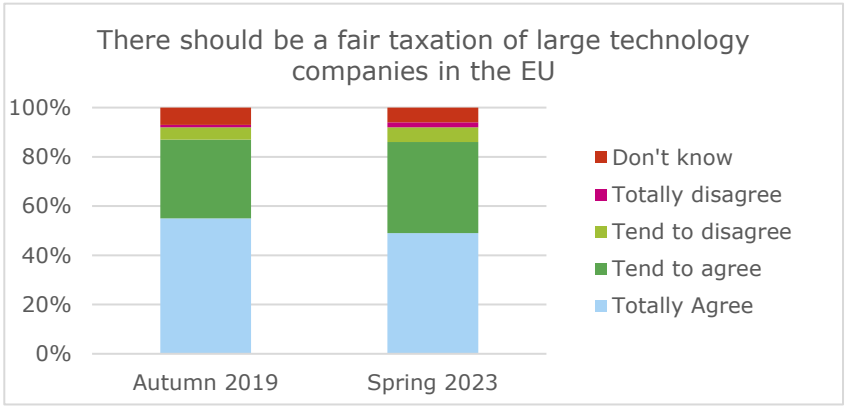
Figure 46. Stakeholders' feedback on five-years trend in key issues identified



Number of respondents: 80 (Tax authorities=8; Intermediaries=73)
Source: Targeted consultations

Fair taxation appears to be a **relevant topic also for the general public opinion** of the EU. For instance, the Eurobarometer shows that the overwhelming majority of EU citizens believe that there should be a fair taxation of large technology companies, both in the autumn 2019 edition (the first in which the question is asked), and in the latest version of the survey.

Figure 47. Eurobarometer survey responses regarding fair taxation



Source: Eurobarometer survey

5.1.2 Issues at stake – Main drivers

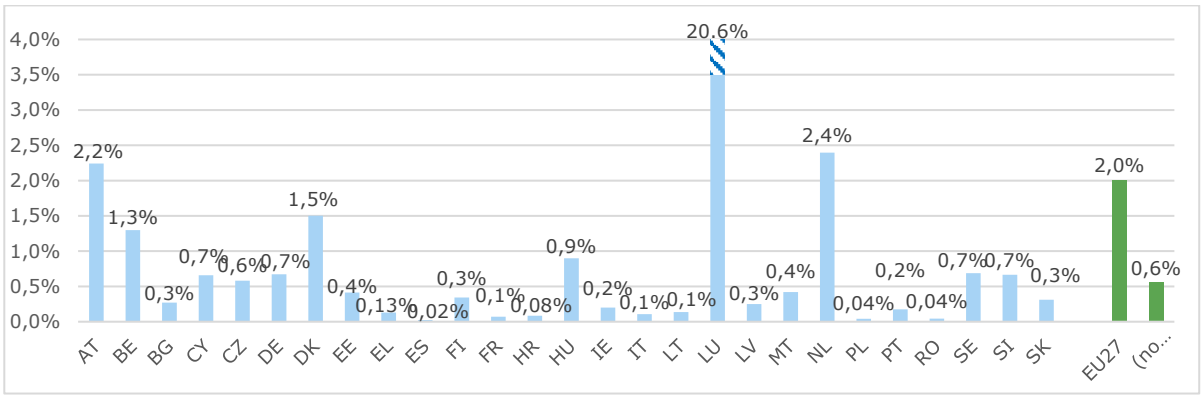
This Section summarises the evidence collected from secondary sources regarding the magnitude of the issues covered by DAC provisions. This includes in particular some considerations on the categories of income and assets exchanged under DAC1 and DAC2 AEOI, as well as on the number and economic features of MNE groups whose ultimate parent entities (UPE) reside in EU Member States.

Income from Employment

In line with the findings of the previous evaluation, **employment income earned in other Member States seems to have a limited importance compared to the overall size of the**

economy, also as share of workforce concerned. The income accruing to cross-border employees is in the order of EUR50 billion, corresponding to some 2% of the total compensation of employees over the same period. Only in five countries this ratio exceeds 1%, with Luxembourg being the only instance in which this ratio is substantial, at over 20%.[163] (see Figure 48).

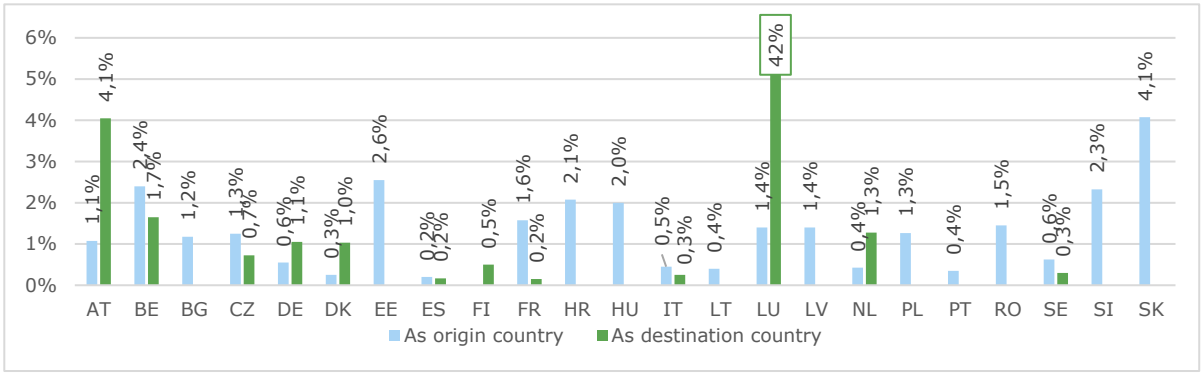
Figure 48. Ratio between BOP Debit marked as 'Primary income: Compensation of employees' and compensation of employees (2018-2021 average)



Note: Eurostat Balance of Payments shows transactions recorded as debits for 'Primary income: Compensation of employees' (annual data). Source: Authors' elaboration on Eurostat data

The findings are broadly similar if the number of cross-border workers[164] is considered. Although information does not cover all EU countries,[165] according to available data some 1.7 million cross-border workers were recorded in the EU, representing around 1-4% of the workforce.[166] Only in a handful of countries these figures exceed 2%, with Luxembourg once again representing an outlier in terms of destination of cross-border workers (see Figure 49). Cross-border workers tend to have medium or higher education levels, with the latter seemingly gaining importance in latest years.

Figure 49. Cross-border workers as % of total workforce (2018-2021 average)



Note: Data include EFTA countries
Source: Authors' elaboration on Annual Report on Intra-EU Labour Mobility 2022

[163] If Luxembourg is not considered, the BOP debit related to compensation of employees amounts on average to just 0.8% of GDP.

[164] A Cross-border worker is defined as a '*person of EU […] nationality who is employed or self-employed in one EU […] country, but ordinarily resides in another (neighbouring) EU […] country.*' (Annual Report on Intra-EU Labour Mobility 2022, p.94). Cross-border workers include frontier workers, posted workers, and seasonal workers.

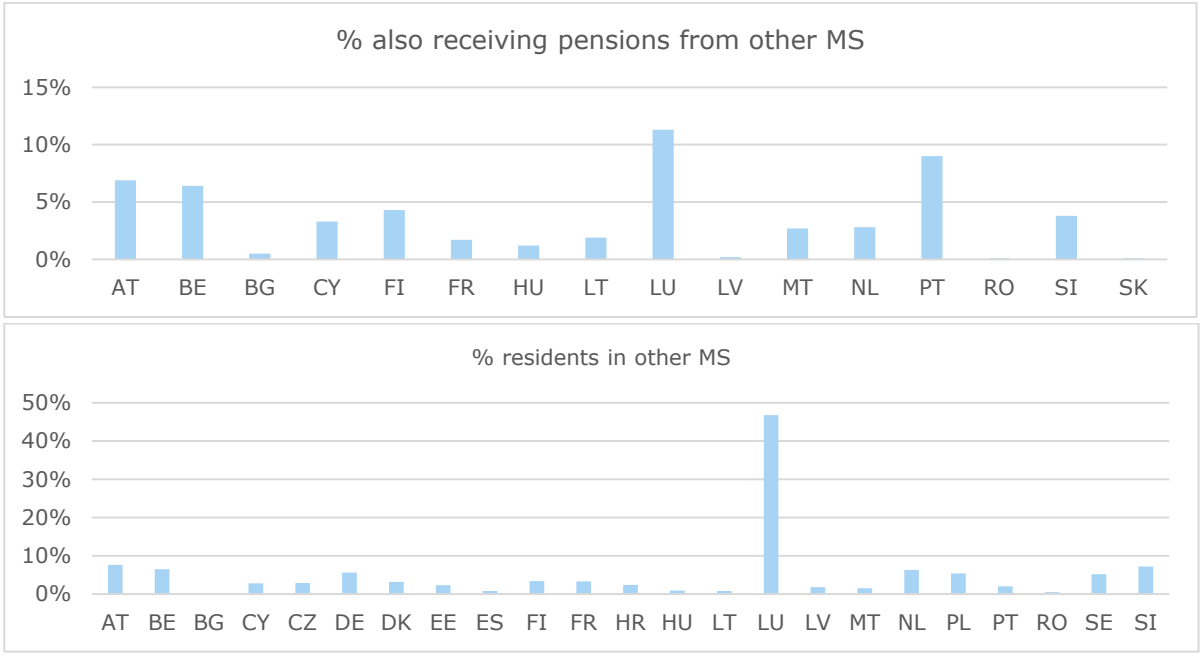
[165] Information for origin countries is available for 23 Member States, while information for destination country is only available for 12 Member States.

[166] In particular, this share is on average 1.3% of the workforce of the origin countries, and 4.4% of destination countries, due to differences in the availability of data. It is also worth noting that data may be somewhat inflated since it also includes cross-border workers to and from EFTA countries, including notably Switzerland, the second largest destination country of EU cross-border workers.

Pensions[167]

Information on the number of cross-border pensioners and on the amounts concerned is rather scarce, but suggests that, also in this case, **the importance of cross-border pension payments can be considered as limited**. As of 2018, cross-border pensioners represented 2.2% of the total number of pensioners in the country of residence, and the amount paid to these pensioners represented 1.5% of total pension payments. As for the income from employment, Luxembourg is by far the largest payment of cross-border pensions, with nearly half of pension beneficiaries residing in other Member States, although this corresponds to less than one third in terms of amount paid. Luxembourg is also the main 'importer' of pensions, meaning that it has the largest share (11%) of pensioners also receiving payments from other Member States. Among the countries for which evidence is available, Portugal, Austria, and Belgium also have a high share of pensioners receiving pensions from more than one Member States (respectively 9%, 7%, and 6%).

Figure 50. Share of cross-border pensioners over total pension beneficiaries (2018)



Source: Authors' elaboration on Cross-border old-age, survivors' and invalidity pensions, 2019

Real Estate and Life Insurance Policies

A 2021 study from the Commission services regarding the amount of wealth hidden by individuals attempted an estimate of the importance of certain income and asset categories as components of offshore hidden wealth, including life insurances and real estate. The findings of the study suggest that *'[w]hile challenging to estimate due to lack of data, […]* ***life insurance and real estate cannot be fully disregarded as asset categories that might be of interest for hiding wealth***'.[168] The scope of the study exceeds that of the Directive, since it covers all international financial centres, and is not limited to assets held or owned in EU Member States other than that

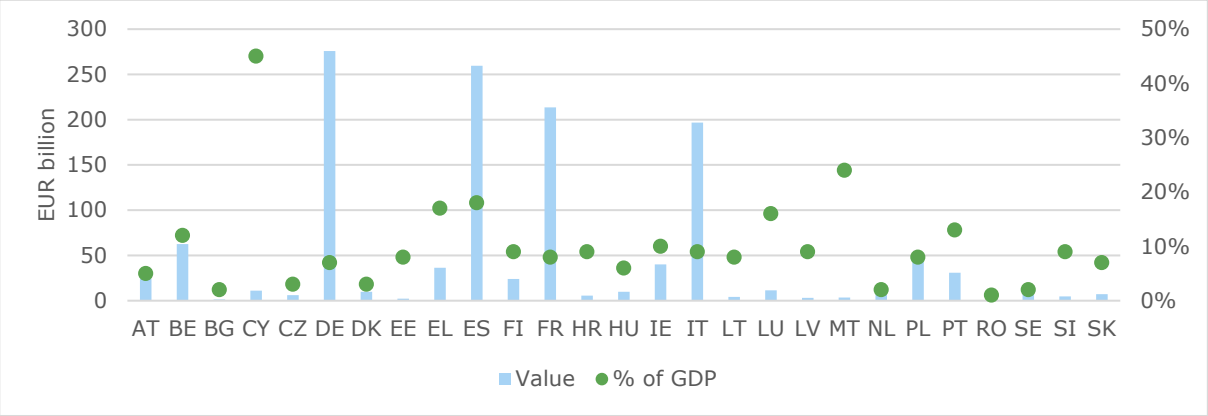
[167] The analysis of cross-border pensions is based on *'Cross-border old-age, survivors' and invalidity pensions'*, Report on Portable Documents P1 – Reference year 2018, October 2019.

[168] European Commission, Directorate-General for Taxation and Customs Union (2021), Monitoring the amount of wealth hidden by individuals in international financial centres and impact of recent internationally agreed standards on tax transparency on the fight against tax evasion – Final report, Publications Office, https://data.europa.eu/doi/10.2778/647791, p.147.

of residence. Nonetheless, the findings of the study provide a useful overview of the magnitude of the issue at stake.

Real estate represents a traditional means to hide wealth, and the study confirmed it to be a substantial component of high-net-worth individuals' allocation of assets over the period analysed. Nearly half of ultra-high net worth individuals owned a second home outside their country of residence, and over one quarter reported plans to invest in immovable property in another country. According to the study's estimate, in 2018 nearly EUR 1,400 billion were held by Member States' individuals in offshore real estate. In four countries, i.e. Germany, Spain, France, and Italy, the amount held in real estate amounted to or exceeded EUR 200 billion, and in eight countries amounted to 10% of GDP or more.

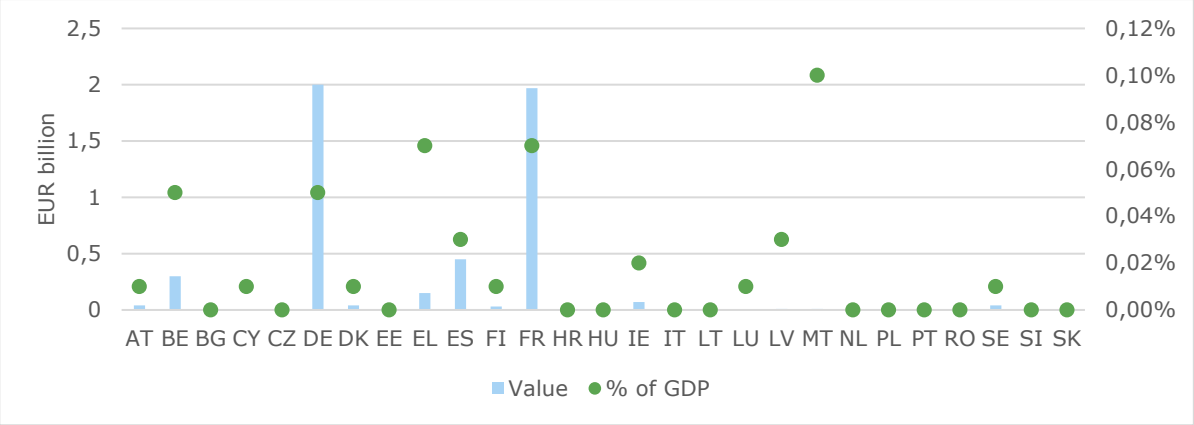
Figure 51. Wealth held offshore in Real Estate by EU Member States



Note: Figures relate to assets held in all countries of the world
Source: Authors' elaboration on Monitoring the amount of wealth hidden by individuals […]

Life insurances are less commonly used to hide wealth, but rather as a wealth planning strategy to finance costs associated with inheritance. They are also much less significant than real estate in terms of magnitude, both in absolute and in relative terms. Cumulatively, wealth held in life insurance was estimated at EUR 5 billion, less then 1% of real estate, and account for 0.1% or less than GDP.

Figure 52. Wealth held offshore in Life Insurance by EU Member States



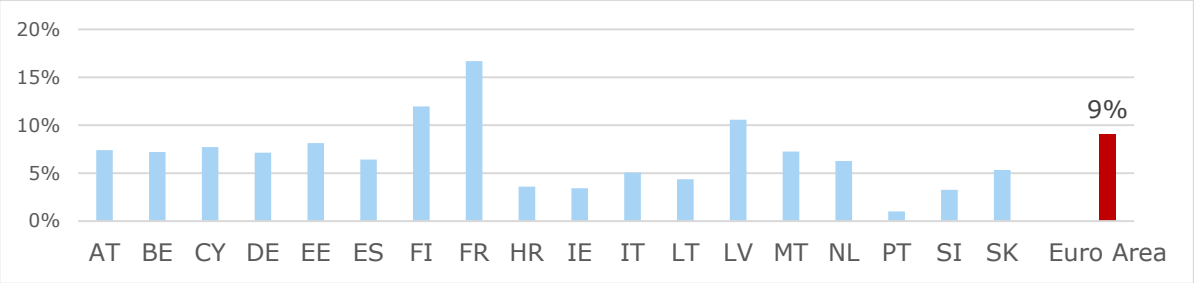
Note: Figures relate to assets held in all countries of the world
Source: Authors' elaboration on Monitoring the amount of wealth hidden by individuals […]

Financial Assets

Compared to other sources of income or wealth covered by DAC, **the relative importance of financial assets held in non-residency Member States appears much higher**. Cross-border deposits at monetary financial institutions (tracked by the ECB for the Euro area) show that, on

average, 9% of gross financial assets are held by non-resident households and non-financial corporations, ranging from 1% in Portugal to over 10% in Finland and Latvia, and 17% in France.

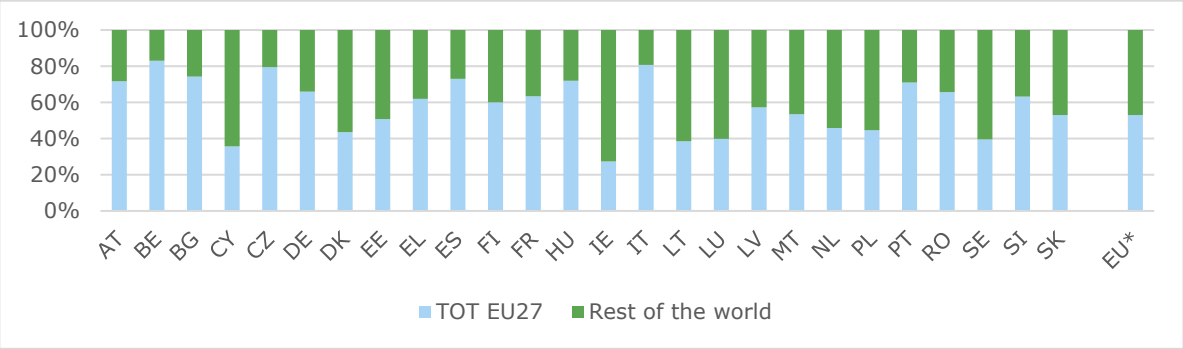
Figure 53. Ratio between cross-border deposit at monetary financial institutions and gross financial assets held by households and non-financial corporations.



Source: Authors' elaboration on data from ECB Cross-border deposits data and Eurostat

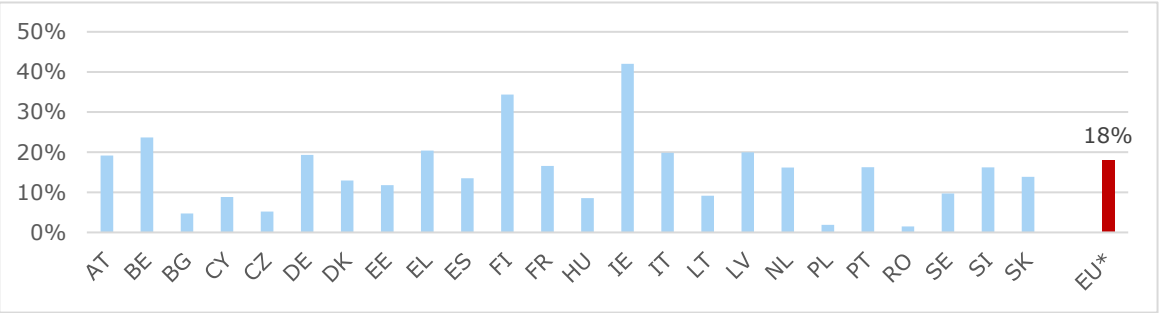
Intra-EU cross-border investments represent a substantial share of the overall portfolio. The total investment portfolio held by EU citizens[169] in EU countries other than the one of residence amounted to some EUR 9,500 billion in 2018, corresponding to over half of all the investment portfolio. In eight Member States the share of investments in non-EU countries was higher than intra-EU cross-border investments. On average, EU investments in other EU countries represent 18% of gross financial assets held by households and non-financial corporations.

Figure 54. Total investment portfolio held in non-residency EU countries vs the rest of the world (2018)



*Note. * Data for Croatia not available.*
Source: Authors' elaboration on data from ECB IMF CPIS

Figure 55. Ratio between intra-EU cross-border investments and gross financial assets held by households and non-financial corporations



** Data not available for Croatia, Malta, and Luxembourg*
Source: Authors' elaboration on data from ECB IMF CPIS

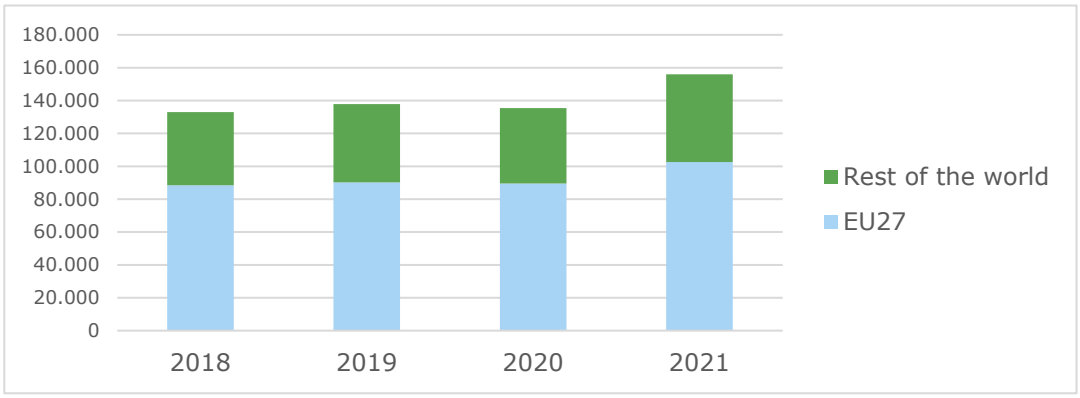
[169] Data not available for Croatia.

Multinational Enterprises

As of 2021, **over 150,000 MNEs were operating in the EU and EFTA countries**, two thirds of which controlled by an entity residing in the EU. The vast majority of these groups operate in three or less EU or EFTA countries, while only 4% are present in 6 or more EU and EFTA countries. Over 90% of the MNEs are considered as small-scale based on the number of legal units, while **only 1.3% are classified as large-scale MNEs**. Germany and the Netherlands are the only two countries hosting the controlling units of 10,000 or more MNEs, while another six countries host between 5,000 and 10,000 MNEs.

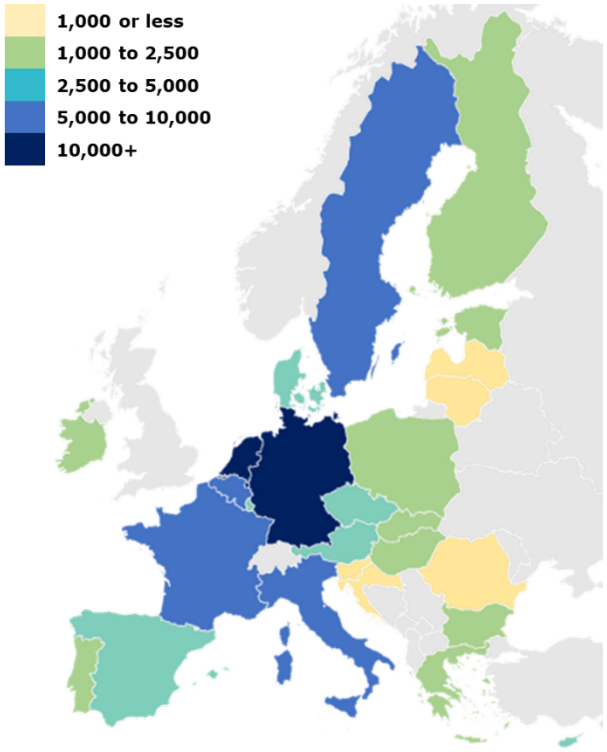
The total number of MNEs operating within the EU appears substantially larger than the number of CbCRs collected per year by EU Member States under DAC4 (an average of 5,200 CbCRs per year oat EU level). However, not all MNEs are subject to reporting, since DAC4 only applies to MNEs with a turnover exceeding €750,000.

Figure 56. Number of MNE groups operating in the EU



Source: Authors' elaboration on Eurostat data

Figure 57. Number of MNE groups by controlling country



Source: Authors' elaboration on Eurostat data

According to the EU Tax Observatory data, collected from CbCRs (see Box 7), **MNEs with a parent jurisdiction in the EU accumulated close to EUR 1,600 billion profit** before income taxes in 2018.[170] Of the total profit in 2018, almost 40%, namely over EUR 580 billion, were domestic (i.e. within the parent jurisdiction). The profit stemmed from almost EUR 20,000 billion in total revenue and resulted in over EUR 200 billion income taxes paid in 2018. The domestic total revenue was close to EUR 7,500 billion, which corresponds to 39% of total revenue, while income taxes paid in the parent jurisdiction were almost EUR 80 billion (35% of total income taxes paid).

Box 7. Data from the EU Tax Observatory

The EU Tax Observatory collects data from CbCRs. Two different kinds of datasets are available:

- Country-level data based on undisclosed CbCRs from over 6,000 MNEs with activities in more than 200 jurisdictions
- MNE-level data, based on public CbCRs from 100 MNEs.

The analysis is based on the former database which, being more comprehensive, allows to get a more complete understanding of the magnitude of the issue at stake. For each country, a number of economic variables are presented (such as total revenue, profit, income taxes). The economic variables are split into domestic and foreign entities, with a diverse granularity.

This data from the point of view of Member States is available for 20 Member States [171] in the database,1 but the disaggregation of data differs between Member States. The database was scanned for data on parent jurisdictions of MNEs in the EU, and the connected partner jurisdictions, scraping information on total revenue, profit before taxes, and income taxes paid in 2018. Subsequently, the data was scanned for revenue/profit/paid-income-taxes reported in jurisdictions that were classified as OFCs. While the database disaggregated information on a country-level for some Member States (i.e. data per individual country as partner jurisdiction), the data was aggregated in regions or other aggregated categories for some Member States. Hence, the information on OFCs could only be retrieved for some of the major Member States and not all 20 countries. Moreover, not for all Member States/partner jurisdictions data is available for all three variables, data coverage is, however, at a satisfactory level.

Granular data about revenue, profits and income taxes paid in Offshore Financial Centres (OFCs) [172] are available for 9 Member States; however, these represent about 80%-85% of the sample, and hence ensure good basis for extrapolation. [173] The available data shows that **about EUR 150 billion of profit was recorded in partner jurisdictions that can be classified as OFCs**. This corresponds to 9% of total profits and 14% of foreign profits. Total revenue attributed to OFCs by EU MNEs was at least EUR 1,755 billion. The income taxes paid in OFCs, on the other hand, was around EUR 10 billion, which was about 8% of the total, suggesting a significant lower tax rate in OFCs. Table 4 below summarises the revenue, profit and corporate income taxes paid by EU MNEs in their parent jurisdiction and abroad.

[170] Latest year available in the database at the time of writing.

[171] Namely: Austria, Belgium, Czechia, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Romania, Slovenia, Spain, Sweden.

[172] The definition for such jurisdiction is based on the one used in: European Commission, Directorate-General for Taxation and Customs Union, *Monitoring the amount of wealth hidden by individuals in international financial centres and impact of recent internationally agreed standards on tax transparency on the fight against tax evasion – Final report*, Publications Office, 2021.

This publication refers to: Vellutini, C., et al (2019), *Estimating International Tax Evasion by Individuals*, Available from: https://ec.europa.eu/taxation_customs/sites/taxation/files/2019-taxation-papers-76.pdf.

[173] The nine Member State for which detailed data on OFCs are available represent 84% of turnover, 82% of profits, and 81% of income taxes paid. Results from the sub-set are extrapolated to the full sample considering the share of revenue generated (84%).

Table 4. Revenue, profit, and income taxes paid by MNEs with a parent jurisdiction in the EU, 2018

	Total revenue (EUR bln)	Profit before income tax (EUR bln)	Income taxes paid (EUR bln)
Domestically	7 500	585	80
Abroad (i.e. in partner jurisdictions)	11 930	1 015	145
… of which in OFCs*	1 755	144	12
Total	**19 430**	**1 600**	**225**

*Note. Data concern 20 EU Member States; *: extrapolation.*
Source: EU TAX observatory.

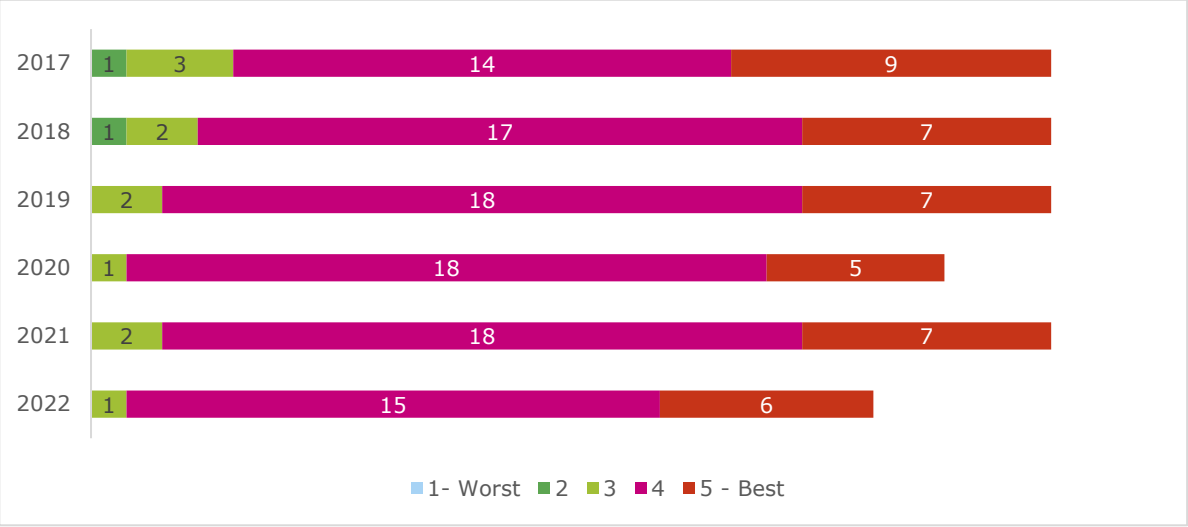
5.2 Appropriateness and fitness-for-purpose of the tools and provisions

This second part of the analysis of relevance seeks to assess the extent to which the Directive is designed so to address its objectives, both as a whole and in terms of appropriateness of the individual tools and provisions.

5.2.1 Overall fitness for purpose

Overall, stakeholders seem to have a **broadly positive opinion regarding DAC's fitness for purpose**, in line with the findings of the previous evaluation. The feedback provided in the annual questionnaires suggests that tax authorities generally believe DAC is overall appropriate for its objectives (Figure 58). This was also confirmed during the targeted consultations conducted for the study: the vast majority of the Member States agreed that the Directive's design is appropriate to tackle the main challenges identified. The **feedback of private respondents[174], albeit mostly positive is less straightforward** than that of public stakeholders, particularly as regards the Directive's fitness to tackle the erosion of the tax base (see Figure 59).

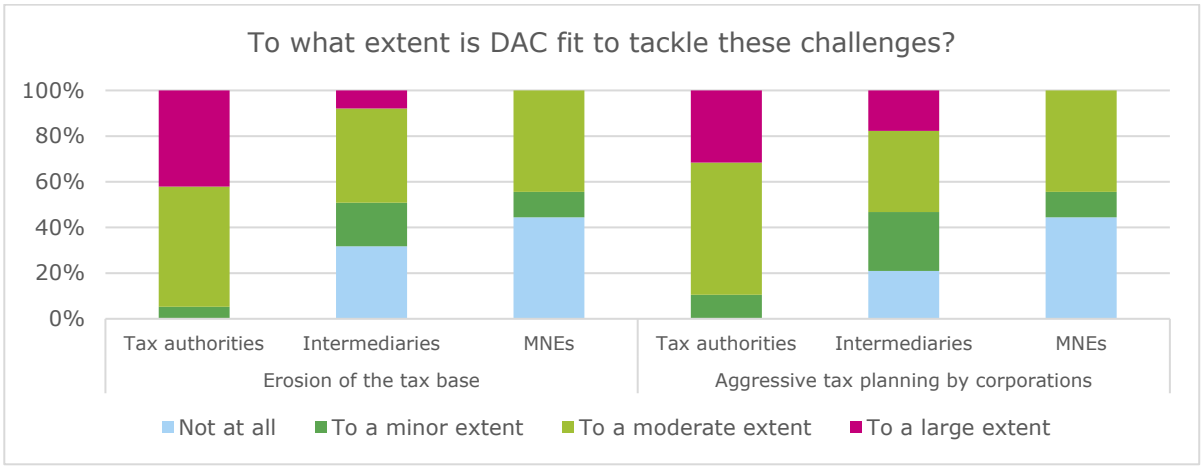
Figure 58. Member States feedback on the appropriateness of the directive to its overall purpose



Source: Authors' elaboration on the Questionnaires on the Functioning of the Directive

[174] The feedback on the overall appropriateness of the Directive was asked intermediaries (both during in-depth interviews and in the on-line survey); business federations; multinational enterprises; and experts, for a total of 86 respondents. Between 13 and 16 respondents either declined to answer this question, or answered '*don't know*'.

Figure 59. Stakeholders' feedback on DAC fitness to tackle the underlying challenges

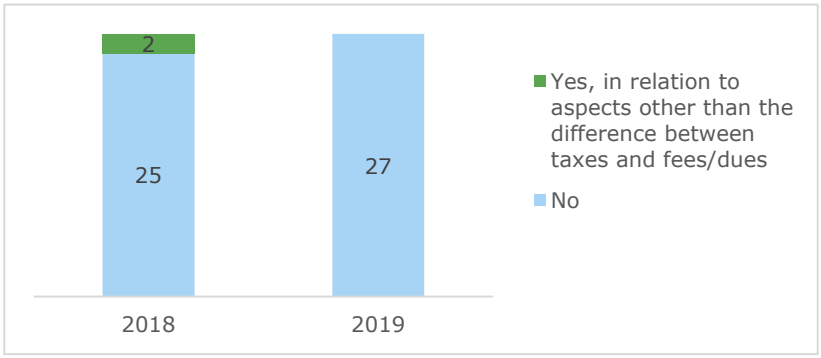


Number of respondents: Tax authorities=19; Private stakeholders (including intermediaries, business federations, MNC) =73 (erosion of the tax base); 72 (aggressive tax planning)
Source: Targeted consultations

5.2.2 Appropriateness of the Directive's provisions and tools

National authorities are **highly satisfied with the scope of the Directive**. In particular, only two Member States in 2018 (and none after that) report having encountered issues with the scope of the Directive (Figure 60). One of the few critiques reported, notably the lack of an explicit inclusion of group requests in the scope of EOIR, was eventually addressed by DAC7.

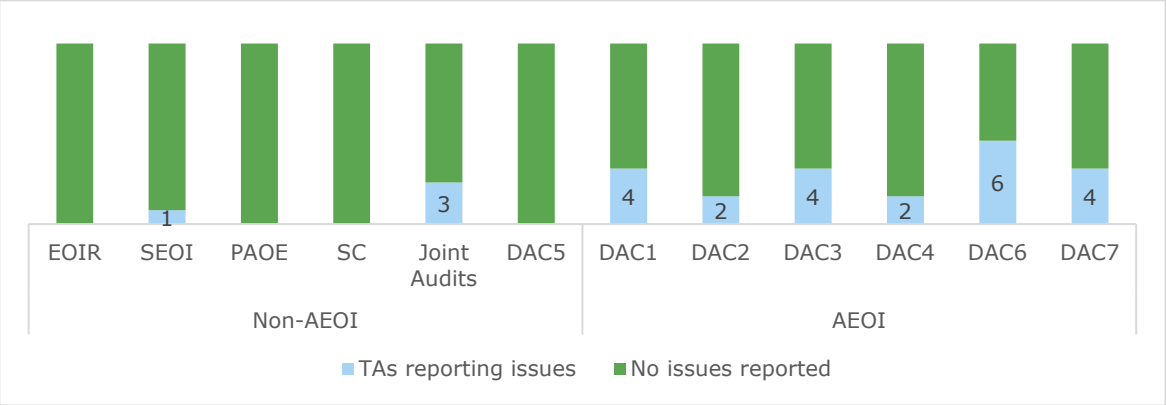
Figure 60. Extent to which Member States encountered problems with the application of the scope of the Directive



Source: Authors' elaboration on the Questionnaires on the Functioning of the Directive

Figure 61 provides an overview of the number of Member States reporting issues in the design or application of the main provisions and tools envisaged by the Directive. **Around half of the tax authorities interviewed (6 out of 14) did not report any issues.** Except for DAC6, problematic aspects were reported by less than one third of respondents. Tax authorities **report more issues with AEOI than non-AEOI instruments**, and tend to see the provisions introduced through more recent amendments of the Directive as more problematic compared to older ones (e.g. joint audits among non-AEOI tools; DAC6 among AEOI). As regards AEOI in particular, several Member States reported how interpretation and application tend to be easier for provisions (like DAC2 and DAC4) having a very close resemblance to the corresponding OECD initiatives, which provide an additional layer of guidelines and support to tax authorities.

Figure 61. Number of Member States reporting issues with DAC provisions



Note: Total of 13 tax authorities interviewed. Source: Targeted consultation

Table 5 below provides an overview of the main issues identified in the design and application of DAC provisions, including the contribution of both private and public stakeholders. The main, recurring issues are highlighted in bold. Selected aspects regarding (i) the collection of certain information by financial institutions under DAC2 and (ii) the design of DAC6 are discussed in more detail in the remaining of this Section.

Table 5. Issues in the design and application of DAC tools reported by stakeholders.

Provision	Issues reported
Non-AEOI	
SEOI	• The absence of any planning in the timing and content makes SEOI unpredictable and thus hard to implement and use by tax authorities
Joint Audits	• According to several counterparts, joint audits can be intended in practice as a merge between PAOE e simultaneous controls. In some cases, however, joint audits were interpreted as a new, enforcement-related instrument, which caused issues in the transposition and implementation process.
AEOI	
DAC1	• The identification of the **tax residency** of taxpayers is often problematic. In particular, taxpayers are often not aware of the criteria for its determination and are not always able to report it correctly. • The deadline for exchanging DAC1 information is seen by some as too long and this prevents the use of the information received for certain purposes (e.g. pre-filling of tax returns)
DAC2	• Financial institutions and federations underlined two main issues recurrently emerging in the collection of information reportable under DAC2 AEOI, namely (i) the identification of **tax residency**; and (ii) the collection and verification of the **TIN** issued by countries other than that of collection. These issues are discussed in more detail in Section 5.2.3 below. • The definition of gross proceeds is, according to some, unclear.

DAC3	• The **summary of the ruling available** in the central directory is still regarded as insufficient to perform a risk assessment, and often needs to be followed up with an EOIR to confirm whether the ruling is of interest to the tax authority for audit purposes. The matter has been addressed by DAC7 and during several ACDT working groups; also DAC8 addresses the issue, by reviewing and expanding the information required, which now also includes the TIN. Also, a new template has been agreed with the Member States in the WG ACCDT and SG AEOI[175] and should be available as of 2024.
DAC4	• No major issues reported, although several private sector respondents report having difficulties with the CbCR **format** (which is based on the OECD xml format[176]). In the Yearly Assessment, some minor complaints on the format were also raised by tax authorities (e.g. receiving tax authorities are not able to disaggregate data by constituent entity) • As further discussed in Section 6.3.1 below, tax authorities often find it difficult to have a complete overview of how many reporting entities reside in their country, which can cause completeness issues • According to one tax authority, the definition of profit is distorted, since it includes the revaluations and sales of participations which are generally not taxable as profits (although the revision of the CbCR currently under discussion would reportedly solve this issue)
DAC6	• The vagueness of certain definitions (particularly the **main benefit test**, and the identification of the **hallmarks**), combined with the lack of operational and practical guidance on their application, has led to inconsistencies in how provisions are applied across Member States (see more details on this in Focus 2 below). • The **intermediaries** subject to reporting requirements differ from country to country (e.g. some countries also require banks to report arrangements while other do not), although in practice, according to tax authorities, this has not materialized in major problems of double reporting of arrangements. • The role/involvement of intermediaries is also under discussion in view of the debate regarding the coherence with privacy (see Section 9) and legal professional privilege (see Section 3.1.2). The issue has been addressed by DAC8 which exempt from the reporting obligation on account of the legal professional privilege also lawyers acting as intermediaries [177].
DAC7	• Given the recent implementation, considerations on DAC7 are **only preliminary**, also on possible differences in national implementation. • As for DAC6, several definitions/aspects have been highlighted by public and private stakeholders as insufficiently specific or concrete. For instance, the definition of platform has been transposed and is applied in a slightly different way across countries (e.g. in the way the employees of the platform operators are considered).

5.2.3 Selected focus on appropriateness and fitness for purpose

Focus 1. Data collection requirements for financial institutions under DAC2

Private stakeholders involved in the implementation of DAC2 provisions, namely financial institutions and the related federations, tend to have a **rather negative opinion on the fitness for purpose of DAC2**. Around one third of the stakeholders consulted believed that DAC2 was only limitedly fit to tackle the erosion of the tax base following globalization, while only one sixth believed that DAC2 has the potential of reducing diverging national policies among EU Member States.

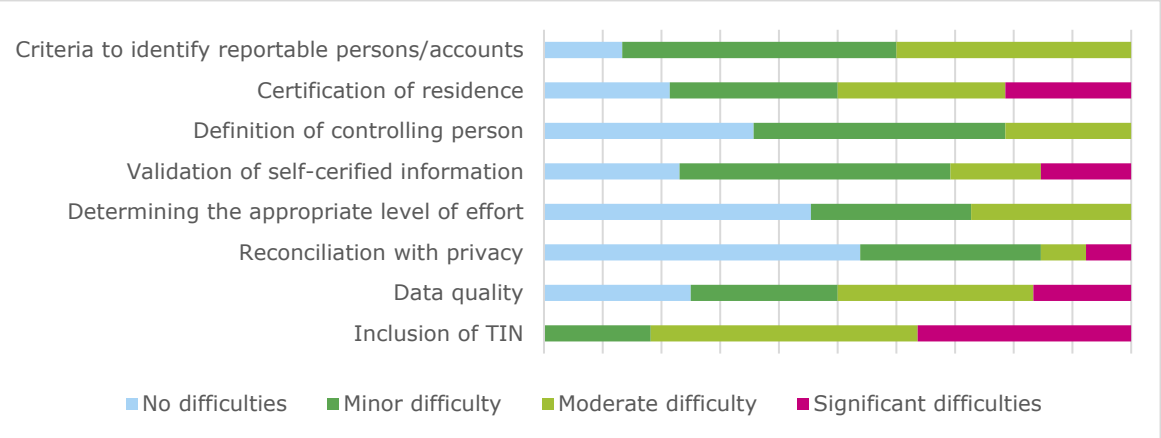
[175] WG ACDT, 54th Meeting – Brussels, 12th October 2023. "The requirements are based on the results of the SG AEOI report on DAC3 Summary Information which was finalised on 21 August 2023, and incorporates the new Annex D of the OECD for BEPS Action 5 on rulings/APA's"

[176] Work on updating the format at OECD level has been postponed due to concomitant work on Pillar 2 implementation.

[177] Article 8ab as emended by DAC8.

Compared to the findings of the previous evaluation, financial institutions confirmed that once the upfront difficulties (and related costs, as will be discussed in Section 8) have been borne, complying with DAC2 has become a mostly unproblematic routine aspect of their activities. However, interviewees underlined several remaining compliance practical issues in, including (i) difficulties related to identification of clients' tax residency and (ii) issues in collecting and verifying the correctness of the foreign TIN, as well as more generally, (iii) the quality of data retrieved (see Figure 62 below).

Figure 62. Private stakeholders' feedback on difficulties for the correct application of DAC2



Source: Targeted consultation; Number of respondents: 11 to 15

As regards the identification of **tax residency**, financial institutions and federations reported how clients – who are ultimately responsible for the correctness of the information provided - are often unaware of the specific regulatory requirements (e.g. they confuse citizenship, residency, and fiscal residency) and fail to provide the information ('*retail clients have a low fiscal literacy level, so they simply do not know*')[178].

The **inclusion of the clients' foreign TIN** is regarded as the most problematic aspect regarding DAC2. Straightforward reporting is, in fact, possible only if '*the correct TIN is obtained at client onboarding*'. In fact, the collection of this information has become a praxis when opening a new account, while the process is often more complicated and burdensome for existing clients, who can be reticent in providing the information or unresponsive. Respondents expect this problem to become less and less important over time ('*with time there will be more and more new clients, and less and less old clients, so circumstances will naturally change*'), and thus would appreciate some transitory exemption for older existing clients, since they do not have any enforcement power to impose the collection of this information ('*For FATCA, we have the possibility of imposing the provision of this information by threatening the closure of the account; but with DAC/CRS, we do not have this power*'; '*according to EU law, a bank can only refuse to open an account if [AML legislation] is not respected, and not if the […] client does not provide a correct TIN […]*'[179]). The issue also emerged with the prospective obligation to mandatory include a TIN for all DAC2 records, included in the DAC8 proposal, but not in its final text.

Finally, financial institutions underlined the difficulty in **verifying the quality of the data collected**, particularly regarding the tax residency and, most of all, the TIN ('*We collect the information, then we can only share the information with the tax authority, but responsibility is with the client*'[180]). The absence of an official validation tool prevents financial institutions from being able to verify the correctness on the information beyond a formal check, e.g. by checking that the

[178] Stakeholders consultations.

[179] Stakeholders consultations.

[180] Stakeholders consultations.

TIN has the correct structure/number of digits ('*we can only do a reasonableness check, but many errors remain unnoticed*').[181]

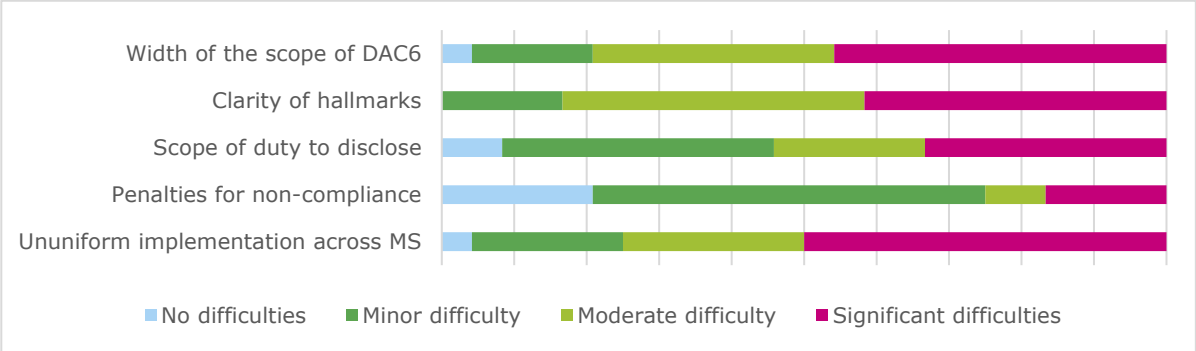
The difficulties in collecting and verifying the correctness of TIN are particularly interesting in view of the upcoming mandatory collection of the foreign TIN also for DAC1 information, since it is likely that similar difficulties will be encountered also in that case.

Focus 2. Design and appropriateness of DAC6 reporting requirements

DAC6 is the Directive provision on which stakeholders – both private and public – reported more issues. This is partly a consequence of the fact that it is the most recent one (except for DAC7, which is however still under implementation). On the other hand, the number and type of comments points to the fact that **several aspects related to DAC6 are not sufficiently clearly defined nor can be easily applied**, which lends itself to different interpretations at national level and to difficulties for tax authorities in ensuring a homogeneous application of the Directive.

As shown in Figure 63, the main difficulties identified by private stakeholders[182] all relate, directly or indirectly, to the content of Annex IV, including the clarity of the hallmarks, the width of the scope of applicability of DAC6, and the lack of uniform implementation across EU countries.

Figure 63. Private stakeholders' feedback on difficulties for the correct application of DAC6



Source: Stakeholders' consultation; Number of respondents: 24

Tax authorities too highlighted a number of issues in the clarity, accuracy, and applicability of the main benefit test and of the hallmarks included in Annex IV, underlining in particular how the issues with the definitions (which are considered too vague, not clear enough, or not sufficiently operationalizable) result in an inconsistent application at national level.[183]

The feedback provided by private stakeholders and by tax authorities is consistent in identifying the **main benefit test as the most problematic aspect** of DAC6. Member States as well as other stakeholders also reported difficulties **with the definitions of the 25 hallmarks**, which are at times seen as too broad or vague, and/or lacking practical guidance in their application. Box 8 below provides a more detailed overview of which hallmarks have emerged as the most problematic from consultations with tax authorities, and why.

[181] Stakeholders consultations.

[182] Private stakeholders consulted on this matter include tax intermediaries, business federations, multinational enterprises, and individual experts.

[183] Notably in the Questionnaire on the relevance of DAC6 Annex IV, compiled by Member States in 2022, in response to the requirements in Article 26(2) of the Directive. The questionnaire investigates in detail the clarity, accuracy, and applicability of the main benefit test and of the 25 hallmarks, and whether they create issues in application and administrative burden for private sector operators.

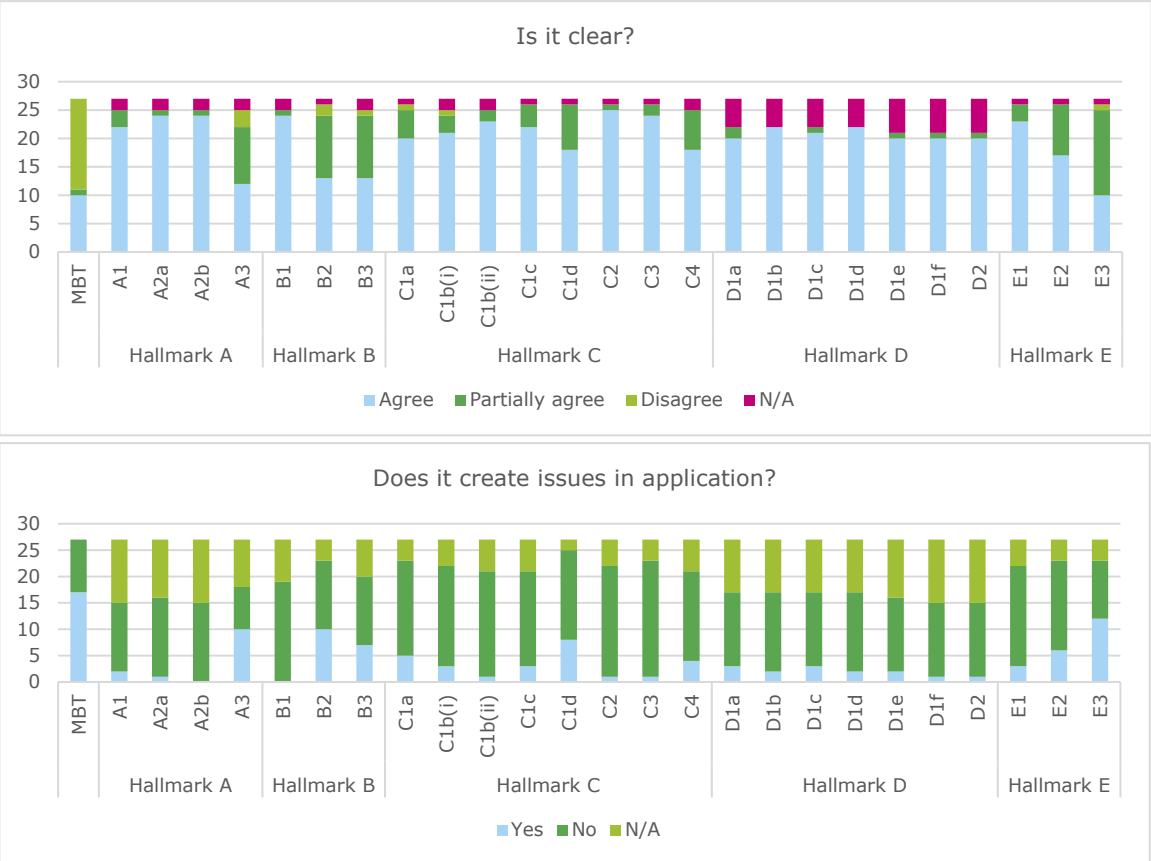
Box 8. Issues with Annex IV definitions

According to the feedback provided by tax authorities in the Questionnaire on the Relevance of DAC6 Annex IV, and to consultations with private stakeholders, the most problematic hallmarks ones include:

- **Hallmark A3**. This hallmark tends to be rather generic, ending up being a 'catch-all' hallmark. The broadness in the definition causes different interpretation across Member States;
- **Hallmark B2**. This hallmark seems to cover different scenarios which are not well defined or specified, thus creating some practical challenges in its application and possibly leading to overreporting;
- **Hallmark B3**. Member States underlined the need for practical guidance on the application of certain definitions, particularly concerning the meaning of 'round-tripping of funds';
- **Hallmarks C1a and C1d**. Member States underlined the lack of definitions of certain terms (particularly 'cross-border payments' and 'preferential tax regime'). Furthermore, some respondents reported that hallmark C1d creates unnecessary reporting requirements, since it may capture recurring payment arrangements, which need to be reported repeatedly;
- **Hallmark C4**. Member States underlined how the wording of this hallmark may be confusing, particularly as regards the term 'material difference';
- **Hallmark E2**. In this case, the problems in the application relate to the difficulties in valuing intangible assets, especially since the lack of detailed guidelines leads to a different application among Member States; and
- **Hallmark E3**. Together with the main benefit test, this hallmark seems to be the one most frequently reported as presenting issues. Overall, respondents suggest that many concepts under E3 are either not defined, or not defined in a clear enough way (e.g. annual earning before tax; intra-group transfer). Furthermore, the Directive does not specify how the EBIT should be calculated.

The figure below includes an overview of the replies provided by Member States; it is worth noting that private stakeholders' narrative feedback is largely consistent, identifying the Main Benefit Test, as well as Hallmarks A3, C1d, and E as the most problematic.

Member States feedback on the clarity and applicability of DAC6 Annex IV



Note: MBT – Main Benefit Test
Source: Authors' elaboration on the Questionnaires on the Relevance of DAC6 Annex IV

5.3 Summing up

Public and private stakeholders agree that the issues the Directive aims to tackle represent a problem for society. The issues covered by DAC, however, are not all equally relevant in quantitative terms. **Financial assets held by EU citizens in Member States other than that of residence are significant**: deposits at financial institutions and investments in other EU countries amount to respectively 9% and 18% of gross financial assets held by EU residents. **Tax evasion and avoidance by MNEs, i.a. by means of profit shifting, also represents a large phenomenon**. MNEs with a parent jurisdiction in the EU accumulated close to EUR 1,600 billion profit before income taxes in 2018. Estimates suggest that nearly one tenth of the profits (and 14% of foreign profits), corresponding the about EUR 150 billion, was recorded in partner jurisdictions that can be classified as offshore financial centres. Instead, **the relative importance of the categories of income covered by DAC1 appears much lower**. Cross-border employees represent between 1 and 4% of the total workforce, and their income represent an average of 2% of total salaries. Similarly, cross-border pensioners represented 2% of the total number of pensioners in the country of residence, and the amount paid to these pensioners represented 1.5% of total payments.

Stakeholders have a **positive opinion of the fitness for purpose of the Directive**. In terms of appropriateness, very few issues were reported respect with non-AEOI tools. As regards AEOI, the most discussed issue concerns **DAC6 reporting requirements**. According to both public and private stakeholders, several aspects related to DAC6 are not sufficiently clearly defined nor can be easily applied. The lack of clarity, exacerbated by the lack of guidelines endorsed by all Member States, also leaves room for different interpretations and applications at national level. On the one hand, given the recent launch of this provision, some difficulties may be natural upfront difficulties in implementation. On the other, some provisions have clearly emerged as problematic, particularly as regards the definition of certain hallmarks and of the main benefit test, and the definition of intermediaries subject to reporting. Another issue concerned the **difficulties of by financial institutions in collecting client's foreign TIN** and in verifying its correctness. The process is particularly problematic for pre-existing clients. More generally, for both DAC1 and DAC2 the identification of the tax residency of taxpayers is often problematic, especially since the taxpayer may have difficulties in reporting it correctly. As regards DAC3, issues remain with the summaries uploaded on the dedicated central directory, which, even when compiled correctly, are often insufficient to perform a risk assessment. Finally, one of the key issues with DAC4 is the perduring difficulty by tax authorities in correctly identifying and monitoring their reporting entities.

6. EFFECTIVENESS – OUTCOMES

6.1 Overview

The assessment of effectiveness covers three evaluation questions, namely Evaluation Questions (EQ) #4 and 5:

- EQ#4 To what extent have the rules introduced by the Directive and its amendments facilitated cooperation among Member States?
- EQ #5 To what extent have the specific objectives of the Directive and its amendments been achieved, in particular with respect to the developments since 2018?

These evaluation questions concern the assessment of the extent to which the Directive materialized into its immediate result, i.e. the facilitation in the cooperation among Member States (EQ#4, discussed in Section 6.2) and the analysis of the achievement of the Directive's specific objectives, i.e. its outcomes (EQ#5, included in Sections 6.3 to 6.4).

Judgement Criteria	Indicators
JC#4.1 Extent to which the Directive provided an effective framework for Member States to cooperate	• Member States degree of satisfaction as reported in expert group meetings and/or DAC-related Fiscalis events • TAs reporting good experience in the interaction with other Member States (by provision) • TAs reporting good experience with sharing of best practices
JC #5.1 Extent to which the Directive contributed to an increased capacity to fight tax fraud, evasion and avoidance	• Extent to which the information received via AEOI, EOIR, and SEOI is complete, of sufficient quality, and is received within the established time limits • Extent to which data received via AEOI and SEOI is processed and used for tax control • Effect of PAOE, simultaneous controls, and joint audits on the effectiveness of the fight against tax fraud
	•
JC #5.2 Extent to which the Directive resulted in an increased spontaneous tax compliance	• Extent to which AEOI data (particularly DAC1 and DAC2) are used to encourage spontaneous tax compliance (e.g. use of DAC1 and DAC2 data for pre-filling of tax returns, informal letters) • Evidence of increased spontaneous tax compliance (deterrent effect)
JC #5.3 Extent to which Fiscalis projects contributed to the achievement of DAC specific objectives	• Contribution of Fiscalis actions to the achievement of DAC specific objectives

6.2 Ease of cooperation

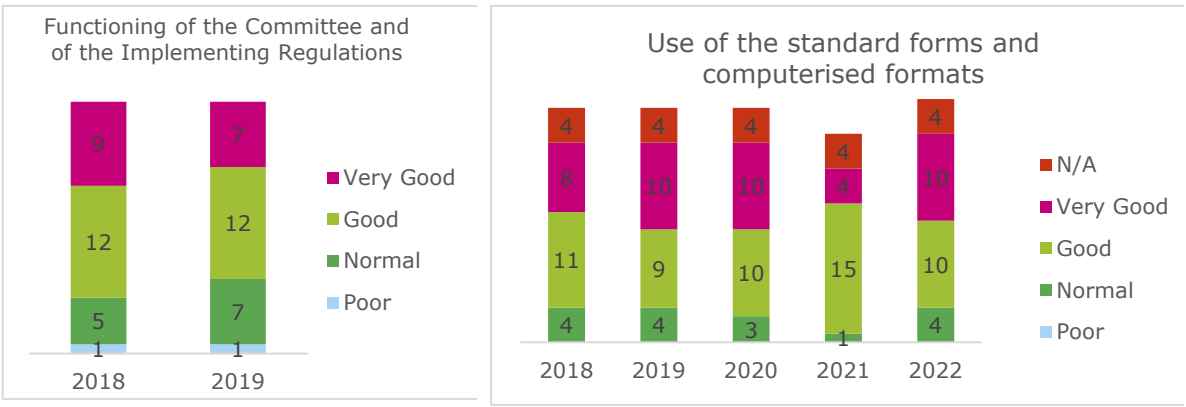
The most immediate result targeted by the Directive is to set up a framework conducive to administrative cooperation among tax authorities. These aspects[184] are assessed by analysing Member States' feedback regarding their degree of satisfaction in interacting with other tax authorities within the different activities foreseen by the Directive, as well as in the dedicated fora, such as expert groups, committees, and Fiscalis events.

Tax authorities largely agreed that the Directive provides a unique and homogeneous legal framework for administrative cooperation, facilitating interactions among competent authorities via

[184] Covered by Evaluation Question #4 and by Judgment Criteria #4.1,

clear rules, definitions, and timelines. Member States consider **the flexibility and wide scope of the DAC framework to allow effective and close cooperation among them**.[185] They appear satisfied with how the DAC fora function, such as the Committee on Administrative Cooperation for Taxation and the Implementing Regulations (Figure 64). The **operational tools and systems entailed by the Directive are also highly appreciated**, as confirmed by the satisfaction with the use of standard forms expressed both in the Questionnaires on the Functioning of the Directive (Figure 64) and during interviews. The existence of a secure communication channel and standard forms forming a '*common language for EOI*'[186] are regarded as one of the key strengths of DAC compared to other multilateral or bilateral cooperation frameworks[187]. Similarly, from a technical perspective, also AEOI does not pose particular challenges once the initial implementation phase is completed[188].

Figure 64. Tax authorities' Satisfaction with Selected Aspects of the Directive



Source: Authors' elaboration on the Questionnaires on the Functioning of the Directive.

Member States report **good cooperation across all DAC provisions**. Within the Yearly Assessments, tax authorities are able to report a wealth of examples of good collaboration to solve technical issues concerning AEOI, or when clarifications are needed ('*The communication between Member States has been very constructive and solution oriented'*[189]). The same goes for countries participating in PAOEs and simultaneous controls ('*Cooperation on working level is very effective and trusting.*'; '*The objective was achieved in both cases [..] [the simultaneous control] led to a better understanding of the existing tax issues, because the auditors examined the cases from two perspectives [and] the affiliated companies only had to suffer 'one' tax audit.*'[190]).

Finally, consistently with the findings of the previous evaluation, one of the strengths of the DAC framework is the **interaction among different provisions and tools**, and in particular the role of AEOI as a further trigger. Between 2018 and 2022, 26 out of 27 countries followed up to AEOI with EOIR concerning at least one category of information. EOIR appear to be relatively more often triggered by AEOI on income from employment under DAC1, and by DAC2 exchanges, although other categories of information are also followed up either by individualised EOIR, or by bilateral contacts, often concerning general questions about the information received (e.g. horizontal interpretation issues, missing fields) (see Figure 65 below).

[185] Views presented during the 43rd meeting of the Working Group on Administrative Cooperation in the field of Direct Taxation (WG ACDT). WG ACDT, 43rd meeting, 27 September 2018, Brussels.

[186] WG ACDT, 43rd meeting, 27 September 2018, Brussels.

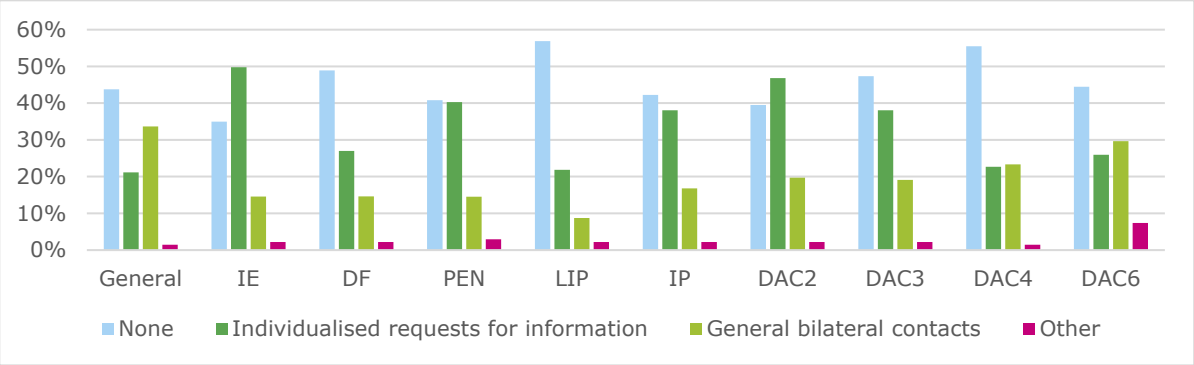
[187] Such as double taxation treaties, or EOIR with non-EU countries

[188] '*The exchange of information appears to be running smoothly, with no major IT issues having been encountered*', from Yearly Assessment.

[189] Yearly Assessments

[190] Questionnaire on the Functioning of the Directive

Figure 65. Further contacts generated by AEOI (share of Member States)



Note: Average of 2018-2022 answers; DAC6 in 2022.
Source: Authors' elaboration on Yearly Assessments

6.3 Increased ability to fight tax fraud, avoidance and evasion

The first specific objective (and hence the corresponding outcome) of the Directive is to increase Member States' capacity to fight tax fraud, evasion, and avoidance. This is assessed by evaluating:

- the completeness, quality and timeliness of cooperation (and particularly of exchanges of information), since these are pre-conditions for the information obtained to be usable in an effective manner by tax authorities (in Section 6.3.1);
- whether and the extent to which the information received through AEOI by Member States is processed and used for tax control purposes (in Section 6.3.2); and
- the available evidence regarding whether and the extent to which administrative cooperation other than AEOI facilitates tax authorities' fight against tax fraud, avoidance, and evasion (in Section 6.3.3).

6.3.1 Usability of information: completeness, quality, and timeliness of exchanges

The completeness, quality, and timeliness of the exchanges determine the usability of the information by the receiving tax authority. More in detail:

- **completeness** has to do with both the scope of the exchanges and with the granularity of the information;
- **quality** mostly concerns whether the foreseen elements are included in the exchange, and whether they are correct, consistent, and reliable. For DAC1 and DAC2, this has to do with the inclusion of so-called identifying elements, i.e. information that can be used to match the records with the right taxpayer;
- **timeliness** relates to the delay between the period to which the information relates (e.g. the fiscal year) and when the information is sent to the receiving Member States.[191]

Not all three aspects can or are relevant to be assessed for all DAC tools. In particular, DAC1 and DAC2 statistics allow for a detailed quantitative analysis of the completeness and timeliness of exchanges; the same goes for EOIR, based on the statistics collected yearly by the Commission. The assessment regarding the other types of exchange of information is largely based on the qualitative feedback collected during the targeted consultation on the questionnaires compiled by

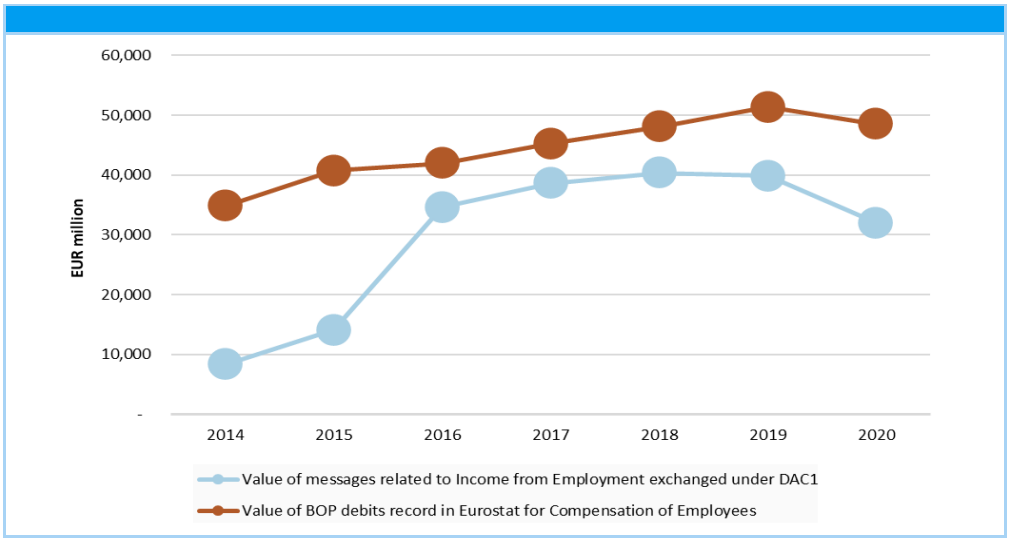
[191] Especially regarding DAC1 AEOI, the Directive usually determines the time limit based the moment the information becomes available to the originating Member State. However, the usability of the information for certain purposes (e.g. pre-filling of tax returns or other automated actions to encourage compliance) can be time-sensitive.

Member States, and other documentary sources (e.g. minutes of expert meetings), mostly focusing on the quality and completeness of exchanges.

DAC1 AEOI

In terms of coverage, **DAC1 information appears to capture a significant share of income earned in other EU countries**. In particular, the information on income from employment can be compared to Balance of Payments data on compensation of employees.[192] As shown in Figure 66, the total value of messages exchanged under DAC1 represented around 84% of the value reported in the Balance of Payments for the EU between 2016 and 2018, i.e. the years for which information can be considered as the most complete.[193]

Figure 66. DAC1 Income from Employment compared to BOP debit for compensation of employees.



Note: Eurostat Balance of Payments shows transactions recorded as debits for 'Primary income: Compensation of employees' (annual data). Values exchanged under DAC1 are organised by tax year.
Source: Authors' elaboration of AEOI Statistics and Eurostat Balance of Payments.

As for **completeness,** the analysis of DAC1 statistics[194] also suggests that the **information shared by Member States typically include detailed and granular data** on e.g. the breakdown of the income amount (e.g. payment, taxes paid, allowances, etc.), the type of payment (e.g. normal pension payment vs employment contributions), or the relationship with the payer (e.g. type of

[192] Balance of payments by country - annual data (BPM6) [BOP_C6_A]. Primary income covers transactions between residents and non-residents. Compensation of employees records wages, salaries and other benefits, in cash or in kind, earned by individuals for work performed for economic units whose place of residence is different from their own (border workers, seasonal workers, employees of international organisations, etc.). BOP item Compensation of employees records money paid to non-resident workers or received from non-resident employers.

[193] The analysis is based on the tax year DAC1 information refers to. Information on more recent tax years is still likely affected by limitations, since exchanges need to happen within 6 months from the end of the year information becomes available – see also analysis of the timeliness of exchanges.

[194] A complete overview of the analysis of completeness of DAC1 statistics is included in Volume 2.

pension or life insurance). Table 6 below provides an overview of the share of non-missing values in the statistics, which has been used as a proxy for the completeness of exchanges.[195]

The degree of completeness was very high for income for employment and director's fees, at over 95%. Completeness for the other datasets was also high, albeit a tad lower, with shares of non-missing values ranging between 83% to around 92%. The analysis seems to suggest a slightly negative correlation between the number of messages exchanged and the completeness of information, i.e. as the number of messages exchanged by Member States has risen, the share of information that is missing (i.e., for which blank values are provided, or which were flagged as unknown) has increases.

Table 6. Completeness of information exchanged under DAC1 (tax years 2017 – 2021*)

Dataset	Share of non-missing values as a share of recipients, payers, etc. (all information)	Share of non-missing values as a share of recipients, payers, etc. (non-identifying information only)
Income for Employment	66%	97%
Director's fees	66%	96%
Pensions	69%	83%
Life insurance policies	88%	88%
Ownership/income from property**	73%	92%

Note: The analysis shows the average share of information (not concerning identifying elements) that was non-missing across detailed datasets relating to each income/asset category (i.e., not left blank and not including 'unknown'). Shares are calculated as a % of recipients, payers, policies or other information to which each dataset refers. (*) Not all datasets provide the message year, as such the analysis of completeness used the tax year to which messages refer instead. (**) The average for IPS excludes data relating to loan events and loan collaterals (IPS-140 and IPS-150) as this was only provided by one Member State, with the data supplied simply stating that no loan events or loan collaterals were available.
Source: Authors' elaboration of AEOI Statistics

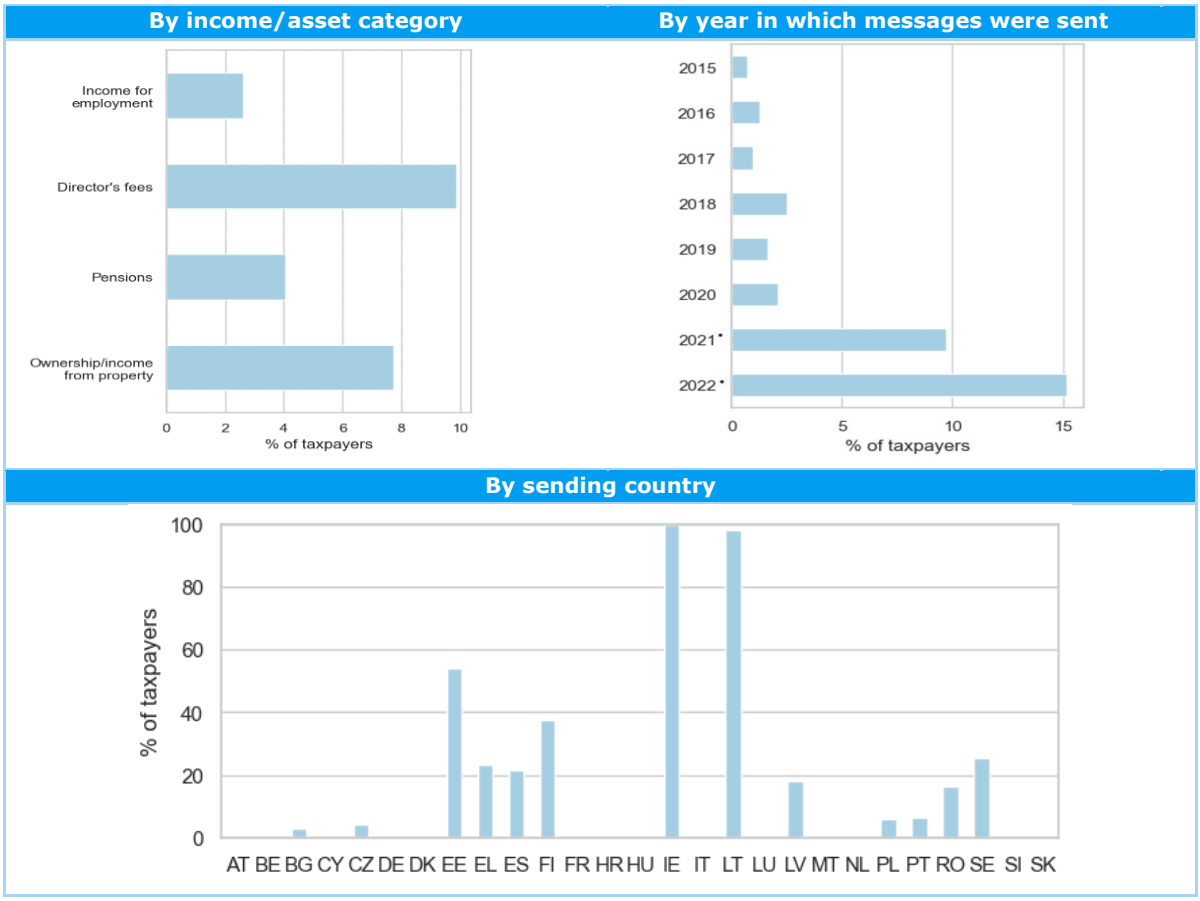
The main aspect analysed as regards the **quality** of information exchanged under DAC1 concerns the extent to which DAC1 information was associated with specific identification elements, including the name – either structured or in a free format, date of birth, address, social security number, and Taxpayer Identification Number (TIN) in the receiving or other Member States. In principle, the inclusion of the TIN of the receiving Member State is one of the most important pieces of information, since it helps Member States to univocally identify taxpayers and to match the information received to their own tax records. According to DAC1 AEOI statistics, **the TIN of the receiving Member State was available for only around 2% of taxpayers** on which messages were exchanged between 2018 and 2020. Evidence from the Yearly Assessments points in the same

[195] The analysis of non-missing value is based on the share of (non-identifying) data (as a share of recipients, payers, taxpayers, or other information to which each dataset refers) that was filled in, rather than left blank, in the datasets for each category of income under DAC1. While the main analysis predominantly draws on the more aggregated data provided in the IES-100, PENS-100, LIPS-100, and IPS-100, the analysis of the completeness rate examined completes across all datasets for which information was available to provide insights of how much detailed information has been exchanged. Two points are worth noting. First, Some MS provided synonyms for missing values such as *unknown.* To ensure the analysis is robust these values have been recoded as missing. Other values such as *not applicable* or *other unspecified* were deemed to provide some information and so were not recoded. Second, detailed data is not provided for all messages; therefore, the analysis of non-missing data naturally is only able to consider messages for which detailed data is available. The analysis of non-missing data included in Table 6 could, in principle, slightly overestimate the completeness of DAC1 exchanges. However, the share of messages for which information is included in the detailed datasets is very high (92% to 100%) for all categories except for immovable property (18%). In fact, the detailed IP datasets by design only capture a subset of the total messages, reflecting the fact that overall statistics relate to both transactions and income, while the detailed datasets break down information into transactions, incomes, loans and loan collateral. The lower figure is therefore per se of little meaning and is scarcely comparable to the other categories.

direction, with only a small share of DAC1 records associated with a TIN issued by the receiving country,[196] with some Member States reporting each year via annual bilateral feedbacks, with the list of non-identified persons. All in all, this is in line with findings from the previous Theoretically, the feedback could be used to improve TIN availability, by requiring the receiving Member State to inform the sending Member State whenever the TIN is successfully identified through 'fuzzy' matching (i.e. using a combination of the other identification elements – see more on this in Section 6.3.2). However, in practice, this does not seem to occur on a large scale or systematically.

The analysis of the statistics available to date suggests TIN availability may have somewhat improved for messages sent in 2021, to around 10%, and further still to around 15% in 2022, although data is not yet complete and robust conclusions can therefore not be drawn. Availability of TIN of the receiving Member States varies greatly by income/asset category and originating Member States (see Figure 67). Availability was higher for director's fees (just under 10%) and ownership/income from property (8%), and lower for income for employment (2%) and pensions (4%). As in the previous study, availability was found to be high for a small a number of sending Member States who provided TINs for close to 100% of taxpayers, while many other Member States provided TINs for no or only a small proportion of taxpayers on which they exchanged information.

Figure 67. Availability of TIN of receiving Member State (2018 – 2022, % of taxpayers)



Note: (*) Data for 2021 and 2022 is not yet complete, which may impact the statistics for those years.
Source: Authors' elaboration of AEOI Statistics

[196] The Yearly Assessment requests Member States to report the share of the information received from each Member State which is associated with a valid TIN, Member State by Member State. The data provided in the Yearly Assessments is not fully comparable with the quantitative analysis, since not all countries provide these figures, and data are not weighted based on the countries' participation in the exchanges (i.e. value and number of tax information exchanged).

The TIN of the receiving Member State is the most straightforward identifiers for matching the information received to local tax records. However other tax codes (such as social security or VAT numbers) or personal data (such as name and address in the receiving country) can be used where TIN information is not available, or in combination with it. In a nutshell, the TIN provides a univocal and direct form of identification; however, the combination of multiple data, when automatically processed, can also lead to a univocal identification, albeit the process may require additional non-automated checks and is more prone to errors.

Figure 68 compares, for each income/asset category, the availability of selected identification elements.[197] The analysis suggests that, while the TIN of the receiving Member State is seldom available, **other identification elements are generally included**. In particular, both the name and the address are available for most taxpayers, generally using structured formats (which simplify processing). Furthermore, a significant share of taxpayers was also associated with one or more TIN issued by Member States other than the receiving one (including the sending Member State). Finally, information on birth dates was also available for a large share of taxpayers.

Figure 68. Inclusion of selected identifiers (2018 – 2022)

TIN information

	Income for employment	Director's fees	Pensions	Ownership/income from property
Taxpayer Identification Number (receiving MS)	3 %	10 %	4 %	8 %
Taxpayer Identification Number (other MS)	80 %	38 %	57 %	78 %
TIN from receiving or other MS	82 %	42 %	58 %	78 %

Identifying personal characteristics

	Income for employment	Director's fees	Pensions	Ownership/income from property
Name free text	10 %	6 %	15 %	49 %
Name structured	94 %	92 %	91 %	64 %
Name free or structured text	100 %	98 %	100 %	100 %
Birth date	99 %	92 %	100 %	84 %
Address free text	24 %	12 %	51 %	61 %
Address structured text	86 %	91 %	53 %	62 %
Address free or structured text	100 %	100 %	100 %	100 %

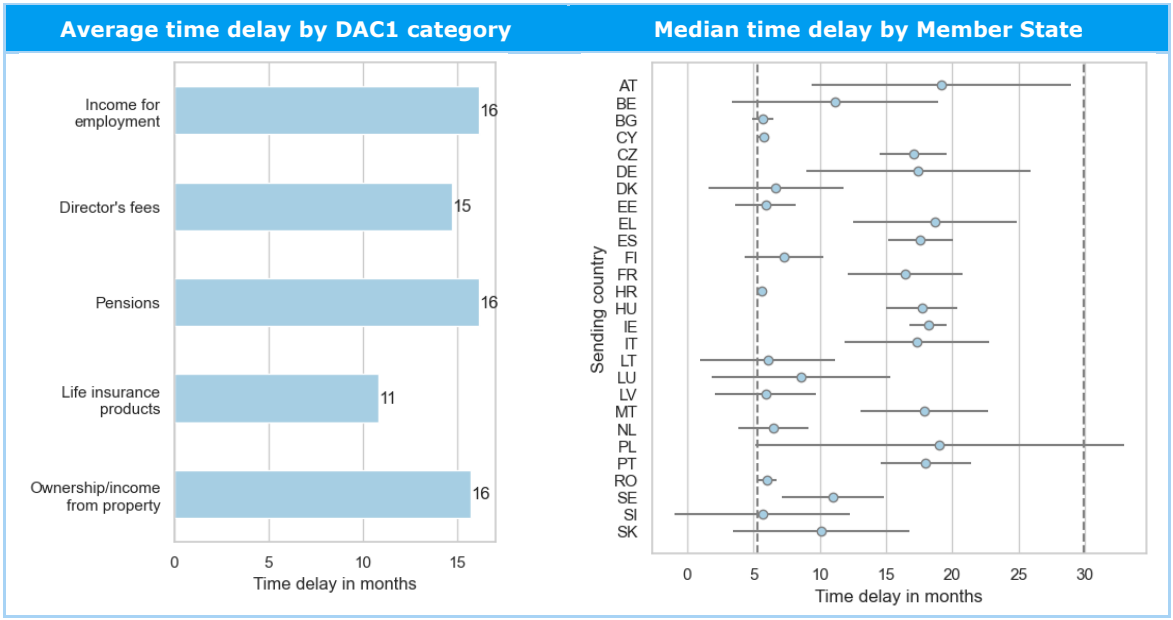
Note: Data for messages sent in 2022 and to a lesser extent 2021 is incomplete.
Source: Authors' elaboration of AEOI Statistics

[197] A complete overview is included in Volume 2.

Finally, as regards the **timing** of DAC1 AEOI exchanges, **information is sent on average 13 months after the end of the tax year to which it refers**. This is in line with the disposition of the Directive, requiring Member States to communicate the information within six months following the end of the tax year during which the information becomes available. The lag was shortest for messages related to life insurance products (11 months).

Most Member States can be divided into two broad groups: 12 sending information, on average, less than 9 months after tax year end[198] accounting for almost 10 million taxpayers, and 13 taking slightly longer to send information, on average between 15 to 20 months[199] accounting for nearly 33 million taxpayers. Belgium, Sweden, and Slovakia were found to be in between these groups with an average delay of around 10-12 months. (Figure 69)

Figure 69. Timeliness of exchange of information under DAC1 (2018 – 2021)



Note: Time delay was calculated as the average (median) difference, in months, between the date a message was sent by tax authorities and the tax year it refers to. Correction messages were not considered for this exercise. The two dotted lines indicate the 5% and 95% quantiles, i.e., the time delay was between the two dotted lines for 90% of messages exchanged.
Source: Authors' elaboration of AEOI Statistics

DAC2 AEOI

DAC2 information tends to be slightly less detailed and complete than DAC1. Table 7 below includes the results of the analysis.[200] The data suggest that basic information (e.g. regarding the account holders or the financial institution) is generally available. On the other hand, more granular information on e.g. the account number or whether an account was closed or is dormant, as well as detailed statistics relating to the controlling person of legal entities account holders, was provided less often. Detailed information on the controlling person was only provided for around one-fifth of

[198] Slovenia, Romania, Luxembourg, Latvia, Lithuania, Croatia, Finland, Estonia, Denmark, Cyprus, Bulgaria, and the Netherlands.

[199] Portugal, Poland, Malta, Italy, Ireland, Hungary, United Kingdom, France, Spain, Greece, Germany, Czechia, and Austria.

[200] As for DAC1, the completeness of the statistics is used as a proxy for the completeness of records.

messages on which information was exchanged,[201] with substantial differences across sending Member States (with share of messages captured in the 'controlling person detail' datasets ranging from 8% to 100%). The completeness does not seem to have changed significantly over time, with only a marginal improvement in 2021.

Table 7. Completeness of information exchanged under DAC2 (tax years 2017 – 2021*)

Dataset	Share of messages captured in the detailed datasets	Share of granular information available (% of accounts, institutions or records
Overall statistics (DAC2-100)	-	90%
Financial institutions and Account statistics (DAC2-200)	-	88%
Unique Account statistics (DAC2-300)	-	97%
Account details statistics (DAC2-400)	85%	71%
Controlling Person details statistics (DAC2-500)	21%	68%

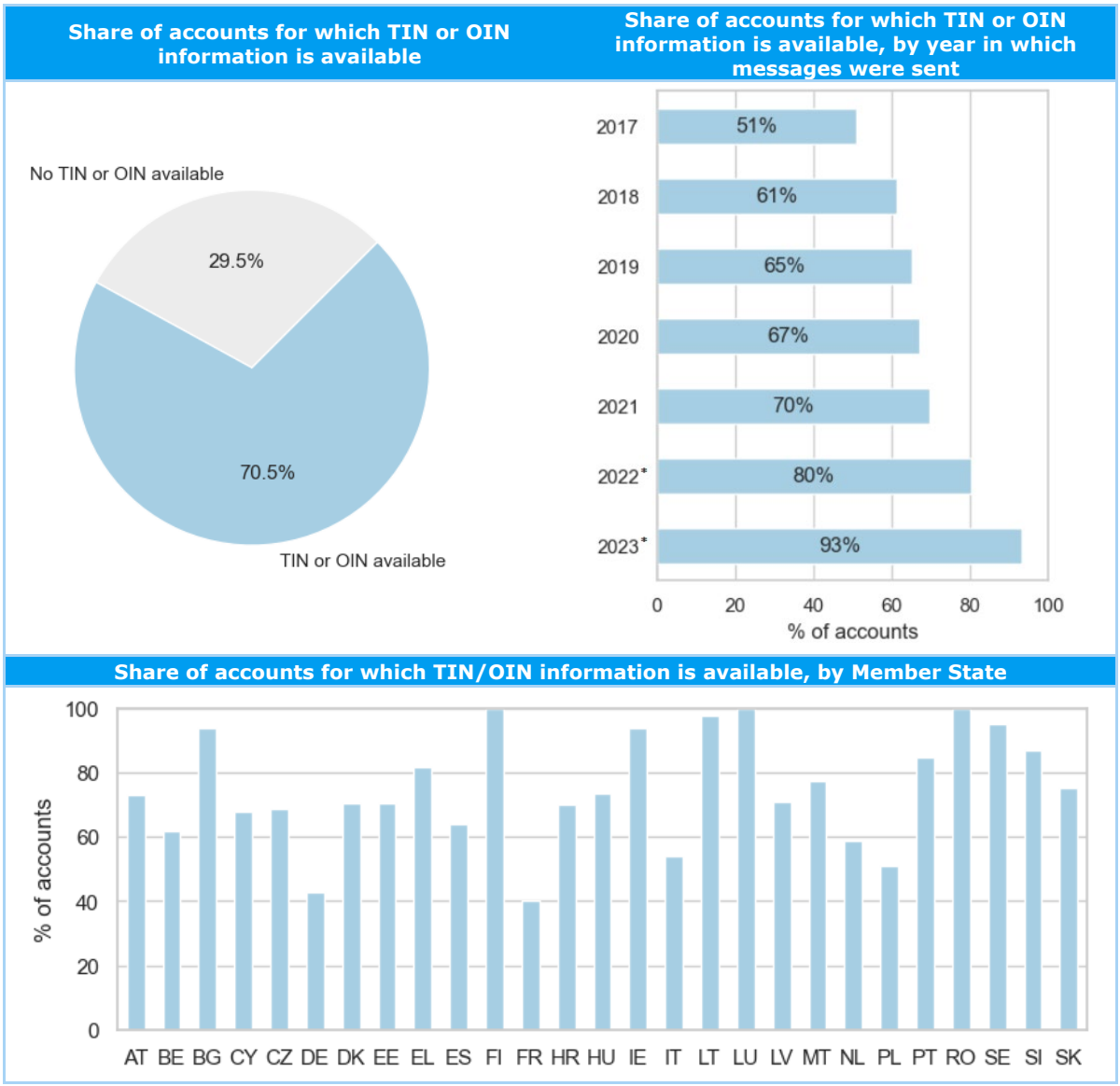
Note: The analysis shows: (i) the share of messages (included in the general dataset – DAC2-100), for which more detailed information was also provided in a particular dataset and (ii) for those messages where information was provided, the share of information that was non-missing (i.e., not left blank and not including 'unknown'). Shares of information provided were calculated as a % of accounts, institutions or records, depending on the information each dataset referred to. As identifying information for DAC2 is much more complete than for DAC1, completeness excluding identifying elements is not reported separately for DAC2. (*) Not all datasets provide the message year, as such the analysis of completeness used the tax year to which messages refer instead.
Source: Authors' elaboration of AEOI Statistics

Under DAC2, financial institutions are required to share the TIN of the account holder(s), although for pre-existing accounts this must be collected through a reasonable effort and is not mandatory. In this respect, the quality of the exchanges under DAC2 is significantly higher than DAC1: **over 70% of the accounts were associated with a TIN or Organisation Identification Number (OIN)**, and the TIN/OIN inclusion increased over the years, from 51% in 2017 and 61% in 2018 to around 70% between 2020 and 2021[202] . As in the case of DAC1, the availability information relating to the TIN / OIN issued by the receiving Member State varies significantly across Member States, although variations are less marked. No less than seven Member States were able to share the TIN/OIN for 90% or more of the accounts, while only two Member States (Germany and France, two of the top senders of DAC2 information) were able to associate TIN/OIN information only to less than half of the accounts.

[201] The DAC2-500, which covers detailed statistics on controlling persons, is seemingly relevant only for non-natural account holders. While the completeness analysis cannot be separated by type of account holder, non-natural persons represent about one fifth of all account holders, roughly corresponding to the share of messages captured in the detailed dataset. This would suggest a good coverage.

[202] Data for 2022 are still incomplete but suggest a further increase

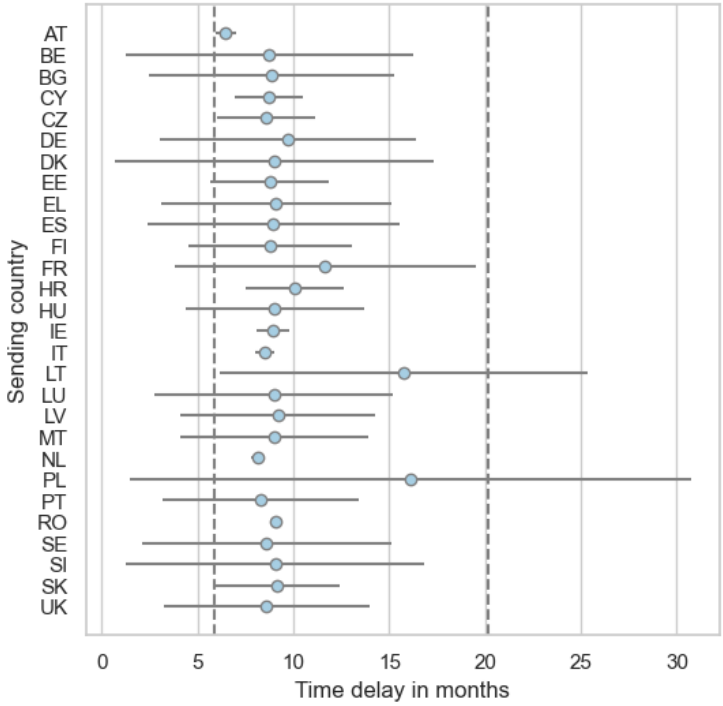
Figure 70. Availability of TIN/OIN (2018 – 2022, % of accounts)



Note: (*) Data for 2022 and 2023 is not yet complete, which may impact the statistics for those years. Data for 2023 was only available for Lithuania and so was excluded from this analysis.
Source: Authors' elaboration of AEOI Statistics

In line with the Directive requirement, **the average time between tax-year end and messages being exchanged was 7 months** (with more than 75% of messages being exchanged in less than 9 months), lower than the average lag in the exchange of information under DAC1. Variations across Member States are also much less pronounced than for DAC1.

Figure 71. Timeliness of exchange of information under DAC2, across the DAC2 period (2018-2021)



Note: Time delay was calculated as the average (median) difference, in months, between the date a message was sent by tax authorities and the tax year it refers to. Correction messages were not considered for this exercise. The two dotted lines indicate the 5% and 95% quantiles, i.e., the time delay was between the two dotted lines for 90% of messages exchanged.
Source: Authors' elaboration of AEOI Statistics

Box 9. Follow up to recommendations on the quality and completeness of DAC1 and DAC2 data

Based on the analysis provided so far on the quality and completeness of the information exchanged under DAC1 and DAC2 AEOI, the following elements emerge:

- **The inclusion of the TIN has not improved since the last evaluation, while it has increased for DAC2.** The inclusion of the TIN in DAC1 information remains a rare occurrence (around 2% of taxpayers), suggesting that this seldom happens in practice. The analysis of the statistics of 2021 and 2022 exchanges seem to suggest an improvement (10-15%), although data are still too incomplete do draw firm conclusions. As regards DAC2, over 70% of the accounts were associated with a TIN or OIN in 2020 and 2021, against 50-60% in 2017-2018.
- **The number of categories reported under DAC1 has changed only marginally**, with only three countries increasing the number of income categories available (see Section 4.1).
- **DAC1 and DAC2 display a relatively high degree of completeness**. DAC 1 information appears to capture a significant share of income earned in other EU countries, and for both types of AEOI information typically include detailed and granular data.
- As regards the procedures for the audit of DAC2 reporting institutions, as of 2022, Spain is the only country that reports not having specific ones in place, although new procedures were adopted recently.

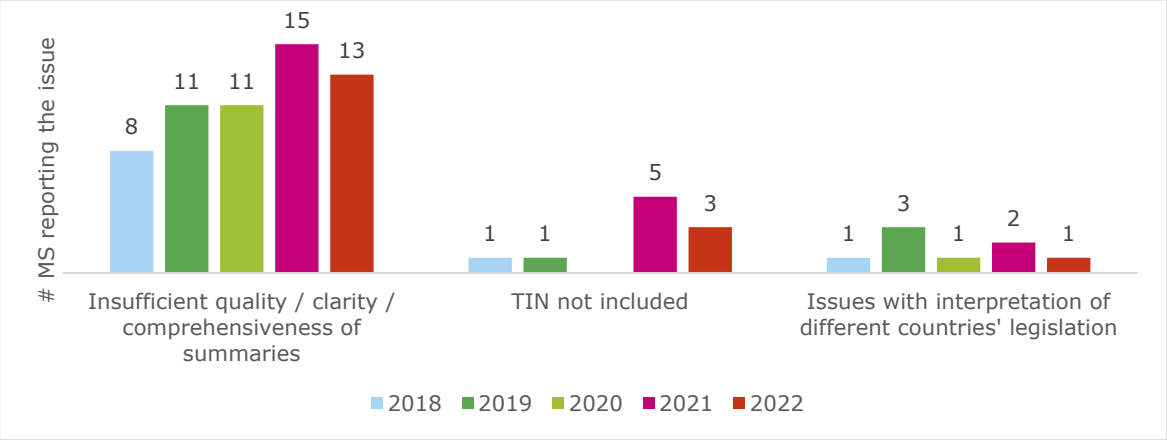
DAC3 AEOI

The main aspect determining the quality of DAC3 exchanges is the content of the summary uploaded on the dedicated central directory. The feedback provided both in the Yearly Assessments and during the targeted consultation indicates that **tax authorities at times find the summaries of rulings insufficiently detailed** to perform risk-assessment activities. As shown in Figure 72 below, in the most recent years, around half of the Member States reported that the summaries are of inadequate quality, insufficiently clear or incomplete. As discussed in Section 4.3 above, this is partly related to the architecture of DAC3 AEOI, which, according to several tax authorities, does not allow to exchange all the information needed by the receiving Member State. Some of the tax authorities interviewed have suggested that the issue is somewhat unavoidable, since the only way

to have all the needed elements is to access the whole ruling, which can be done by requesting it via EOIR after checking the summary. Nonetheless, in order to be usable, summaries need to include an amount of information which allows receiving tax authorities to check the potential relevance of the ruling and conduct some basic assessments. This is, however, not always the case.

In fact, **summaries from different Member States show a varying level of detail, and hence quality and usability** (‘*the level of detail and of adequacy of received information varies greatly from country to country*’). Reportedly, some countries provide excessively succinct summaries, insufficient to gain even a broad understanding of the content of a ruling. This suggests that there is for improvement in the quality of the summaries without the need to introduce substantial changes in DAC3 formats, e.g. by introducing a minimum length for the summaries, standard mandatory fields, or by requiring receiving Member States to provide a systematic feedback on the quality of the data. In particular, several tax authorities lamented the **frequent absence of the TIN of the taxpayers involved** in the ruling, which complicate the identification of the concerned entities, and thus suggest making the inclusion of the TIN mandatory. Finally, some tax authorities reported difficulties in interpreting other countries’ legislative requirements, and would therefore find it useful for the originating Member State to include a reference to the relevant legal provision.

Figure 72. Issues reported by Member States regarding the usability of DAC3 AEOI



Source: Authors’ elaboration of Yearly Assessment questionnaires

DAC4 AEOI

The two main aspects determining the completeness and the quality of DAC4 exchanges concern, respectively:

- the extent to which all the expected CbCRs are collected by tax authorities from their reporting entities and exchanged; and,
- the data included in the reports.

As regards the former aspect, **not all Member States are able to ensure that all expected CbCRs are collected**. Member States are able to estimate the number of reports expected by locally-established parent entities, as well as the number of CbCRs to be received from other EU countries concerning local entities of MNE groups. To this purpose, the Directive[203] requires Member States to put in place mechanisms to request that each constituent entities of an MNE group notify the tax authority either that they are the reporting entity, or the identity the reporting entity and its tax residence. However, in practice, not all Member States are able to estimate the number of CbCRs expected.

[203] DAC Articles 3 and 4, Section II, Annex III.

The 2021 ECA Report had already highlighted the issue, finding that '*tax authorities did insufficient checks whether all the entities that should have reported in a given year had actually done so*'.[204] According to the Yearly Assessments, as of 2022, **one third of Member States[205] had not adopted instruments to assess whether all expected CBCR's were received**, with two (Bulgaria and Cyprus) not foreseeing any change in this respect, mostly due to lack of internal resources. The problem was repeatedly discussed during expert groups,[206] especially with regards to Member States' inability to complete the statistics regarding outstanding reports (five or six in 2020 and 2021, declined to two or three in the last iteration). Furthermore, in several cases, these statistics appear to be based on the comparison with the number of CbCRs collected or received in previous years, rather than on information collected from local parent and constituent entities.

As for data quality, the **CbCRs data appear to be affected by a number of inconsistencies and gaps** which impact its usability and usefulness. This issue has been repeatedly raised by tax authorities during the expert groups and the Yearly Assessment. Some examples include:

- Missing information (particularly regarding the TIN);
- Missing or unclear indication about or inconsistent use of currency;
- Missing or unclear indication of the start and end date of the reporting period;
- Notation mistakes (e.g. data included as thousands or millions instead of units; inconsistent use of negative sign);
- Clerical mistakes (e.g. negative number of employees or share of capital).

To address this issue, several Member States highlighted the need for an automatic validation of data (e.g. rejecting CbCRs if certain information is missing or if the formats do not correspond). It is however worth noting that modifications on the CbCR format must be channelled through an OECD format update.

DAC6 AEOI

The analysis of the quality and completeness of DAC6 AEOI exchanges is limited by the recent implementation of this provision. A number of Member States reported not to have started analysing DAC6 data, and they are therefore not in a position to comment on their quality. Nonetheless, the preliminary comments provided suggests that **DAC6 exchanges are seemingly also affected by quality issues** similar to those that affect DAC3 and DAC4 AEOI.

Figure 73 below provides an overview of the comments provided by Member States in the Yearly Assessments. The most reported issue with DAC6 is, by large, the **insufficient or inconsistent quality of the summaries describing the arrangements**. The vast majority of the respondents report that the summaries are not detailed enough to be used for risk assessment, sometimes because they lack important details ('*Summaries are in some cases not good enough to identify the actual transaction/arrangement*'; '*The summaries are too shallow and don't give enough overview to understand if there is a tax issue or what it is*'). Other mention that, their quality is extremely diverse and unpredictable ('*The quality of the disclosure description free text varies from a disclosure to another. As such, some disclosing party would describe in full the structure / transaction while others remain very light on the details.*'). Other issues mentioned by tax authorities, albeit much less frequently, include difficulties with the interpretation of national legislation, the inconsistent application of the Main Benefit Test and of the hallmarks, or the presence of a number of empty or wrongly filled fields[207]. The content of DAC6 summaries has been

[204] ECA Report, p. 38.

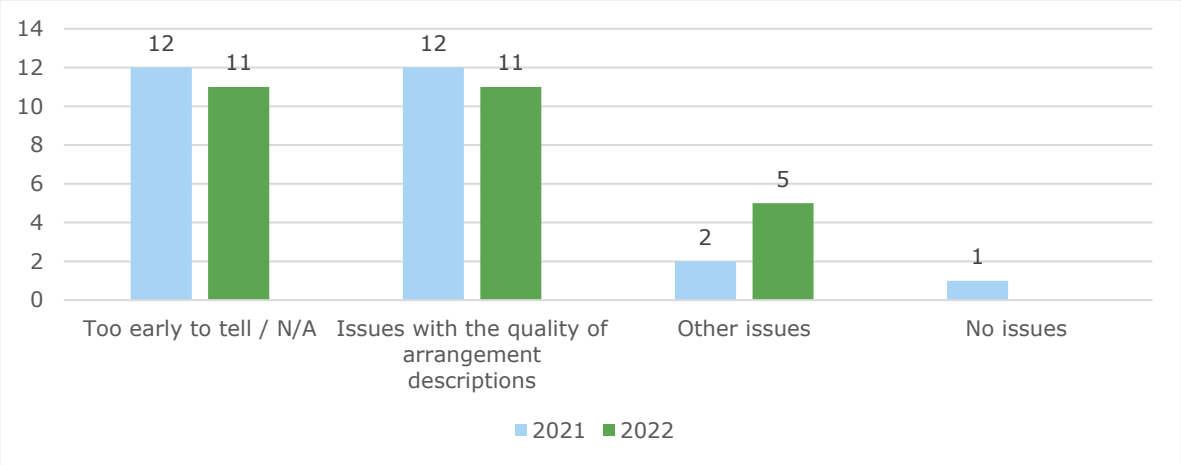
[205] Bulgaria, Cyprus, Czech Republic, Estonia, France, Latvia, Malta, Slovakia and Romania.

[206] E.g. During SG AEOI M023 of 4 February 2021.

[207] For instance, the name of the originating country input instead of the language, which does not allow an automatic processing; inconsistent use of the Arrangement unique identifier

addressed by DAC8 amendment which further details the information that shall be included, namely, a reference to the name by which the reported arrangement(s) is commonly known together with a general description thereof and any other information useful to the competent authority for the assessment of a potential risk deriving from the arrangement(s)[208].

Figure 73. Issues reported by Member States regarding the usability of DAC6 AEOI

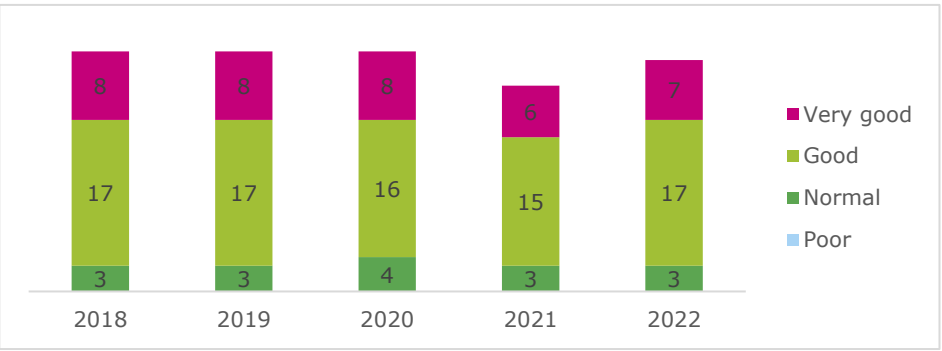


Source: Authors' elaboration of Yearly Assessment Questionnaires

EOIR

According to the feedback provided by Member States, **the replies received to EOIR requests are of good or very good quality**, with no country assessing the replies received as poor. Member States report that '*almost all Member States [provide] complete and correct replies*' and that '*most of the replies sent [provided] exhausting significant information and the majority of [our] questions […] were responded [to] sufficiently*.'[209]

Figure 74. Member States' feedback on the quality of the replies received



Source: Authors' elaboration on the Questionnaires on the Functioning of the Directive

Member States are also **generally satisfied with the timeliness of the replies received to EOIR** (see Figure 75). Most Member States consider timeliness as good or very good, and none of them score it as poor. The majority of Member States[210] report that they have experienced instances in which other countries were unable to respect the time limits, in particularly for complicated cases, or when information had to be retrieved by third parties (e.g. financial institutions). However, all Member States concerned agreed that this has caused no disruption on ongoing activities. Finally,

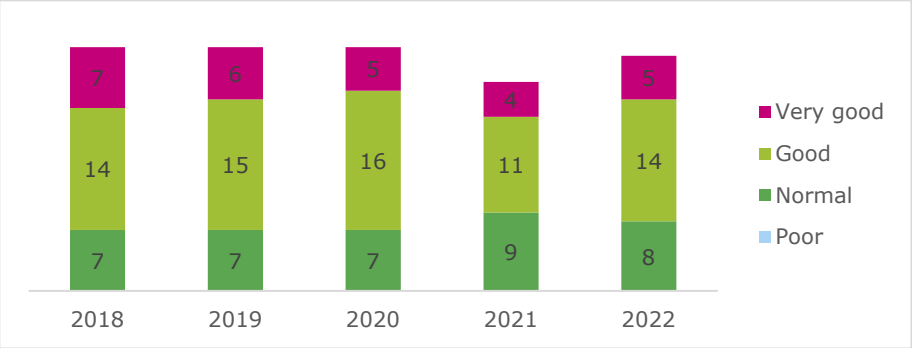
[208] DAC, Article 8ab, § 14 point (c)

[209] Questionnaires on the Functioning of the Directive.

[210] Notably 18 in 2018, 16 in 2019, 19 in 2020 and 2021, and 22 in 2022

only few Member States have agreed bilaterally with other countries on different time limits for receiving replies to their requests.[211]

Figure 75. Member States' feedback on the timeliness of replies



Source: Authors' elaboration on the Questionnaires on the Functioning of the Directive

6.3.2 Use of AEOI data for tax control purposes

Tax authorities receive a wealth of information under the various AEOI provisions. However, if not put to use, AEOI information cannot generate its intended benefits. This Section provides an overview of whether and the extent to which Member States process and use the information received for tax control purposes.

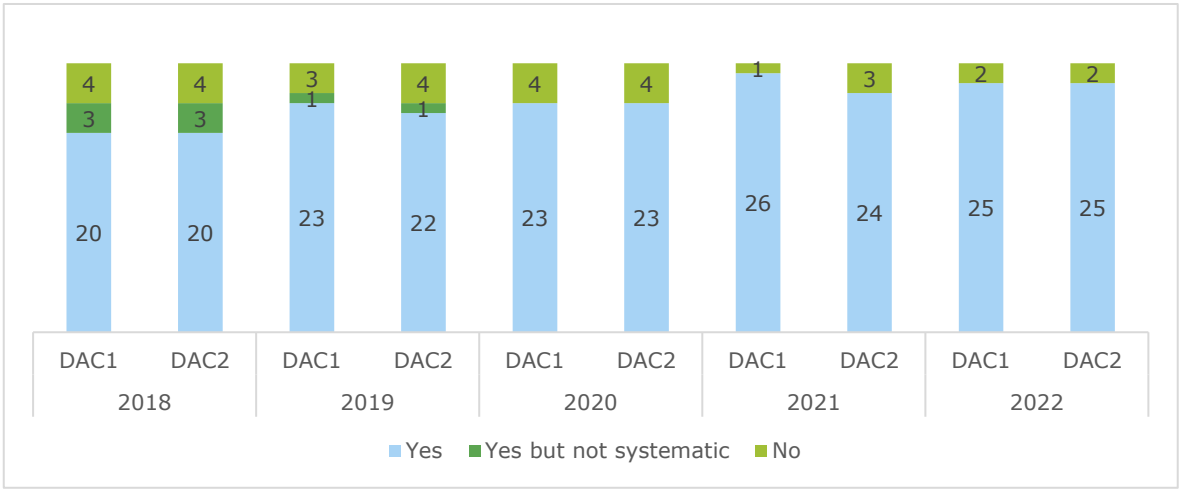
Processing of Information

Compared to the findings of the previous evaluation, **Member States process the information received via AEOI more**. Nearly all Member States process the information received, in the vast majority of cases during the year of reception and working with all data. In the few cases in which an initial selection is made on the files, typically by applying a threshold (e.g. in terms of value), tax authorities still retain 80-90% of the data.

The matching of files with national taxpayer datasets is the main processing approach adopted by tax authorities. **Between 23 and 25 countries systematically match DAC1 and DAC2 data** (Figure 76). The number of Member States routinely matching DAC1 and DAC2 data increased over the years, also compared with the previous evaluation, which found that 20 Member States systematically matched the files. In some cases, a different approach is taken depending on the category of income/assets covered by the files, especially as regards DAC1. For instance, in 2021, Spain reported performing a routine matching of all files received except for LIP, whose data was not processed nor stored in the internal database of the tax authority.

[211] In particular, only two countries, Hungary and Latvia, reported having specific agreements with other countries up to 2020; in 2021, Bulgaria and Romania also reported having agreed on different time limits, however seemingly on a case-by-case basis rather than permanently ('*Due to Covid-19 restrictions and the type of information requested we agreed a few times on other time limits*'). The situation remained unchanged in 2022, except for Hungary, which did not report any specific agreement on different timelines.

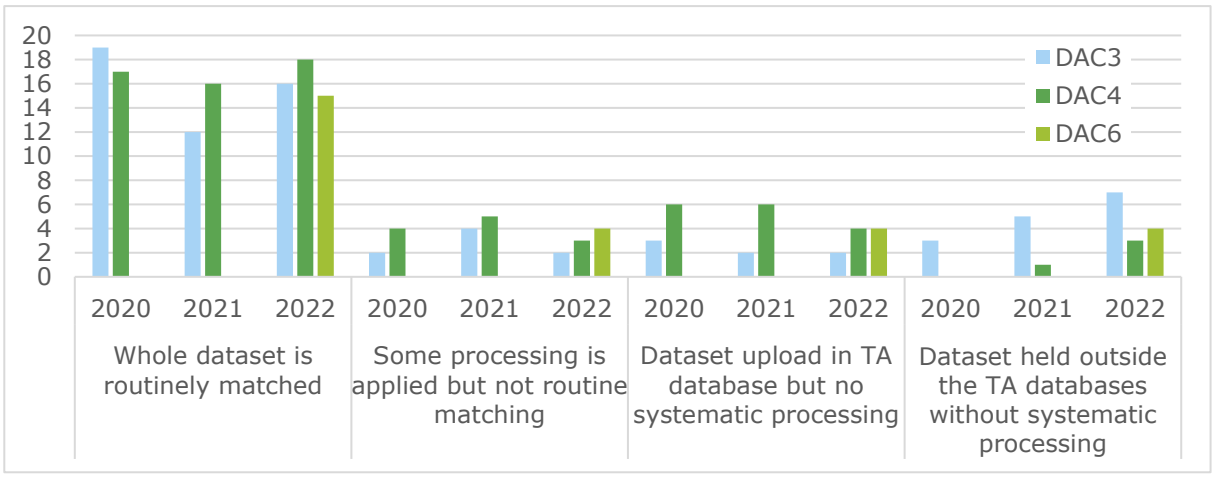
Figure 76. Number of Member States performing matching on the datasets received – DAC1 and DAC2



Source: Authors' elaboration on Yearly Assessments

Most Member States also match DAC3, DAC4 and DAC6 data routinely (e.g. by linking the ATR/APA or the CbCR to the local taxpayer concerned), although less than for DAC1 and DAC2. Overall, about one fourth of the Member States report not having systematically processed DAC4 and DAC6 files; when this is not the case, files are sometimes uploaded in the tax authorities' databases for queries and searching. The approach to DAC3 information appears less systematic, with one third not processing the data received in 2022. In this case, however, data remains available for future use and consultation in the Central Directory, without a need to upload it in internal database. .[212]

Figure 77. Approach to the processing of files – DAC3, DAC4 and DAC6



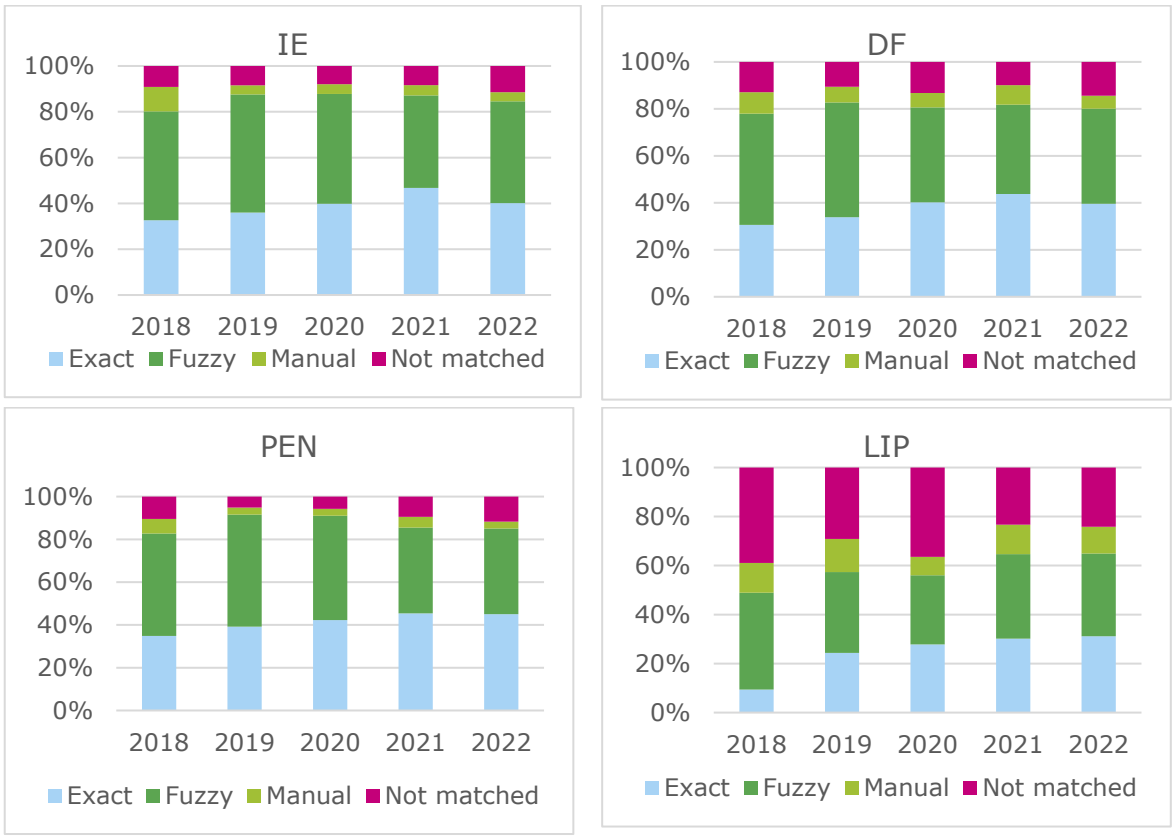
Note: More than one answer possible
Source: Authors' elaboration on Yearly Assessments

[212] It should be noted that the change in format in the Yearly Assessment Questionnaire does not allow for a fully-fledged comparison across the years: for 2018, 2019, and 2020 Member States could decide to report their approach to processing only once, if they believed it was similar across all AEOI, which possibly somewhat inflated the processing of DAC3 and DAC4 files at least in some cases. In 2021, as discussed, the format of the questionnaire changed substantially, but certain questions were not mandatory, which leaves some gaps in the replies. Finally, in 2022, Member States could report that no change had occurred in processing compared to the previous years.

Member States are **able to successfully match a substantial share of the data received** and processed (about 85-90% of data received via DAC1 or 2, except for LIP; see Figure 78 below). While the share of data remaining unmatched has remained broadly stable in the years examined, **Member States' appear to become increasingly good at matching data through automatic processing**, particularly through exact matching. This is also true compared to the findings of the previous evaluation, especially for DAC2, for which the overall matching rate was slightly lower, at 81% on average.

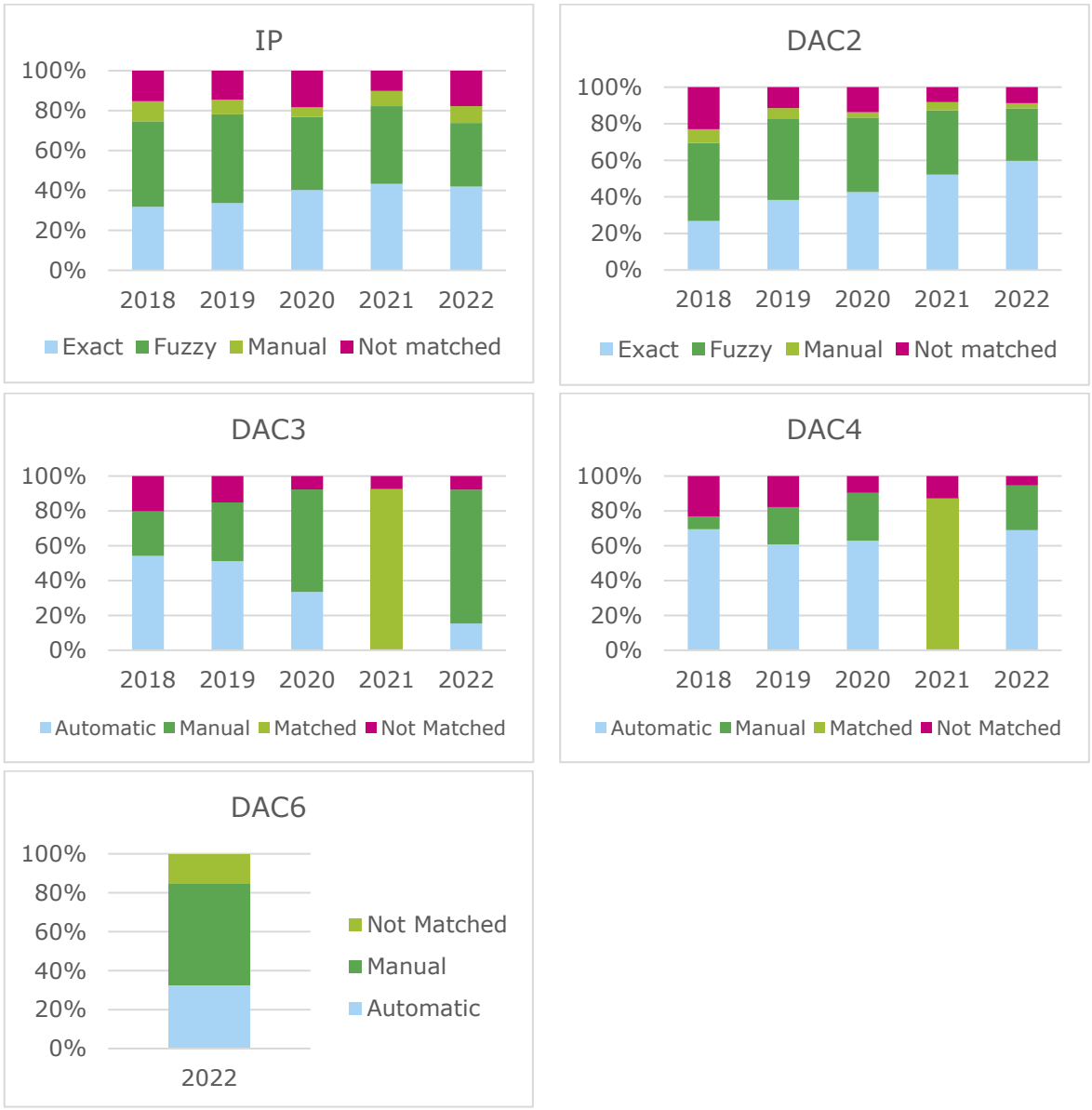
The **successful matching of DAC3 and DAC4 data seems to be increasing over time**, although, for DAC3, automatic matching seems less and less used over the years, seemingly due to a combination of the small number of rulings received ('*Since only limited number of rulings concerns [our country], only manual matching is performed*')[213] and due to the lack of the relevant identifiers ('*the main challenge […] was the lack of essential information such as the TIN issued by [our tax administration], and/or the Name and/or the address of the entities consistently filled*').[214] Finally, in 2022, Member States shared information related to the matching of DAC6 for the first time. Figures suggest that Member States are quite successful in matching the arrangements exchanged under DAC6 with national databases, with an overall average success rate comparable to that of DAC1 and DAC2 data.

Figure 78. Average matching rates by type of matching



[213] Yearly Assessment.

[214] Yearly Assessment.



Note: Exact and fuzzy matching are both automatic matching processes; however, while the former is based on univocal elements (e.g. TIN), fuzzy matching is an approximate matching process.
Source: Authors' elaboration on Yearly Assessments

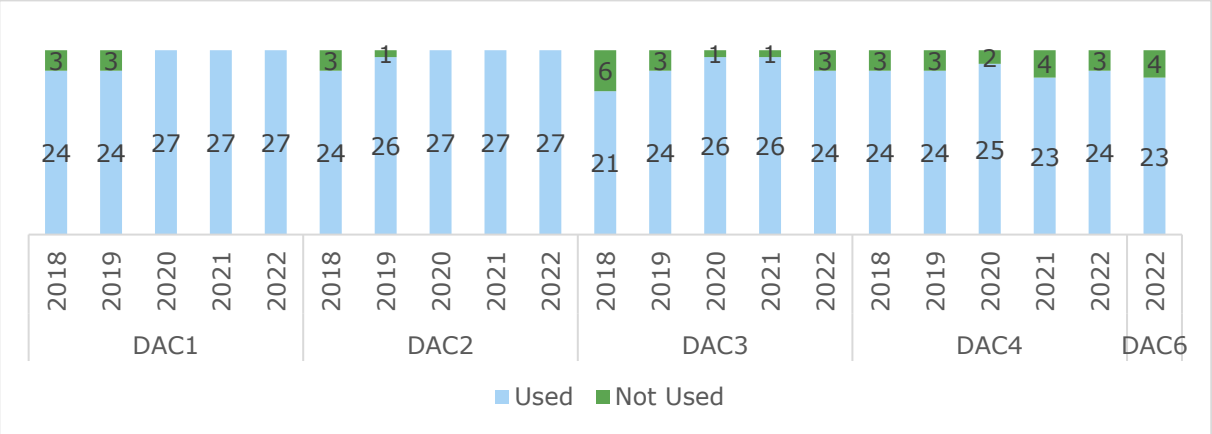
Use of Information for tax control

Reportedly, **Member States are increasingly using the information received via AEOI** (see Figure 79). In most recent years, all tax authorities reported using DAC1 and DAC2 information. This is a substantial increase compared to the findings of the previous evaluation, which found that, as of 2017, 21 countries used at least one of the income categories exchanged under DAC1, and nine countries were not using DAC2 information at all.[215] As regards DAC3 and DAC4, starting from 2019, only a handful of countries have not used the information received, albeit not every year. In this case, the use of this information can change from year to year, based on policy decisions and the implementation of specific projects. In most cases, when DAC3 and DAC4 data is not used – or not used systematically – this is due to resource constraints, especially within smaller tax authorities in 'net sending' states, i.e. countries which are mostly on the originating side of these exchanges. In these instances, the priority was given to data exchange rather than use ('*First of all we need to*

[215] See DAC Evaluation, pp 44-46.

focus on the outgoing information, since it is important for us to ensure that we are sharing accurate information. The second phase will be to look at the incoming information and reflect on how it can be used' – consultation with tax authorities). As emerges from Box 10, even when it is used, DAC3 and DAC4 information appears to not be used systematically. Finally, in the first year of processing and using DAC6 information, only four Member States reported not using the information.

Figure 79. Number of Member States using the information received



Note: For DAC1, Member States are considering as using the information if they use at least one category of income
Source: Authors' elaboration on Yearly Assessments

Tax control-related activities are, by far, the most common uses of AEOI information exchanged under all provisions. More in detail, **risk assessment is the most common use** for all types of AEOI information. According to the feedback provided by tax authorities,[216] AEOI data is used for two types of risk assessment. First, the information received is used in combination with other data points and indicators to identify which taxpayers to be audited. Secondly, the information is also used for general risk assessment, such as group profiling or, particularly for DAC6, to identify areas for policy intervention (more details on DAC3 and DAC4 use for risk assessment and audit is provided in Box 10 below). DAC information, especially DAC2 and, to a slightly lesser extent, DAC1 and DAC4, is also **frequently used for audits**, including both general audits and those regarding specific categories of income and capital. Finally, **DAC1 and DAC2 data are also used for tax assessment**.

Box 10. Use of DAC3 and DAC4 data

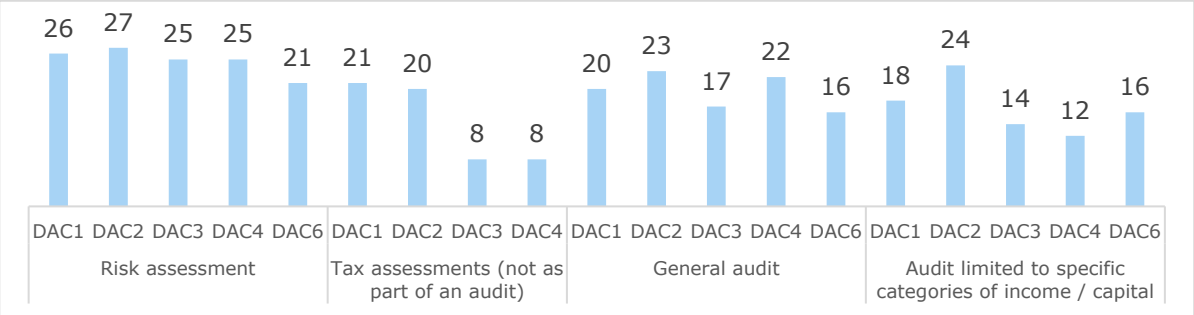
The 2021 and 2022 Yearly Assessments collect information on the extent to which DAC3 and DAC4 information has been used for risk assessment and tax audit purposes. While the majority of Member States are able to provide information on the number of taxpayers affected in 2022, only a minority share information on the number of APAs/ATRs and CbCRs received and used. Many countries refer that a quantitative assessment of the use of DAC3/4 is complex, also because the information retrieved is typically used together with other sources ('*[data is] consolidated with other relevant information […] and, after the joint assessment, the […] company may be proposed for a tax audit. Therefore, [DAC] information is taken into account when taxpayer's risk is assessed, but we do not have a specific […] analysis process.*') Overall, when available, data suggest that **not all rulings and CbCR received are used for tax control purposes in the year of reception**, with **lower shares in 2022** compared to 2021 for both DAC3 and DAC4. More in detail, although they are more numerous in absolute terms, the share of CbCR used is lower than that of rulings.

[216] Feedback provided in the Yearly Assessment. The latest version of the Yearly Assessment (compiled in 2023, referring to 2022) include specific questions related to the use of DAC data for risk assessment purpose regarding DAC3, DAC4, and DAC6). In 2021, some comments related to the use of AEOI data for tax control purposes were provided as 'Return on Experience' – ROX.

	DAC3		DAC4	
	2021	**2022**	**2021**	**2022**
Taxpayers affected by the information received	Tot: 1,905 Average: 112	Tot: 2,546 Average: 116	Tot: 92,823 Average: 7,735	Tot: 82,299 Average: 5,879
Number of APA/ATR or CbCR used	Tot: 850 Average: 61	Tot: 2,004 Average: 118	Tot: 5,416 Average: 74	Tot: 11,104 Average: 925
Number received	Tot: 1,764 Average: 104	Tot: 5,201 Average: 248	Tot: 24,462 Average: 1,631	Tot: 34,371 Average: 2,022
% used	49%	39%	31%	26%

Note: Totals and Averages only refer to the countries sharing information
Source: Authors' elaboration on Yearly Assessment

Figure 80. Use of AEOI for tax control purposes



Note: Used for at least one year. For DAC1, Member States are considering as using the information if they use at least one category of income.
Source: Authors' elaboration on Yearly Assessments

Box 11. Follow up to recommendations on the processing and risk analysis of DAC1 and DAC2 information

ECA and EP provided two key recommendations regarding the processing and use of DAC1 and DAC2 information, concerning (i) the need to perform further analysis of unmatched DAC1 and DAC2 data; and (ii) the introduction of procedures for the systematic risk analysis of information received from other Member States. The following elements can be summarized from the analysis above:

- **Both the number of Member States systematically matching data and the average matching rates have improved** since the 2019 evaluation.
- All Member States used DAC1 and DAC2 information in most recent years, and in particular **all 27 EU countries used DAC2 and 26 used DAC1 information for risk assessment**.

6.3.3 Non-AEOI ACDT and fight against tax fraud

Tax authorities largely agree that the **Directive provides Member States with valuable tools for identifying and fighting tax fraud and evasion**. As discussed in Section 4, Member States have different attitudes towards the uptake and implementation of the various non-AEOI tools, based on national priorities and strategies. Some comments on the strengths of the various provisions are provided here below.

EOIR

The exchange of information on request is possibly the tool most unanimously appreciated by tax authorities, particularly given its cost-effectiveness, and the well-established channels and infrastructures. EOIR is **considered to be a reliable and fast way to obtain the information needed** for tax control purposes (‘*Exchange of information on request is namely well established as an integral part of tax audits*’ – targeted consultations with tax authorities). The few resources

required to send a request for information make it the default or preferred option for many tax authorities. This has particularly been the case during the peak of the COVID period, when in-person activities were not possible.

SEOI

Not a lot of information is available regarding the use of SEOI by receiving Member States. The feedback provided in the Questionnaires on the Functioning of the Directive suggests that **SEOI can trigger tax controls, or become part of risk assessment processes** (*'One example of useful SEOI was the sale of cryptocurrency that was reported as a capital gain, but could not be taxed in the reporting Member States as the individual was not tax resident there, and may possibly generate tax liability in [our Member State]'*[217]). In many cases, however, tax authorities report that they do not collect specific statistics on whether and how SEOI is used, especially since in many countries information would not be used centrally, but in local tax offices.

PAOE

PAOEs, as well as simultaneous controls, are considered by many tax authorities 'advanced' or 'reinforced' administrative cooperation tools, due to the amount of resources required, to be used after having exhausted other domestic and cross-border channels. As regards PAOEs in particular, tax authorities report that they are **particularly effective since they allow to obtain a large amount of information quickly** (*'it's a fast instrument, in 2 or 3 days you can look e.g. at the documentation on board meetings, cross-check this data, and collect all the information needed'; 'large-scale and accurate information can be obtained quickly, the necessary additional questions can be asked and a discussion oriented to a productive result can be created'*[218]). In some cases, the possibility of collecting information on more than one taxpayer in a single visit has also been taken advantage of, to further optimize resources.

Simultaneous controls

Simultaneous controls are highly appreciated by the tax authorities which carried them out ('*Generally, the simultaneous controls were experienced as useful. In almost all cases they helped to gain a more complete picture of the facts and circumstances of the cases*'; '*They have brought us clarity about the international tax positions of the involved taxpayers and has contributed to taxes being collected […] and reduced the number of Mutual Agreement Procedures*[219] *needed to resolve tax disputes*'). Simultaneous controls are particularly appreciated for fostering dialogue among tax authorities and aligning their interests ('*every country would like to see and bring results, so we have to somehow sit at the same table and agree*'; '*although it is not always possible to reach a common agreement within the Simultaneous Control* […] *a lot of information is collected to support following disputes*'[220] -), and to build EU-level tax audit strategies

DAC5

Information on beneficial ownership is regularly requested to other Member States in the contest of administrative cooperation activities. The majority of tax authorities report having sent and/or requested information related to beneficial ownership multiple times per year, although dedicated statistics are not available.

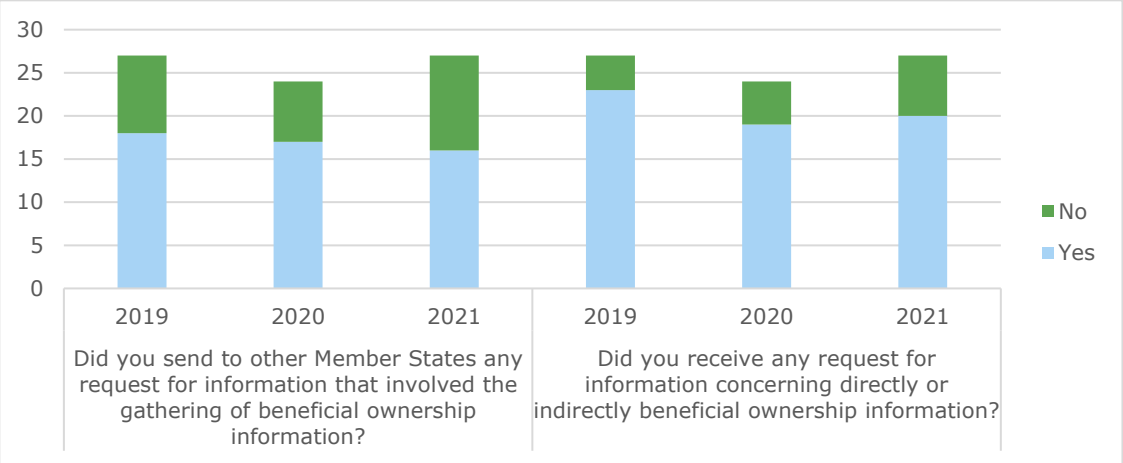
[217] From the Questionnaire on the Functioning of the Directive

[218] Targeted consultations with tax authorities

[219] The Mutual Agreement Procedure is an instrument for the resolution of international tax disputes, that can be used if a taxpayer considers that the actions of one of the Tax Authorities concerned could result in taxation decisions that would conflict with a tax convention or of a tax treaty.

[220] Targeted consultations with tax authorities

Figure 81. Number of Member States sending and requesting information on beneficial ownership



Source: Author's elaboration on Questionnaire on the Functioning of the Directive

The feedback provided by Member States is univocally positive, with **no instances of refusal to provide information related to beneficial ownership** since 2017. A couple of cases of inability to provide information were reported in 2017 and 2018. In these cases, a Member State was unable to respond to requests for information related to beneficial ownership, although in the reason for not replying appears not to be related with the topic of the request, but rather to other factors (e.g. inability to provide information on a deregistered company). Similarly, no difficulties were reported in retrieving the information requested by other Member States.

6.4 Increased spontaneous tax compliance

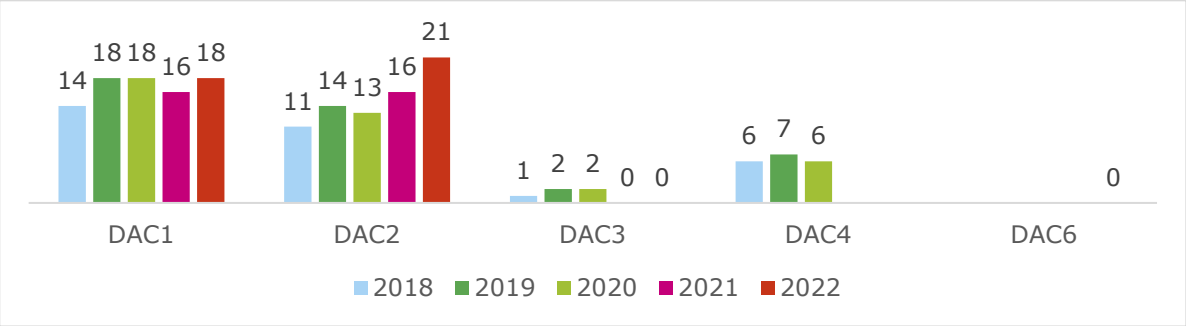
The third specific objective of the Directive relates to the extent to which DAC – and in particularly AEOI provisions – contributed to changing taxpayers' behaviour, increasing spontaneous compliance. This Section investigates the extent to which this outcome has been achieved by, reviewing the utilization of AEOI to encourage spontaneous tax compliance (in Section 6.4.1), and by presenting the available evidence as regards the extent to which a deterrent effect has materialized as a consequence of AEOI (in Section 6.4.2).

6.4.1 Use of AEOI to encourage spontaneous tax compliance

In addition to tax controls, AEOI information can be used by tax authorities to foster compliance, for instance by conducting awareness campaigns regarding the availability of such information, notifying the taxpayers concerned, through voluntary disclosure programmes, or by pre-filling tax returns. **DAC1 and DAC2 information is used for fostering compliance by most Member States** (respectively two thirds and three fourths, see Figure 82), although less commonly than for tax controls (see Section 6.3.2). This type of use is much less common for DAC3, DAC4 and DAC6.[221] This is not surprising, since, for these provisions, a deterrence effect is expected more through the increased transparency, rather than from specific actions to foster compliance.

[221] The figures are not fully comparable due to changes in the format of the Yearly Assessment questionnaire. In particular, the question is identical for all DACs for 2018, 2019, and 2020. Starting from 2021, the Yearly Assessment differentiates the possible use for DAC1 and DAC2, on the one hand, and the other provisions, on the other. In particular, starting from 2021 Member States can select 'voluntary disclosure programmes' for DAC1 and DAC2; while, of the compliance-related purposes, only 'Notification to generate disclosure (within tax return or not)' is available for DAC3 and DAC6 (in 2022); and none of the four is available for DAC4.

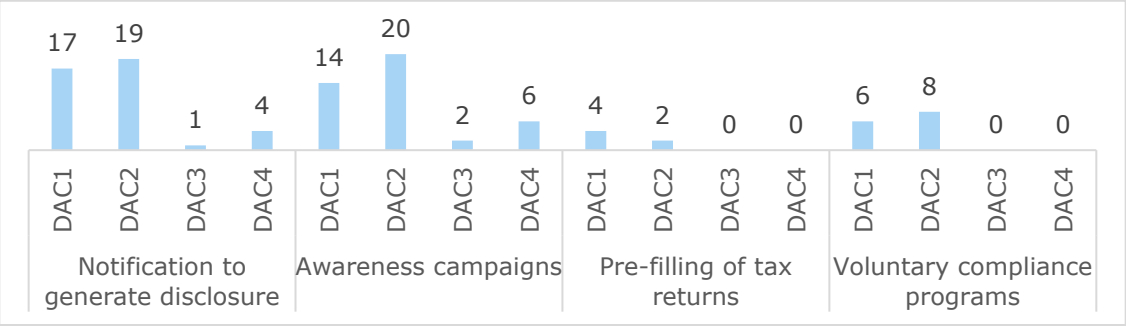
Figure 82. Number of Member States using the information received for tax compliance purposes



Note: Tax compliance purposes include: notification to generate disclosure, awareness campaigns, pre-filling for tax returns, voluntary compliance programmes. Not all purposes are investigated all years, and for DAC4, none of the four are included as options in 2021 and 2022. For DAC1, Member States are considered as using the information if they use at least one category of income.
Source: Authors' elaboration on Yearly Assessments

More in detail, the **notification to spur disclosure is the most common compliance-related use for DAC1 and DAC2 information** (17 and 19 Member States respectively). Typically, tax authorities use AEOI data to inform taxpayers about their obligations to declare a certain income or adjust their tax returns, for instance through telephone contacts or nudge letters. In other cases, the notification is provided by specific reminders appearing when filing out the tax returns (*'when a taxpayer opens his online tax return, a pop-up is displayed to indicate the presence in the previous year of international income known to the tax authorities'*[222]). **DAC2 is very frequently used to carry out awareness campaigns** (20 Member States), a use also reported by 14 Member States for DAC1 (*'There have been public announcements of the introduction of DAC2/CRS'*[223]; *'we run media campaigns via our own webpage and with the help of the media when the need for a countrywide message appears, for instance close to the deadline for paying income taxes.'*[224]). Six to eight Member States (for DAC1 and DAC2 respectively) reported using the information received for voluntary compliance programmes. Finally, **pre-filling of tax returns appears to be only a marginal use of DAC1 and DAC2 information**. This is mostly due to the fact that the timing of DAC1 and DAC2 exchanges is hardly compatible with this use, since information is typically received after the deadline for submitting tax returns.

Figure 83. Use of AEOI for tax compliance purposes



Note: Used for at least one year. For DAC1, Member States are considering as using the information if they use at least one category of income.
Source: Authors' elaboration on Yearly Assessments

[222] Targeted consultation

[223] Yearly Assessments

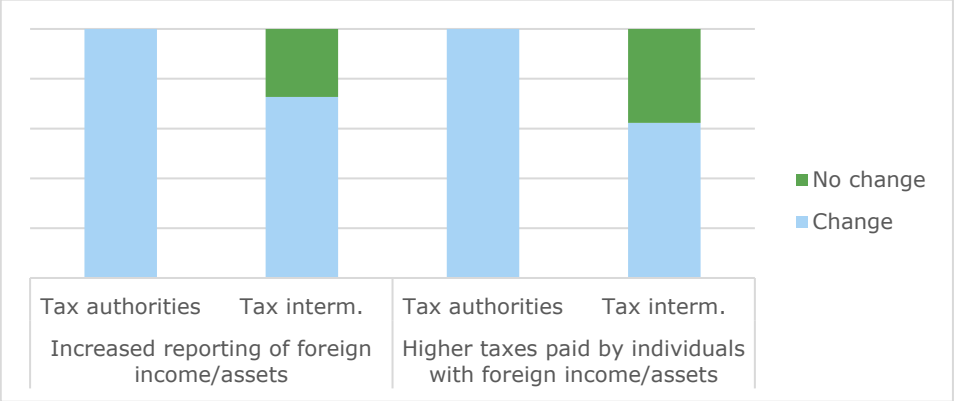
[224] Targeted consultation

6.4.2 Evidence of deterrent effect of AEOI

The feedback collected from public authorities and private stakeholders suggests that **DAC resulted in a deterrent effect on taxpayers, although it cannot be quantified**. In particular, tax authorities believe that DAC exerts a deterrent effect on taxpayers to a high or very high extent, especially because of AEOI. The **evidence reported by Member States is largely qualitative**, and often generic (*'with the automatic exchange of information, more taxpayers are encouraged to declare income earned abroad and to reduce tax planning schemes'*[225]; *'in our view, DAC […] contributes to the deterrent effect […] but we can't provide any particular evidence or data on [it].'*[226]).

In line with the above-mentioned generic nature of the feedback, this positive assessment, however, does not always mirror the feedback collected on specific behaviours. Figure 84 below show their feedback regarding whether or not they perceived a change in taxpayers' behaviours. In particular, the feedback was rather positive regarding the **increase in the reporting of foreign income and assets by individuals, and the taxes paid by individuals earning income or holding assets in other EU countries**, with all tax authorities, and most intermediaries, reporting a positive change in this respect. DAC2 was mentioned as the provision with the strongest effect on spontaneous tax compliance (see Box 12 below).

Figure 84. Stakeholders' feedback on change in behaviour of individuals



Source: Targeted consultations

Box 12. Tax Rulings and Deterrent Effect

DAC2/CRS was often mentioned by tax authorities as the DAC provision exerting the strongest deterrent effect, particularly in terms of increased reporting. In a couple of cases, countries reported the outcome of voluntary disclosure programmes, for instance including the use of nudge letters based on DAC2 exchanges, resulting in positive outcomes *('Almost half of letters received a positive reaction - a very high figure compared to other similar initiatives').* In another case, a country reported obtaining satisfactory results in terms of encouraging tax compliance by pre-filling tax returns with DAC2 (as well as DAC1) information (*'we do not fill-in the amount, as we are often not confident enough with the quality of data, but we signal that we are aware of the presence of a foreign tax account. This usually helps with compliance.'*[227]).

Tax authorities underline that, while they are unable to provide precise estimates – and especially to disaggregate the contribution of DAC from that of other concurring factors, they have witnessed tangible positive results. One country reported in 2021 that *'the introduction of DAC2/CRS reporting along with the change in legislation proved to be a significant incentive for taxpayers to voluntarily disclose their undeclared offshore*

[225] Yearly Assessments

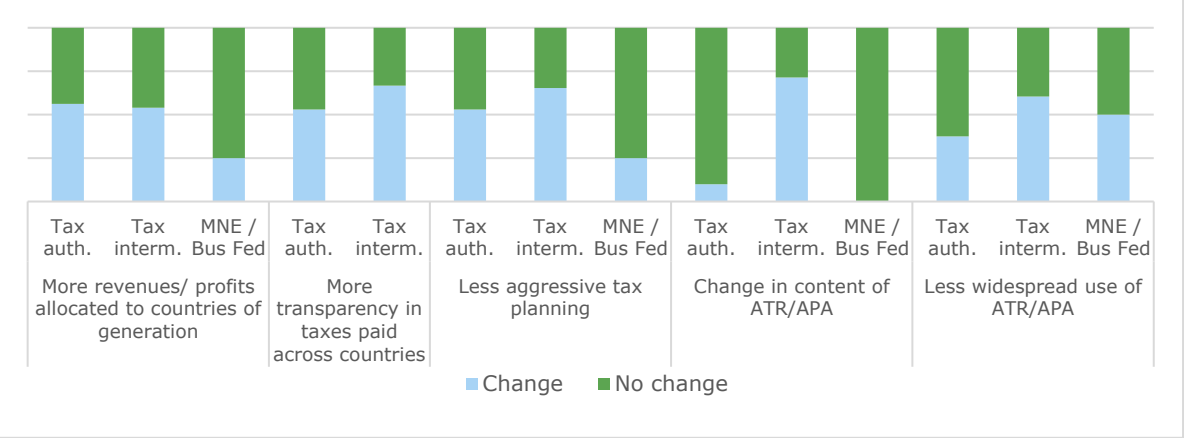
[226] Targeted consultations

[227] *Ibidem*

income and assets',[228] resulting in over 3,000 cases and substantial tax yields. In other cases, tax authorities have noticed a significant increase in the number of foreign accounts in the tax declarations, which cannot credibly be solely attributed to market dynamics ('*In 2019 we had some 450,000 declarations of foreign accounts, now we have around 1.4 million. There are some natural reasons, but we believe it is also because taxpayers know we exchange information.*'[229]). It is also worth noting that the positive effect on the disclosure of foreign accounts is typically permanent ('*Several taxpayers decided to comply also for following fiscal years.*'[230]).

Compared to individuals, **the deterrent effect on corporations is perceived by stakeholders to be not (or not yet) as significant** (see Figure 85 below). In fact, while only a minority of both tax authorities and intermediaries[231] reported no change at all in the behaviour of corporate taxpayers, when specific aspects are investigated, the share of respondents highlighting a change in the behaviour of corporations was relatively small. Many tax authorities (at least one third for each aspect investigated) found difficulties in identifying whether a certain change had occurred, and whether it concerned only few or most of the relevant taxpayers. Among those able to answer on this aspect, **few tax authorities report having perceived a change in the behaviour of corporations**, and significantly less than for individual taxpayers. Between one third and around half of tax authorities reporting a change in allocation of revenues and profits, an increase in the transparency, and a decrease in aggressive tax planning and in the use of tax rulings. Finally, only one Member State reported witnessing any change in the contents of tax rulings.[232] Tax intermediaries have a somewhat more positive opinion, particularly as regards transparency, aggressive tax planning, and the change in the content of tax rulings. MNEs and business federations are, instead, the stakeholders with the less positive outlook. Only **four out of eight MNEs/business federations noticed any change in the behaviour** of corporate taxpayers.

Figure 85. Stakeholders' feedback on change in behaviour of corporations



Source: Targeted consultations

Box 13. Tax Rulings and Deterrent Effect

As discussed in Section 4.3 above, the analysis of DAC3 statistics show a steep decline in the number of rulings issued in the EU, driven by the fall in the number of ATR/APA issued by the Netherlands and Luxembourg. Evidence, however, suggests that this mostly originated from a change in tax authorities' policies towards granting them, rather than in a deterrent effect on taxpayers' attitude in requesting them.

[228] Yearly Assessments

[229] Targeted consultation

[230] Yearly Assessments

[231] Respectively 2 out of 17 responding the question, and 8 out of 52 responding the question.

[232] The content of ATR/APA was only discussed in interviews with tax authorities, and not in the e-mail survey.

This was also confirmed during interviews; for instance, a private stakeholder underlined how they '*noticed in the behaviour of tax authorities that there is an increased reluctance to provide ruling on technical matters under an ATR*'[233] (targeted consultation). Similarly, little to no effect was reported by tax authorities and by representatives of MNEs and business federations regarding the contents of rulings.

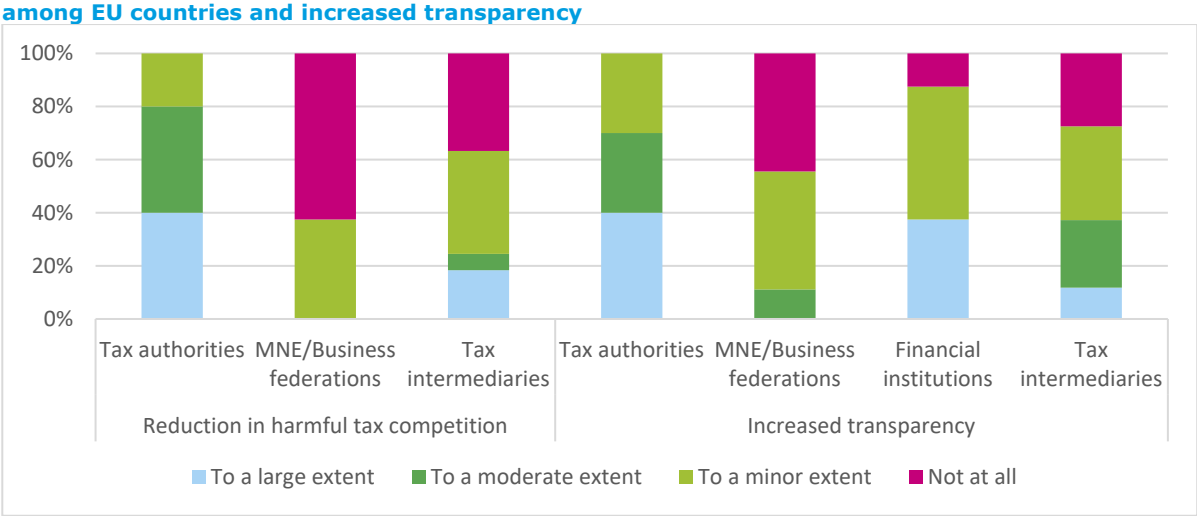
Stakeholders also tend to underline that any positive change detected in the spontaneous tax compliance of corporations is likely to be attributed to a multiplicity of factors, and not simply to DAC. For instance, **the effect of DAC3 and DAC4 is often seen as compounded with other international initiatives and actions** and, more largely, to a change in the sensitivity and awareness of the general public. ('*Since 2012, the world has changed […] DAC may have contributed, but other aspects, such as GAR or AML provisions on beneficial ownership had more importance*'[234] – '*We […] see preventive / anticipation effects of BEPS on taxpayers*'[235]). As regards DAC6 in particularly, many private stakeholders underlined how it may be too early to perceive any deterrent effect. This is also confirmed by the fact that none of the intermediaries or MNE/business federations interviewed had any direct or indirect knowledge of any use of DAC6 information by tax authorities ('*We have no information that DAC6 data is being used. They are likely going to be used during audit and tax controls, but this will happen later, maybe in a few years*'[236]).

6.5 Other effects and results

Transparency of tax rules

While not a target explicitly targeted by the Directive, some of DAC provisions – particularly DAC3 and, to some extent, DAC4 and DAC6, have the **potential of increasing the transparency of national tax rules**, thus reducing the potential for harmful tax competition among Member States. As shown in Figure 86 below, this effect was to some extent perceived by stakeholders, and in particular by tax authorities, while only a minority of private stakeholders[237] reported a moderate or major effect of the Directive on these aspects.

Figure 86. Extent to which stakeholders believe DAC contributed to reducing harmful tax competition among EU countries and increased transparency



Source: targeted consultations. Number of respondents: 63 (5 tax authorities; 58 private stakeholders) on harmful tax competition; 79 (10 tax authorities; 69 private stakeholders) on transparency.

[233] Targeted consultation

[234] Targeted consultations with private stakeholders

[235] Yearly Assessment

[236] Targeted consultation

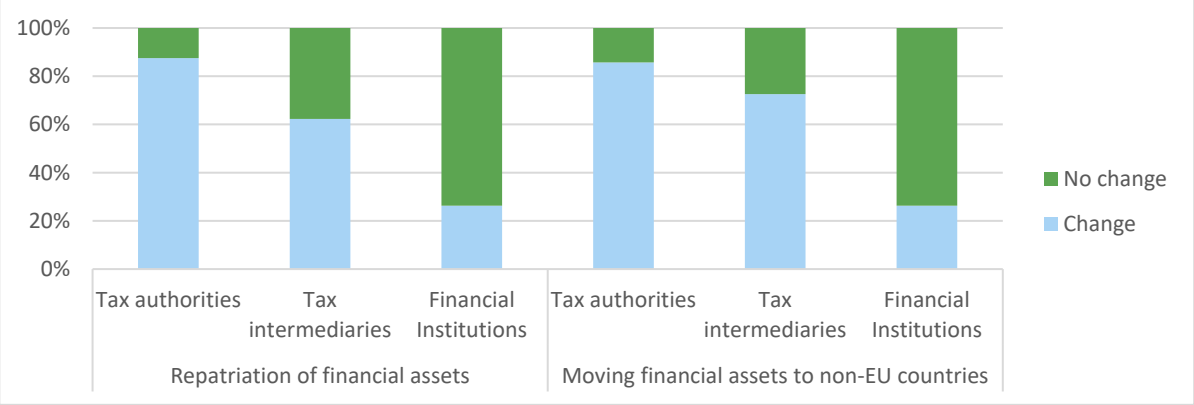
[237] Notably including tax intermediaries, business federations and MNEs, and financial institutions.

In some cases, this effect has already materialized into chances in the tax rules applied to MNEs. The Polish tax authority reported that information obtained from DAC6 exchanges was amongst the reasons for the inclusion of limited partnerships within the scope of subjective corporate income tax, and for the restriction of the possibility to reduce depreciation rates in income tax by taxpayers operating in a special economic zone. Furthermore, several stakeholders mentioned a change in tax authorities' attitude with respect to ATRs/APAs for MNEs in the Netherlands, which could be linked to the introduction of DAC3. This also clearly emerged from the review of the trends in DAC3 exchanges: the number of rulings sent by the Netherlands decreased steeply from nearly 3,500 in 2019 to 500-600 starting from 2020. A similar trend was also experienced by Luxembourg, from 467 in 2018, to 289 in 2019, and to 15-20 per year after that. In both these countries, the decline is related to changes in national policies on the topic.[238] The increased difficulty to access APA/ATR was highlighted by several stakeholders, but both the tax authority and private sector representatives confirmed that the change was not directly related to DAC3 exchanges.[239]

Repatriation of Financial Assets

Besides the results on increased reporting of assets held abroad, DAC2 could in principle have an effect on repatriation of assets. This was investigated during consultations with stakeholders, including both tax authorities and private sector representatives (particularly financial institutions and tax intermediaries) (see Figure 87 below). **Only few financial institutions reported having witnessed any repatriation of financial assets** ('*There certainly is some repatriation of assets and moving to non-EU countries, but not on a scale that you can distinguish from the normal course of business'*[240]). Among intermediaries, feedback was slightly less negative; however, interviewees mostly reported that change only involved some or few of the taxpayers concerned.

Figure 87. Stakeholders' feedback on change in behaviour of individuals



Source: targeted consultation

The existence of high-level evidence of a deterrent effect on portfolio holdings deposited in other EU members states after the implementation of the DAC2 directive was also investigated through the benchmarking of DAC2 statistics. In particular, values for account balances exchanged under

[238] In the Netherlands: Decision on pre-consultation rulings of an international nature, 16/06/2019 (https://wetten.overheid.nl/BWBR0042342/2022-06-18/0/afdrukken+informatie), amended again in 2021 and 2022; in Luxembourg, the Law of 19 December 2014 (Loi du 19 décembre 2014 relative à la mise en œuvre du paquet d'avenir – première partie - 2015) provided for the payment of fees for the issuance for rulings.

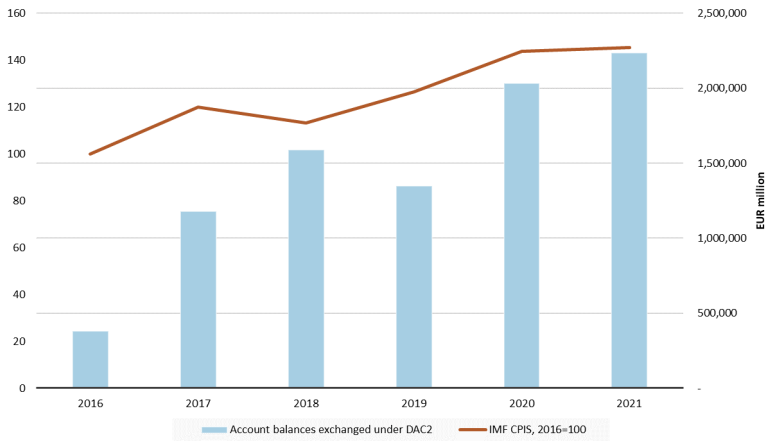
[239] The tax authority confirmed that this change was not a direct consequence of information obtained from DAC exchanges. Private operators reported that DAC3 could be seen, at best, as one of the elements that led to it. A substantial change in the process for obtaining an APA/ATR also occurred in Luxembourg, which, however, was not included in the sample of countries in which interviews with the private sector were conducted. However, also in that case, the tax authorities referred that DAC3 played little to no role in this policy decision.

[240] Targeted consultation

DAC2 between 2016 and 2021 were compared with information from the CPIS[241] collection.[242] The idea is that due to the new information exchange, funds previously held in other EU Member States by EU citizens, businesses or institutions may be transferred to non-EU countries or be repatriated to avoid disclosure, leading to an overall decline of holdings kept in other EU Member States. This was explored looking at both the overall values of holdings kept in other EU countries (to see if a decline occurred after the introduction of DAC2) and looking at the share of holdings kept in EU and non-EU countries (expecting to see a relative shift towards non-EU countries if any deterrence effect occurred).[243] Clearly, this type of analysis may only provide a high-level indication, and there are many other factors potentially affecting the data series.

The overall values (reflecting account balances) exchanged under DAC2 consistently increased between 2016 and 2021, with the exception of a decline between 2018 and 2019. This increase was also driven by some EU Member States (for example Italy) reporting very low values initially and rising substantially after 2019. During the same period, the value of cross-border portfolio liabilities of EU Member States towards residents of other EU Member States and reported in the CPIS statistics grew in most years (the value for 2016 has been set to 100), with the exception of a decline between 2017 and 2018.

Figure 88. Account balances at the end of the year, EU – values exchanged under DAC2 compared with trends from IMF CPIS by tax year, 2016-2021



Note: Left axis measures levels, as an index (with 2016 set to 100), in total derived liabilities (reported in December of each year) from IMF Coordinated Portfolio Investment Survey (original values referred to USD). Right axis measures end of the year balance accounts exchanged under DAC2 (EUR million). All figures refer to EU.
Source: Authors' elaboration of AEOI Statistics and IMF's Coordinated Portfolio Investment Survey

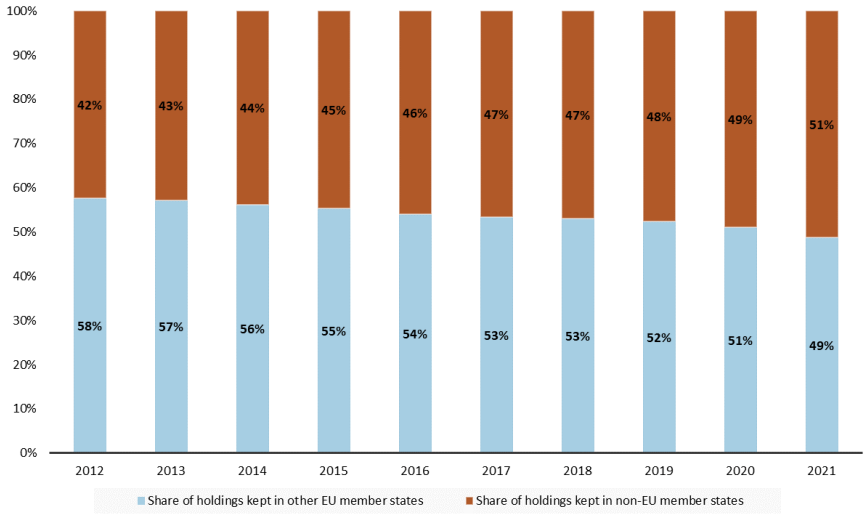
[241] The Coordinated Portfolio Investment Survey (CPIS) is a voluntary data collection exercise conducted under the auspices of the IMF that collects an economy's data on its holdings of portfolio investment securities (data are separately requested for equity and investment fund shares, long-term debt instruments, and short-term debt instruments). In particular, total derived liabilities are used for the analysis. More reliable detailed cross border positions data can usually be collected on an economy's holdings of portfolio investment because the holder (creditor) will usually know what securities it holds. On the liabilities side, the issuer of a security (debtor) may not know the residency of the holder because the securities may be held by foreign custodians or other intermediaries. Using the assets data reported by CPIS participating economies, the IMF derives liabilities data for all economies (CPIS reporters as well as non-reporters); these data are termed 'derived liabilities'. A subset of economies also report liabilities data (an encouraged item in the CPIS), see https://datahelp.imf.org/knowledgebase/articles/500647-why-are-coordinated-portfolio-investment-cpis-da

[242] A similar exercise was also undertaken using deposit liabilities from the European Central Bank (ECB) Balance Sheet Items (BSI) database. This exercise yielded the same overarching conclusion (no evidence of deterrence effect was found). However, data availability from the ECB BSI database was lower, with data only available for 18 of the 27 EU MS. While the IMF CPIS data also has gaps, it uses derived liabilities from assets to fill in instances where no data on liabilities is available. For these reasons the analysis presented in this section uses the IMF CPIS data.

[243] While the main analysis uses the year in which messages were exchanged, for consistency with the CPIS data, the triangulation exercise uses the tax year to which messages refer to.

Looking at the share of holdings kept in other EU Member States in total foreign holdings over the last 10 available years, this has gradually declined over time, from 58% in 2012 to 49% in 2021. This trend was already occurring before the introduction of the DAC2 directive on the automatic exchange of financial account information and happened gradually over time, without a significant step-change at a particular point in time. At the same time, it is also possible that expectations played a role, explaining why the shift occurred gradually over time).

Figure 89. Share of EU holdings kept in other EU Member States, IMF CPIS 2012-2021

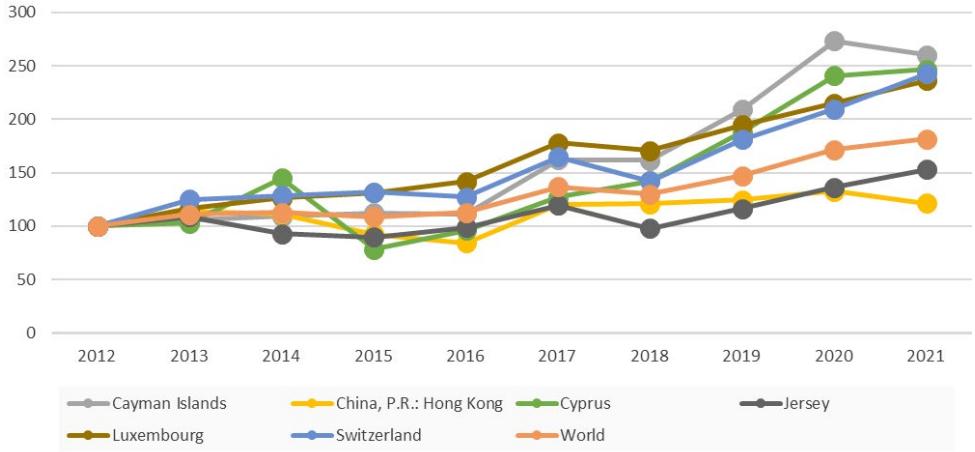


Note: Share of holdings kept in other EU Member States as a ratio of all holdings kept abroad. Figures refer to total derived liabilities (reported in December of each year) from IMF Coordinated Portfolio Investment Survey. All figures refer to EU.
Source: Authors' elaboration of IMF's Coordinated Portfolio Investment Survey

Finally, information on the so-called offshore financial centres (as defined in the Ecorys report, 2021[244]) was gathered to see whether there is any evidence of a shift over time away from the financial centres based in the EU (Luxembourg and Cyprus) and towards non-EU financial centres (only the major ones are shown, together with the overall trend in all holdings kept abroad, denominated as 'World'). The IMF CPIS data used does not seem to suggest that such a shift occurred, as growth in the value of holdings kept in Luxembourg and Cyprus outpaced that observed in most other major financial centres in the period considered.

[244] See Table 5-3 of: European Commission, Directorate-General for Taxation and Customs Union, *Monitoring the amount of wealth hidden by individuals in international financial centres and impact of recent internationally agreed standards on tax transparency on the fight against tax evasion: final report*, 2021, https://data.europa.eu/doi/10.2778/647791

Figure 90. Trends in holdings kept in major offshore financial centres, IMF CPIS 2012-2021



Note: Trends in holdings kept in major offshore financial centres by EU countries, 2012=100. Figures refer to total derived liabilities (reported in December of each year) from IMF Coordinated Portfolio Investment Survey. 'World' identifies all holdings kept abroad and it is provided for reference. For the definition of offshore financial centres see Table 5-3 of: European Commission, Directorate-General for Taxation and Customs Union, 'Monitoring the amount of wealth hidden by individuals in international financial centres and impact of recent internationally agreed standards on tax transparency on the fight against tax evasion: final report', 2021. Source: Authors' elaboration of IMF's Coordinated Portfolio Investment Survey

Overall, this high-level analysis does not show major evidence of a specific deterrent effect on the repatriation of assets or on the transfer of assets to non-EU countries.

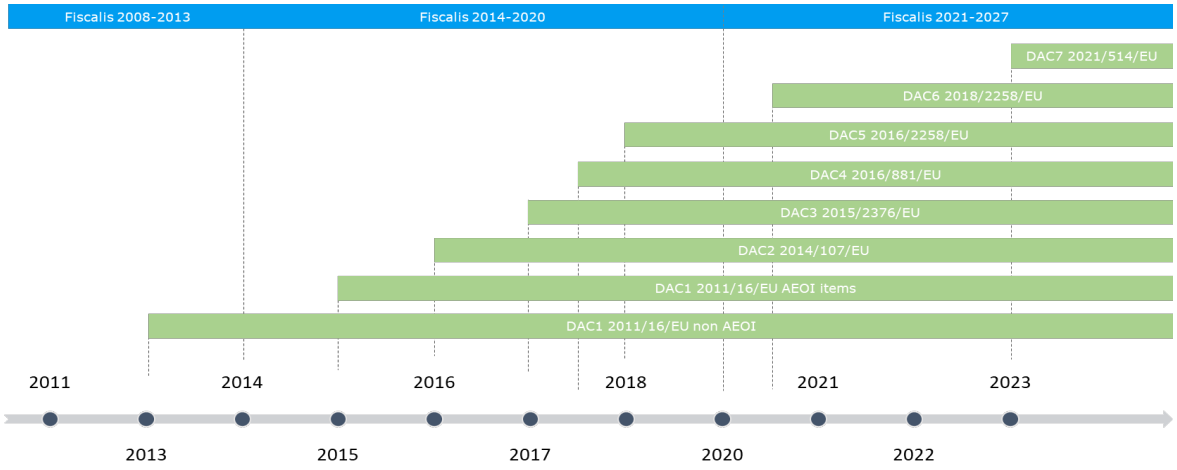
6.6 Contribution of Fiscalis

The Fiscalis programme **is a long-standing cooperation programme to promote the coherent implementation of EU tax law and to support the fight against tax fraud, tax evasion and aggressive tax planning**. It does so by advancing secure exchange of information, supporting cooperation initiatives, and enhancing tax authorities' administrative capacity. The first Fiscalis programme comprised the period 1998-2002 and the programme has seen so far five different iterations. Its most recent implementation, Fiscalis 2021-2027, has a budget of EUR 269 million with a first programming period spanning from 2021 to2023.

In what follows, the document presents a broad overview of Fiscalis, focusing on the contribution of the latest completed edition of the programme (i.e., Fiscalis 2020, which ran from 2014 to 2020) to the functioning of DAC. The contribution of the latest iteration of the Fiscalis programme (2021-2027) to the DAC is also reflected in the analysis. The timeline of Fiscalis and its relation with DAC is shown in Figure 91[245].

[245] As per the ToR, the study considered the role of the latest completed iteration of the Fiscalis programme (2014-2020) and the latest iteration of the programme (2021-2027) to analyse their contribution to the application and functioning of the provisions of the DAC and its amendments.

Figure 91: Time scope



The objectives of Fiscalis and DAC are closely related. Indeed, the DAC sets the legislative framework for information exchange in tax cooperation while Fiscalis enabled the achievement of its operational objectives through funding of IT systems and other cooperation activities. The programme also contributed to capacity building and the development of operational tools and measures necessary to support Member States' tax administrations.

Overall, although the budget allocated to DAC-related activities has been a small share of the total budget of the Programme – often well below 1% - **the impact of the activities funded by Fiscalis on DAC effectiveness has been significant.** It materialized in the funding of IT systems, workshops, project groups, working visits, simultaneous controls, PAOEs and programme groups. Table 8 below summarises the budget allocated to such activities in the two latest iterations of the programme[246].

Table 8. Fiscalis contributions to DAC

Fiscalis' forms of support	Budget Fiscalis 2020 and 2027
IT systems	EUR 3,184,000
Workshops	EUR >147,838
Project groups	EUR >217,392
Working visits	EUR 968,017
Simultaneous controls	
Presence in administrative offices	
Programme Groups	EUR 22,885

The largest contributions, in terms of funds, concerned support to DAC IT systems. The programme financed the European Information Systems, that are IT assets developed to support effective and fair taxation in the EU by enabling secure information exchange between Member States' tax administrations, enhance administrative cooperation and improve administrative capacity.

Between 2014-2020, around 76% of the Fiscalis budget (EUR 168 million) was committed to develop, maintain and operate the European Information System, constituting the largest share of Fiscalis 2020 annual budget[247]. Of these, **EUR 3.2 million** went to finance the **development of DAC-specific IT systems**. The table below breaks down expenses for each DAC.

[246] More detail is provided in Volume 2 – Annexes, Section 7.

[247] European Commission, DG TAXUD, (2022), Study on the final evaluation of the Fiscalis 2020 programme – Final report, Publications Office of the European Union, https://data.europa.eu/doi/10.2778/970563, Table 14

Table 9. Financing of Fiscalis IT systems (2014 -2020)

Name	Abbreviation	Total development cost for the Fiscalis 2020 Programme
Directive on Administrative Cooperation 1	DAC1	EUR 436,000
Directive on Administrative Cooperation 2	DAC2	EUR 587,000
Directive on Administrative Cooperation 3	DAC3	EUR 715,000
Directive on Administrative Cooperation 4	DAC4	EUR 300,000
Directive on Administrative Cooperation 6	DAC6	EUR 1,146,000

Source: Data provided by DG TAXUD in the context of the Study on the final evaluation of the Fiscalis 2020 programme

Fiscalis IT support included the setup of the Common Communication Network/Common Systems Interface (CCN/CSI) for DAC AEOI systems. The CCN/CSI is the IT infrastructure of EIS dedicated to specifically support the exchange of information between administrations, thus it represents the operational backbone of all DAC information sharing. The total **Fiscalis support to the CCN between 2011 and 2017 amounted to around EUR 2 million**[248], however, the infrastructure is used for multi-purpose communication (e.g. also for administrative cooperation in indirect taxation); hence, it is not possible to isolate the funding that exclusively supported DAC IT operations. Under Fiscalis 2020, **between 2014 and 2017, EUR 18 million were allocated for CCN**, that is about EUR 4.5 million per year.

Finally, Fiscalis 2013 specifically supported the development of the e-forms used for non-automatic exchanges, and the XML schemas used for DAC1 automatic exchanges. Additionally, Fiscalis 2020 supported the development of software modules which Member States could use (and adapt) for implementing the DAC2 provisions.

The positive contribution of Fiscalis to supporting the achievement of DAC objectives is also confirmed from tax authorities and the previous evaluations. From the targeted consultation, it emerged that the Fiscalis programme provided a valuable platform for multilateral discussions on DAC-related common issues, and that, were these EU funds not available, face-to-face meetings and learning opportunities from other countries would be limited. Also, Fiscalis was crucial to support those forms of AC that required deploying human resources to other countries (PAOEs and simultaneous controls). In a lot of cases, these activities would not occur without access to Fiscalis funds.

In line with these findings, the evaluation of Fiscalis 2013 '*considered it plausible that fraud and tax evasion was reduced and/or prevented, in turn avoiding distortions of competition in the Internal Market*'. It was found that '*the IT systems directly supported the implementation of the EU acquis for ACDT*'[249]. The evaluation of Fiscalis 2020 confirmed that the iteration supported the implementation of EU tax legislation to fight tax fraud, tax evasion and aggressive tax planning. It did so by enhancing cross-country cooperation, promoting harmonisation and simplification, improving the availability of information and secure information exchanges.[250]

[248] Commission Staff Working Document, Evaluation of the Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC; Report for the European Commission – DG TAXUD, Evaluation of Administrative Cooperation in Direct Taxation, by Economisti Associati

[249] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0745

[250] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12449-Cooperation-between-tax-authorities-final-evaluation-of-Fiscalis-2020_en

6.7 Summing up

Tax authorities largely agreed that the framework set up by the Directive is conducive to administrative cooperation, and shared their appreciation on the operational tools and systems entailed by it, reporting good cooperation across all DAC provisions. They also confirmed that the interaction among different provisions and tools is one of the strengths of the Directive.

The usability of the information exchanged is a pre-condition for the achievement of the specific objectives of the Directive. In particular, the analysis focused on the completeness, quality, and timeliness of the exchanges. **DAC1 and DAC2 exchanges, whose statistics allow for a more detailed analysis, generally display a high degree of completeness**, as the information shared include detailed and granular data, concerning both content aspects and identification element. The only exception has to do with the inclusion of the TIN of the receiving country in DAC1 exchanges, whose availability has remained low (about 2% of taxpayers). As regards DAC3 and DAC4, tax authorities lamented the varying quality of the information exchanged. **For DAC4, in particular, not all Member States are able to ensure that all expected CbCRs are collected, which may affect the completeness of the information**. No problems emerged with the timeliness of exchanges.

As regards the achievement of the first of the three specific objectives of the Directive, i.e. increase Member States' capacity to fight tax fraud, Member States process the information received more than at the time of the previous evaluation, with only a couple of tax authorities not matching DAC1 and DAC2 data, and only slightly less DAC3, DAC4, and DAC6. **Matching rates are rather high for DAC1 and DAC2, mostly about 85-90%**, recording an increase compared to the previous evaluation, with an increase in the automatic matching (particularly exact) between 2018 and 2022). Matching rates are also high and increasing for DAC3 and DAC4, and for the first year of DAC6 matching. In most recent years, **all tax authorities reported using DAC1 and DAC2 information for tax control purposes**, and particularly for risk assessment and audit. DAC3 and DAC4 information is also used by most Member States, although some information suggests that the use may not be as systematic for all. Non-AEOI tools are also praised as valuable for identifying tax fraud and evasion, with particular regards to EOIR, as well as advanced cooperation tools.

AEOI, and in particular DAC1 and DAC2, is also used to foster spontaneous tax compliance, through the implementation of notifications to generate disclosure, and through awareness campaigns. The study also investigated the extent to which DAC resulted in a change in behaviour among taxpayers. The feedback collected suggests that **DAC resulted in a deterrent effect on individual taxpayers, although it cannot be quantified**. **The deterrent effect on corporations is perceived by stakeholders to be not (or not yet) as significant**, and the effect of DAC3 and DAC4 is often seen as compounded with other international activities and actions.

7. EFFECTIVENESS: IMPACTS

In this Section, the study will assess the extent to which the Directive generated the expected impacts by fulfilling its general objectives, and namely:

1. safeguarding Member States' tax base and revenues;
2. contributing to the smooth functioning of the Internal Market; and
3. increasing the transparency and fairness of the European tax systems.

Section 7.1 deals with the first objective, while Section 7.2 with the latter.

Judgement Criteria	Indicators
JC #6.1 Extent to which the Directive contributed to safeguard Member States' tax revenues	• Additional tax assessed and/or collected as a result of the provisions of the Directive (by provision) • Stakeholders' perception on the extent to which the Directive contributed to safeguard Member States tax revenues
JC #6.2 Extent to which the Directive contributed to the smooth functioning of the Internal Market and to a perceived fairer tax system	• Increased perceived fairness of the tax system • Increased perceived functioning of the Internal Market

7.1 Safeguard of Member States' tax revenues

The most straightforward objective of DAC is the safeguard of Member States' tax revenue, by increasing the tax collected or recouped from taxpayers with income, assets or operations in different Member States. This is a consequence of both audit and control activities based on the information obtained via the DAC, as well as the deterrence effect, i.e. the increase in compliance because of the awareness about the increase transparency.[251]

The achievement of these objectives can be measured via a number of sources:

- Data on additional taxes and tax basis communicated by Member States via the Yearly Assessment and the CACT Statistics, refined via the targeted consultation of the tax authorities;
- Economic data and literature;
- The targeted consultation of private stakeholders.

The methodology used for the analysis of tax benefits is summarised in Box 14.

Box 14. Methodology to estimate tax benefits

The following methodology applies to the estimates of tax benefits from DAC1 and DAC2 AEOI, as well as those from non-AEOI activities (discussed in sections 7.1.1and 7.1.3):

1. First, data on tax benefits reported in the Yearly Assessment and CACT statistics were retrieved from the annual submissions.
2. Data were first checked for consistency. Consistency checks consisted in: (i) identifying outliers, i.e. countries that generated a disproportionate amount of benefits for a given tool in a given year; (ii) identifying geographical outliers, i.e. countries which generated an amount of benefits significantly higher controlling for their economic size (in terms of tax revenues, GDP); (iii) identifying break in the time series, i.e., for any given country, years in which tax benefits where significantly different from the average of the period.

[251] The analysis concerns tax revenue collected because of enforcement or deterrence; however, data often are available only for one aspects. For DAC1, DAC2 and other forms of AC, data mostly (but not exclusively) concern revenues from enforcement actions; for DAC4, tax benefits assessed come from the deterrent effect.

3. Outliers were discussed with tax authorities during the targeted consultation, clarifying whether they resulted from mistakes in the calculation of benefits, compilation of the reporting tools, or reflected their actual estimates.
4. When no sufficient information could be found to justify outliers, they were removed from the calculation or replaced with average values reflecting normal trends.
5. When the above steps were completed, **reported tax benefits**, i.e. the benefits as reported by the national tax authorities, were estimated.
6. Then, for each DAC tool, the data coverage was then determined. This required considering the number of reporting Member States, as well as the weighted EU coverage. Weights per each country were calculated by considering GDP in PPS, direct tax revenue (as a proxy of economic size), and operating expenditures by tax administrations (as a proxy of compliance effort).
7. Based on these weights, **estimated EU tax benefits** were extrapolated. Estimates are considered partly robust when the data coverage is higher than 25%. However, since this remains a low threshold, EU benefits are always presented as ranges. When data series do not achieve such a coverage, the extrapolation is not performed. When data series do not achieve such a coverage for a number of years, the extrapolation is presented as tentative estimates for these years. Based on the above, no disaggregation of estimates (e.g. in terms of DAC1 incomes, between ex-ante and ex-post activities, or per non-AEOI tools) is possible.

The following methodology applies to the estimates of tax benefits from DAC4 AEOI (presented in Section 7.1.2 below):

1. Tax authorities could not report the tax benefits from DAC3 and DAC4. The collection of these data was attempted between 2018 and 2020, and then discontinued, since no Member State could provide estimates. This is due to the more tenuous link between these AEOIs and enforcement activities. Indeed, the information from DAC3 and DAC4 do not directly lead to the identification of tax evasion and unreported taxable basis. Rather, they typically help identifying taxpayers at risk or suspicious behaviours and are one of the sources that contribute to risk analysis. Also, it is more difficult to attribute the benefits, in terms of additional taxes assessed for or reported by MNEs, to each of the various tools, i.e., DAC3, DAC4 and, in perspective, DAC6.
2. Estimates on the impact of public CbCR can be retrieved from the economic literature. The parameters from this analysis have been adapted to estimate the impacts of DAC4.
3. DAC4 do not require tax authorities or MNEs to publicly disclose their CbCR (differently from the requirements for large banks or the extractive industries). Hence, the likely effect of DAC4 is a fraction of those estimated for public CbCR. This fraction is captured by the conversion factor.
4. The central value of the conversion factor is 0.33, meaning that the effect of DAC4 is one third of that of public CbCR. Given the uncertainty on the magnitude of the effect of DAC4 compared to public CbCR, a sensitivity analysis of the conversion factor is carried out, and benefits are presented in a range. The sensitivity values are set at 0.25 (one quarter) and 0.5 (half). This corresponds to an increase of the MNEs' effective tax rate of 1.0%, with sensitivity values at 0.7% and 1.5%.

7.1.1 Tax benefits from DAC1 and DAC2

In the Yearly Assessments, Member States provide detailed data on the tax benefits generated by DAC1 and DAC2. Benefits are estimated as additional tax assessed[252] or additional tax basis[253]. Data coverage is less than perfect, but it is increasing. The data coverage becomes significant for 2021 and 2022, when data are available for economies representing between one quarter and two thirds of the EU direct tax revenue. More in detail, for DAC1, estimates of tax benefits are provided by 8 Member States in 2021 and 12 Member States for 2022. For DAC2, about half Member States provided estimates for 2021 and 18 Member States for 2022; according to findings from Member

[252] Additional tax assessed do not correspond to additional taxes recouped, with the latter than can only be measured with a time delays, once the administrative procedures or litigation are completed. Typically, additionally tax recouped are a fraction of those assessed.

[253] Starting from 2021, a distinction has been introduced between benefits resulting from ex ante activities (e.g. compliance campaigns and information letters) and ex post activities (e.g. audits and checks).

States, more and more tax authorities are developing monitoring systems to this purpose, hence the data availability should increase in the future.

Table 10 shows **reported tax benefits** in terms of additional tax assessed, for both DAC1 and DAC2. For DAC1, reported tax benefits reached about EUR 150 million in 2021, due to the higher data coverage. In 2022, they are estimated at about EUR 50 million; data for previous years are lower, around EUR 10 million. Additional taxes assessed for DAC2 are higher compared to DAC1. This is in line with the qualitative insights from the questionnaire and the targeted consultation. While in 2018 and 2019 the additional taxes assessed were worth about EUR 40 million, this figure increased to more than EUR 200 million in 2020, up to EUR 340 million in 2021 and more than EUR 680 million in 2022. The increase is driven by a better data coverage, but also by some Member States, such as France, Finland and Spain. In particular, France accounts for more than 60% of the tax assessed thanks to DAC2 in 2022.

Table 10. Reported tax benefits from DAC1 and DAC2, additional tax assessed (EUR million)

	2018	2019	2020	2021	2022
DAC1	8	6	11	148	53
DAC2	35	41	223	338	683
Min-Max at national level					
DAC1	0.1 – 4	0.01 – 2	0.01 – 3	0.01 – 62	0.3 – 62
DAC2	0.01 – 18	0.1 – 22	0.01 – 183	0.01 – 317	0.1 – 420
Reporting Member States					
DAC1	7	6	7	8	11
DAC2	6	9	13	9	18
Sample coverage					
DAC1	16%	11%	27%	38%	27%
DAC2	26%	34%	41%	48%	64%

Note. Sample coverage is calculated considering the number of Member States, their economic size, and their compliance efforts (see Box 14 above). Source: Authors' elaboration on Yearly Assessment.

For DAC1, some Member States could also provide a breakdown of additional taxes assessed per income category. The available data and their quality allow only for some qualitative considerations. Income from employment and pensions have the lion's share, generating between 80 and 90% of additional taxes assessed because of DAC1. A significant share of benefits, varying from year to year, originates from income from immovable property, while life insurance and directors' fees only have a marginal share[254].

Box 15. Additional tax basis

Tax benefits in terms of additional tax basis are shown in Table 11 below. The data are less robust, since a lower number of Member States, accounting for a significantly smaller part of the sample, could report this data. Hence, no estimation of potential benefits at EU level is provided. Any comparison between the taxes assessed and additional tax basis would be spurious, due to the difference in reporting Member States.[255]

Table 11. Reported tax benefits from DAC1 and DAC2, additional tax basis (EUR million)

	2018	2019	2020	2021	2022
DAC1	116	490	778	833	318
DAC2	7	41	134	162	88

[254] When it comes to the recently added category of royalties, which Member States can already exchange on a voluntary basis, no benefits were reported.

[255] For instance, in 2018 the additional tax basis for DAC2 is lower than additional taxes, both in terms of actual and potential benefits, which is obviously not possible.

Reporting Member States					
DAC1	4	3	6	5	6
DAC2	4	5	4	5	5
Sample coverage					
DAC1	7%	7%	7%	23%	16%
DAC2	12%	27%	8%	16%	15%

Note. Sample coverage is calculated considering the number of Member States, their economic size, and their compliance efforts (see Box 13 above). Source: Authors' elaboration on Yearly Assessment

12Based on the data reported by Member States, **estimated EU tax benefits** can be extrapolated,[256] although they are subject to a degree of uncertainty.[257] They measure what total benefits would be if all Member States used DAC1 and DAC2 data similarly to those that report benefits.[258] However, as shown in Section 6 above, data usage and processing, albeit increasing, remains uneven.

Estimated EU tax benefits are shown in Table 12 below. The extrapolation is sufficiently robust for 2021 and 2022, when the data cover a considerable share of the EU. For DAC1, EU benefits would amount to about EUR 200 - 400 million. For DAC2, estimated EU tax benefits have grown significantly in the last two to three years. These are estimated at about EUR 700 million in 2021 and about EUR 1,100 million in 2022. For the previous years, potential benefits are significantly lower, in the EUR 40 – 130 million range for 2018 and 2019. The increase is likely to reflect both a better recording of benefit data, as well an increase in the usage of DAC2 for ex-ante and ex-post enforcement actions.

Table 13. Estimated EU tax benefits, additional tax assessed (EUR million)

	2018	2019	2020	2021	2022
DAC1	*50*	*50*	*40*	390	200
DAC2	*130*	120	540	700	1,070

Notes. In Italic: tentative estimates. Tax benefits rounded to the tens of million.
Source: Authors' elaboration on Yearly Assessment.

7.1.2 Tax benefits from DAC3 and DAC4

As mentioned in Box 15 above, there are no available data from tax authorities on the tax benefits from DAC3 and DAC4. As for DAC3, the Intra-European Organisation of Tax Administrations made an assessment of the possible benefits from AEOI of cross-border tax rulings and advance pricing agreements[259]. In particular, this could be measured by the high-risk transactions and schemes identified, and by the amount of additional taxes identified or collected on auditing such

[256] Results have been extrapolated at EU level by weighting existing national data by direct tax revenues and tax authorities' operating expenditures. Each country has been assigned a weight based on (i) revenues from direct taxes (from Eurostat); and (ii) tax authorities' operating expenditures (from OECD). Based on these weights, in 2021 existing data covered 36% of the sample for DAC1 and 46% for DAC2. The coverage ratio is lower for previous years. The EU total has then been calculated assuming that missing countries generate similar levels of benefits as Member States which provided data. For the final report, other weighting systems will be considered (e.g. value of income / assets received under DAC1 / 2).

[257] The extrapolation relies on the assumption that, for the missing Member States, the level of benefits is similar to those reported by other countries. In other words, this assumes that Member States are able to use DAC1 and DAC2 data for enforcement and prevention purpose in a similar (or equivalent) manner.

[258] During the analysis, two measures of potential benefits have been estimated: (i) assuming that all Member States used data; (ii) considering the few Member States that did not use data at all (for which tax benefits are 0). However, the latter is only marginally different from the former, since that very few small countries report no data usage, and none of them for 2021.

[259] Intra-European Organisation of Tax Administrations (2021), IOTA Report on Effective Treatment of Tax Rulings Subject to the Exchange Between Tax Administrations – A Review of Progress, Budapest.

transactions. However, very limited data are available in this respect, as only one of the countries participating to the assessment could provide estimates on the additional taxes assessed.

Tax benefits of CbCR have been documented in the literature. Here, a difference must be made between public and private CbCR disclosure:

- Under public disclosure, both tax authorities and the public at large are better informed about taxes paid across jurisdictions, as MNEs make their CbCRs available in the public domain. In the EU, this is currently required for extractive industries and large banks[260]. Other MNEs will be subject to public CbCR form 2025 onwards; today, they can make their CbCR public on a voluntary basis, but only few of them currently do so.[261] Under public CbCR, MNEs thus face both possible enforcement actions and reputational effects.
- Under private disclosure, as provided by DAC4, CbCRs are not put in the public domain, but communicated to the tax authority of the country of main establishment (which in turn transmits it to the EU countries concerned); hence, the impact on MNEs occurs because of possible enforcement actions, and of publicity and pressure from consumers and NGOs. This means that any economic impact of private CbCR is expectedly lower.

The available economic analysis mostly focuses on banks, and for which a longer data series on the impacts of public CbCR exists:

- Overesch and Wolff[262] show **that the effective tax rates increased for EU banks subject to public CbCR** compared to domestic EU banks outside the scope of the obligation and their US peers. More in detail, the total taxes paid by banks subject to CbCR increased from 28.3% to 31.2% of their profits (+2.9 p.p.). Banks with higher-than-average activities in tax havens so their tax increasing even more (+3.7 p.p.). Hence, CbCR increased the taxation level of multinational banks' profits.
- Joshi *et al.*[263] demonstrate that **public CbCR reduces profit shifting**, i.e. the amount of profits allocated to foreign low-tax jurisdictions. At the same time, the effective tax rate borne by banks covered by this obligation did not increase, possibly because other tax evasion strategies escape CbCR scrutiny. Hence, albeit total tax burden remains similar, tax revenues shift towards high-tax jurisdictions. The numerical estimates suggest that a standard (inter-quartile) improvement of disclosure decreases profits in low-cost jurisdictions by 12.8%.

To estimate the impacts of DAC4, which concern all EU MNEs, the analysis expands, with some caveats, on the results from Overesch and Wolff[264]. Here, the major concern is that – unlike large banks and few other companies – most MNEs are subject to private, not public, CbCR. Hence, impacts are likely smaller. Three scenarios are considered: in the central scenario, the effects of private CbCR are one third of those estimated for public CbCR; sensitivity values are set at half and

[260] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC Text with EEA relevance; Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (Text with EEA relevance)Text with EEA relevance

[261] CRSD has made CbCRs compulsory for all EU large companies and listed SMEs (or those issuing debt securities trade in regulated exchange); the first year of reporting is 2024, to be reported in 2025, for companies with more than 500 employees. Cf. Godar, S., Aliprandi, G., Faccio, T. and P. Jansky, The Long Way to Tax Transparency: Lessons from the Early Publishers of Country-by-Country Reports, EU Tax Observatory Working Paper No. 10, December 2022.

[262] Overesch M. and H. Wolff, Financial Transparency to the Rescue: Effects of Country-by-Country Reporting in the EU Banking Sector on Tax Avoidance Contemporary Accounting Research, Vol. 38 No. 3, Fall 2021.

[263] Joshi P., Outslay E. and A. Personn, Does Public Country-by-Country Reporting Deter Tax Avoidance and Income Shifting? Evidence from the European Banking Industry, Contemporary Accounting Research, Vol. 37 No. 4, Winter 2020.

[264] Results from Joshi *et al.* cannot be extrapolated, because of the different methodology, since available data from the EU Tax Observatory do now allow to measure improvement of disclosure among MNEs covered.

one quarter. This means that the effective tax rate is expected to increase by 1.0% (range: 0.7 – 1.5%).

Considering the yearly profits generated by EU MNEs in domestic jurisdictions (EUR 585 billion), and under the assumption the increase in the effective tax rates is homogeneous across jurisdictions, the effect of CbCR can be estimated in a range of EUR 4.2 – 8.5 billion (central estimate at 5.6 billion). In relative terms, the changes are a fraction of existing revenues, representing 1.2% of current revenues from corporate income taxes, and 0.1% of total tax revenue in the EU[265].The absolute figures are very large, because of the very large amount of profits generated by EU MNEs domestically. This means that even a small change in the effective tax rate results in a large impact on revenues.

As discussed more in detail in Section 9, in the near future, the effects of DAC4 on the taxation of MNEs are going to be reinforced by the effects of the global minimum effective tax rate, i.e. the so-called Pillar II OECD proposal[266]. While the latter focuses on the rate of taxation for larger corporations' profits, it also includes rules on how to calculate the tax basis, which partly overlap with or use the same data points of DAC4 CbCR. The OECD estimates that the Pillar II proposal will lead to an increase of corporate income taxes of between 1.7 to 2.8%; this would correspond, at global level, to about USD 220 billion. For high-income economies (excluding the US),[267] the revenue gains are estimated in between 2% and 4% of current corporate income tax level.[268] These benefits are likely to include, i.e. 'absorb', those currently attributed to DAC4.

7.1.3 Tax benefits from non-AEOI activities

In the CACT statistics, Member States provide estimates about the benefits generated by the following tools in terms of tax assessed: EOIR, SEOI and simultaneous controls (some Member States only provide aggregated data for the three tools). This allows for the calculation of **reported tax benefits**, as well as of **estimated EU tax benefits**, in line with the methodology used for DAC1 and DAC2, as described in Box 14 above. Data are available for a limited number of Member States (four to seven). However, since the two largest Member States report data, EU-weighted coverage is similar to DAC1 and DAC2, at between 30-50%.

Reported tax benefits from non-AEOI activities are shown in Table 13 below. Between 2018 and 2020, these are worth between EUR 80 and 200 million additional taxes assessed per year. In 2021 and 2022, they fall significantly. This is partly due to the more limited data coverage (especially for 2022), but it is also the effect of COVID-19, which slowed down certain cooperation activities, and in particular PAOEs and simultaneous controls. Given that these activities may generate benefits in the following period, the downward trend is likely to continue in the following years.

Table 14. Tax benefits from other forms of administrative cooperation, additional tax assessed (EUR million)

	2018	2019	2020	2021	2022
Total reported tax benefits	128	199	79	51	13
Min-max at MS level	0.8 – 79	0.8 – 174	0.1 – 49	0.1 – 39	0.1 – 10
Reporting Member States	6	5	7	4	4

[265] Data on tax revenues are retrieved from DG TAXUD, Annual report on taxation, and refer to 2018.

[266] OECD (2021), Tax Challenges Arising from Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, https://doi.org/10.1787/782bac33-en.

[267] No impact assessment was carried out for the Commission's proposal implementing the OECD Pillar II agreement, hence no public estimates for impacts at EU level are available.

[268] OECD (2023), Economic Impact Assessment of the Two-Pillar Solution revenue Estimates for Pillar One & Pillar Two, 18 January 2023; OECD (2020) Digitalisation Of The Economy Economic Impact Assessment, 20 October 2020

Sample coverage	46%	46%	46%	45%	29%

Note. Sample coverage is calculated considering the number of Member States, their economic size, and their compliance efforts (see Box 14 above). Source: Authors' elaboration on CACT statistics.

Considering **estimated EU tax benefits from non-AEOI activities**, for the period 2018-2020 these can be appraised at between EUR 180 and 450 million per year. Similarly to reported benefits, they decline in the following years, to EUR 120 and 50 million respectively. Annual estimates are shown in Table 14 below.

Table 15. Potential and actual tax benefits from other forms of administrative cooperation, additional tax assessed (EUR million)

	2018	2019	2020	2021	2022
Estimated EU tax benefits	290	450	180	120	50

Note. Benefits rounded to the tens of million. Source: Authors' elaboration on CACT statistics.

With respect to specific types of tools, most of the benefits are generated by EOIR and simultaneous controls. Considering the period 2018-2020, the former accounts for 50% of the tax benefits and the latter for slightly more than 43%. This changes significantly for 2021 and 2022, when most of the benefits accrue for EOIR. However, data at this level of disaggregation are too limited to allow for a more detailed analysis.

7.1.4 Overall estimates

The evidence about the benefits generated by DAC in terms of safeguarding Member States' tax revenue are consistent and increasingly solid over time. However, the quantitative estimation of such effects remains difficult and subject to some uncertainty. For DAC1, DAC2 and non-AEOI, the main difficulties are in the few national estimates available, whose accuracy cannot be independently verified. For DAC4, the main limitation concerns the fact that no dedicated literature exists on private – as opposed as to public – CbCR. Hence, the estimates below therefore represent an indication of the order of magnitude of the benefits generated.

Table 15 below shows the estimates of the annual benefits generated by DAC, based on 2021-2022 data. For DAC1, DAC2 and non-AEOI, these are presented as reported tax benefits, that is based on the benefits reported by Member States, and estimated EU tax benefits, i.e. extrapolated at EU level. For DAC4, estimates are based on the economic literature.

DAC1 and DAC2 AEOIs are estimated to generate between EUR 700 and 1,300 million of additional tax assessed. DAC4 – targeted at MNEs – is estimated to have a much larger impact, in the area of EUR 4,200 to 8,500 million additional revenue. The contribution from non-AEOI is marginal, at few tens of millions EUR of additional tax assessed.

Table 16. DAC tax benefits (EUR million)

	Reported	Estimated EU	Literature-based
DAC1	50 – 150	200 – 390	-
DAC2	330 – 680	700 – 1,070	-
DAC4	-	-	4,200 – 8,500
Non-AEOI	10 – 50	50 – 120	-

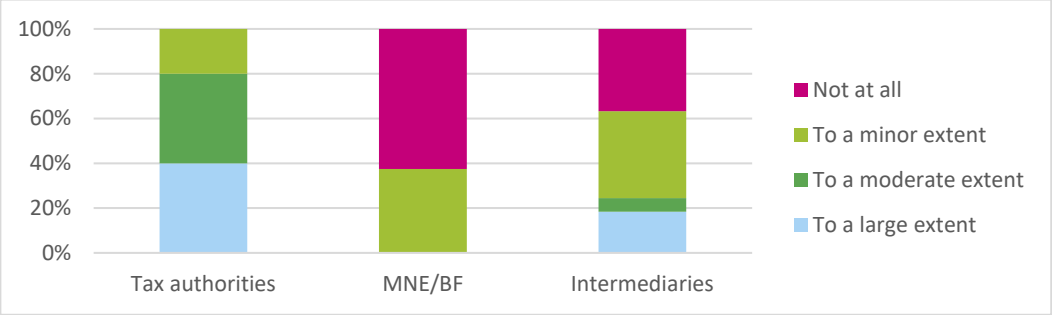
Source: Authors' elaboration.

In total, at EU level, **additional tax revenue can be estimated at between EUR 5 and 10 billion, with a central estimate in the area of EUR 6.8 billion.** In relative terms, this represents about **0.3% of direct tax revenue**.[269]

Box 16. Views from stakeholders: Safeguarding tax revenues

The above analysis shows that DAC protected Member States' tax revenues, both via ex ante or ex post control activities, as well by changing the incentives and behaviour of corporations. This results from both the existing economic literature, as well as the data reported by national tax authorities.

This is largely confirmed by the perception of the stakeholders. Tax authorities, which are the 'ultimate beneficiary' from this objective, mostly considered that DAC has contributed to a large or moderate extent to safeguarding tax revenues. Half of private stakeholders also share the same view (the most positive assessment among the various objectives of DAC).



Source: Targeted consultations

7.2 Contribution to the smooth functioning of the Internal Market and to a fairer tax system

The other two general objectives of DAC consist in **contributing to the smooth functioning of the Internal Market and to the fairness of the EU tax systems**. These general objectives are indirect, not because of their importance, but because they can be accomplished only in so far as the Directive helps fighting tax evasion and avoidance and thus protect Member States' direct tax revenue. Here below, the impacts and the underlying causation mechanisms are explored with respect to both Internal Market and tax fairness.

7.2.1 Smooth functioning of the Internal Market

DAC contributes to the functioning of the Internal Market by limiting the opportunities for tax evasion and avoidance for companies and individuals operating cross-border[270]. In practice, this means that a number of market distortions are eliminated, or their magnitude is reduced. In particular, DAC affects three kinds of distortions:

- **Domestic vs. cross-border distortions.** Distortions between individuals and companies that operate cross-border vs. those who only operate domestically. The main distortion is that the latter cannot exploit loopholes and lack of fiscal transparency for incomes obtained or assets held abroad, resulting in higher domestic taxation of income or profit (and, for firms, a consequently higher cost of capital)[271]. At the same, those who operate cross-border can be

[269] Or 0.1% of total tax revenue, or 0.05% of EU GDP. 2021 data from DG TAXUD, Annual report on taxation and Eurostat.

[270] I.e., companies that operate in multiple EU Member States and individuals with incomes from or financial assets in other EU Member States.

[271] Cf. Álvarez-Martínez, M. T., et al.,(2018). How large is the corporate tax base erosion and profit shifting? A general equilibrium approach. Economic Systems Research, 34(2), 167-198.

subject to additional reporting requirements because of their activities, which DAC aims to harmonise.

- **Cross-jurisdictional distortions.** Distortions induced by the fact that tax treatment in certain jurisdictions is less transparent or create loopholes to unfairly reduce the tax burden, so that companies and individuals operating there have a greater tax advantage (static distortion) or can allocate their assets and economic activities to exploit the tax advantage (dynamic distortion).
- **Cross-income distortions.** Distortions induced by the fact that more mobile forms of income (e.g., profits, capital proceeds and dividends) can be moved in less transparent or lower tax jurisdictions, with less mobile forms of income (e.g., labour) bearing a higher burden to compensate for tax losses.

In operational terms, the reduction of distortions can be assessed by observing different phenomena (or lack thereof)

1. An increase in the **level-playing field** for companies and individuals;
2. The **reduction of harmful tax competition** among Member States (albeit this is not a goal of DAC, but rather an effect); and
3. The **harmonisation of reporting requirements** and the reduction of **litigation costs.**

On the **level-playing field**, a generic but general consensus by stakeholders and in the literature emerges that the recent policy initiatives at EU and international (OECD) level have led to a greater transparency of tax treatment and tax systems. This has reduced the room of manoeuvre for multinational companies and individuals to hide their tax basis or to aggressively allocate wealth and profits in favourable jurisdictions.[272] In turn, this has contributed to reducing some of the distortions, and in particular those concerning domestic vs. cross-border companies and cross-jurisdictional distortions.

This is not to say that the objective has been accomplished. In particular, transparency is improving, but remains partial, and it thus continues being easier to hide tax basis in other jurisdictions rather than domestically. Also, the reduction concerned tax elusive practices, e.g. those exploiting loopholes while remaining within legal boundaries or in a grey area, and small-scale behaviour (e.g. by individuals), more than purposeful large-scale tax evasion.

This positive evolution reduced the tax advantage that can be obtained by companies and individuals operating cross-border by some, partial, extent. Still, the role of DAC remains difficult to identify, given the concurring EU and international policy initiatives (for instance, ATAD and Pillar II) and other events (e.g. the so-called 'Panama papers'[273]). This especially true with respect to r the taxation of multinational companies. The role of DAC is clearer with respect to individuals, where DAC, jointly with the relevant BEPS actions, has been a game changer[274]. However, the bulk of the problems with respect to the level-playing field remains with companies, rather than individuals.

As for the **reduction of harmful tax competition,** the limited evidence suggests that this has only limitedly occurred. The reduction of harmful tax competition is not among the objectives of

[272] Cf. Targeted consultation of private stakeholders and tax authorities as well as numerous policy sources, i.a. OECD Global Forum (2022), Raising the Bar on Tax Transparency 2022 - OECD Global Forum Annual Report and European Commission, Directorate-General for Taxation and Customs Union, Renda, A., Simonelli, F., et al. (2020), Reflections on the EU objectives in addressing aggressive tax planning and harmful tax practices – Final report, Publications Office, https://data.europa.eu/doi/10.2778/39958 , at § 4.2.1.

[273] The Panama Papers were a leak of financial files from one of the biggest offshore law firms in the world – Mossack Fonseca. The files exposed a network of 214,000 tax havens involving wealthy people, public officials, and entities from 200 nations. Most of the documents showed no illegal actions, but some of the shell corporations set up by the law firm had been used for fraud, tax evasion, or avoiding international sanctions.

[274] Leo Ahrens & Fabio Bothner (2019): The Big Bang: Tax Evasion After Automatic Exchange of Information Under FATCA and CRS, New Political Economy, DOI: 10.1080/13563467.2019.1639651

DAC, which has limited tools in this respect. In particular, DAC only tackles one specific form of harmful tax competition, that are tax rulings via DAC3.[275] It has indirect or only recent effects on other forms of tax competition, such as shell companies or certain interest deduction schemes, which would thus be visible under DAC4 or could be reported under DAC6, or favourable tax treatment for intellectual property rights (e.g. so-called patent boxes[276]) not in line with the OECD-level principles, which could now emerge, at least for individuals, under the revised DAC1. However, and most importantly, DAC is not intended to affect tax rates or align the definition of the corporate tax basis.[277]

As for the **harmonisation of the reporting requirements**, this concerns the DACs requiring collection of data from taxpayers, i.e. DAC2 from financial institutions, DAC4 from multinationals, DAC6 from intermediaries and DAC7 from platforms. On DAC2 and DAC4, the harmonisation has been successful, as stakeholders do not report significant discrepancies on the data collected, also thanks to the reliance on international standards. Some stakeholders from the financial industry voiced concerns about the discrepancy of the sanction regime, with penalty levels that can vary significantly across Member States. While this was confirmed by the review of the national regimes, in practice sanctions have been hardly, if ever, applied, hence with no material consequences on reporting entities. Stil, the potential liability associated with omissions and mistakes faced by local financial institutions remains different[278].

The picture is different from DAC6, due, on the one side, to its very recent implementation, and, to the other, to the different application or interpretation across the Member States. In this respect, the progressively increasing familiarity with the provisions will dissipate some of the current problems, but concerns remain about the differences in scope and depth of the reporting duties across countries, particularly regarding different interpretations of the main benefit test and of certain hallmarks[279]. This may result in varying DAC6 costs and complexity for operators active in different Member States.

As for DAC7, it brings a Single Market benefit by 'replacing' existing or planned national data reporting requirements for platforms, such as those in place in Austria, Spain, Italy and France.[280] Large platforms acknowledge that having a single EU-wide reporting requirement may be simpler, in terms of compliance, compared to different national regimes. However, DAC7 does not come with an obligation for Member States to remove existing requirements for platforms; this has been done e.g., in France, but not uniformly (for instance, in Spain, at the time of writing, the existing obligation has not yet been removed). Hence, this remains an issue to monitor in the coming years, to make sure that the harmonisation brought about by DAC7 generates tangible benefits for operators rather than duplicated burdens.

Finally, with respect of DAC7, stakeholders also commented on the potential diverging implementation across Member States, in terms of e.g. interpretation of the requirements, scope, data requested, and transmission methods. However, the implementation is not yet firmed up in

[275] Cf. Van De Velde E. and Cannas F. (2021), Harmful tax practices within the EU: definition, identification and recommendations, Publication for the subcommittee on Tax Matters, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg.

[276] '*The expression 'patent box', or 'knowledge box', refers to special types of incentives offered to corporations entitling them to reduce the tax burden on intellectual property.' Ibid.* at p. 20.

[277] This is only reflected in the ongoing resistance by Member States to the European Commission's proposals in this area.

[278] Cf. Section 3.1.2 above.

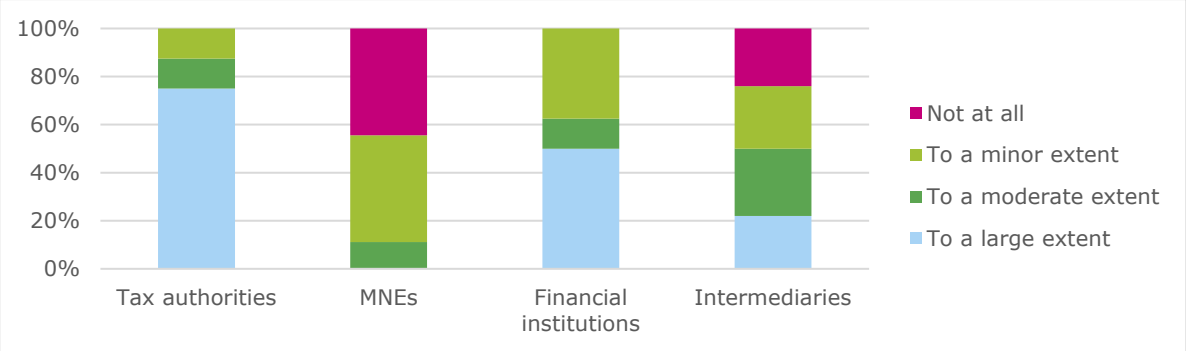
[279] Cf. Section 5.2.3 above.

[280] Reporting requirements for platforms (or groups thereof, such as intermediaries of accommodation services) were also introduced or announced in Italy, Czechia, Germany, Denmark, Estonia, Hungary, the Netherlands, Poland and Sweden. Cf. European Commission, Directorate-General for Taxation and Customs Union, Luchetta, G., Giannotti, E., et al., (2022), VAT in the digital age – Final report. Volume 2, The VAT treatment of the platform economy, Publications Office of the European Union, 2022

most Member States, and consequently it is not yet possible to judge on this issue. At the same time, the platforms interviewed – and especially those which are not EU-based – have not reported instances of forum-shopping (i.e. the selection of a low-compliance jurisdiction for data submission), suggesting that the discrepancies are not large enough, at the moment, to distort compliance.

DAC7 has thus add a positive effect on the harmonisation of reporting requirements, which alleviate the distortion between cross-border and domestic operators by limiting the additional burdens for the former. This was also confirmed in the targeted consultation, where slightly more than 50% of respondents considered that DAC has improved harmonisation to a large or moderate extent, as shown in Figure 92 below.

Figure 92. Stakeholders' perceptions of DAC contribution to the harmonisation of reporting requirements in the EU



Source: Targeted consultation

When it comes to the reduction of the number and complexity of cross-border litigation cases, and thus the associated **litigation costs for businesses and tax authorities**[281], there is some positive evidence emerging from a minority of stakeholders. DAC can reduce complexity and number of cross-border tax litigation for a number of reasons:

- tax authorities possess more accurate data allowing to accurately determine the tax basis and due, without need for audits and the ensuing litigation;
- in case of tax re-assessment, the evidence obtained from DAC can be strong and clear enough for the taxpayer to renounce appeal, and hence litigations ('*national control activities [rely on] more precise information that cannot be denied by taxpayers*' [282]);
- companies operating in multiple jurisdictions cannot defend using opposite arguments based on the limited knowledge of cross-border operations by tax authorities ('*Telling a different story in one country than in another is no longer possible*' [283]).

Four tax authorities reported this evidence, suggesting less attrition from litigation for companies and individuals operating within the Single Market, while two suggested that this was not the case. As for private stakeholders, almost no interviewee reported visible changes in this area. They also highlighted an unintended consequence: better data on foreign incomes, assets or operations means more re-assessment and audits. Though they can rely on more solid evidence, in case of a significant re-assessment, the taxpayers may decide to go to court to resist the claim. An increase in controls on cross-border companies or individuals may thus increase the amount of litigation for these taxpayers.

[281] This includes administrative procedures, court litigation, as well as arbitration or the mutual agreement procedure available for cross-border taxpayers.

[282] Targeted consultation of tax authorities

[283] Targeted consultation of tax authorities

7.2.2 Tax fairness

Tax fairness is a dimension of a tax system that goes beyond the mere compliance with existing laws. The UN defines tax fairness as '*the effectiveness of public policy design in reconciling taxation objectives with economic and societal objectives and ensuring tax costs are distributed fairly in society*'.[284] This however calls into question what a fair distribution is, acknowledging that different stakeholders would have a different view on that.

The concept of tax fairness includes two dimensions: legal and non-legal. Breaching tax law to commit tax fraud or evade taxation is unfair from a legal perspective. However, using legal loopholes to avoid paid taxes (in full) is also perceived as unfair. The non-legal dimension is however the part which is difficult to define.

The European Commission elaborated on the concept of tax fairness, which became one of the staples of EU tax policy. In its Communication on Fair and Simple Taxation[285], it states that financial resources to respond to the crisis and challenged faced by the EU should be secured without '*imposing an undue burden on those already badly affected by the crisis*'. Similarly, revenue from corporate taxation should be generated '*in a fair way, by realigning taxing rights with value creation*' (i.e. taxing value where it is created). In a nutshell, as put by one tax authority during the consultation, **fair taxation is perceived as the right amount of taxes paid in the right Member State**.

Albeit there is not an agreement about when a tax system is fair, there is a fair consensus when this is not fair, and DAC is perceived by tax authorities as a tool to fight unfairness. The positive impact on tax fairness concerns both corporations (via DAC3/4/6) and individuals (via DAC1/2), and results from the combined operation of automatic, on request and spontaneous exchanges, with a key role usually attributed to AEOI. Clearly, via awareness, deterrence, nudging or enforcement, DAC contributes to increasing the level of (voluntary) tax compliance, which results in a fairer distribution of the tax burden between domestic and local taxpayers, corporations and individuals, and across different forms of income. The international dimension of DAC – and of the related global initiatives – is a prerequisite for improving tax fairness, which depends inter alia on an effective cooperation among tax authorities and addressing cross-border tax loopholes.

Similarly to Single Market effects, while the role of DAC is positively praised, it is difficult to single out its specific contribution. DAC operates in a web of other EU and international initiatives, which provide not only for better information sharing, but also substantive rules ('*the less widespread use of aggressive tax planning techniques, including cross-border tax avoidance arrangements, is probably for a large portion due to the introduction of various national and international anti-tax avoidance legislation, such as ATAD and withholding taxes on interest and royalty payments to low taxed countries*'[286]).

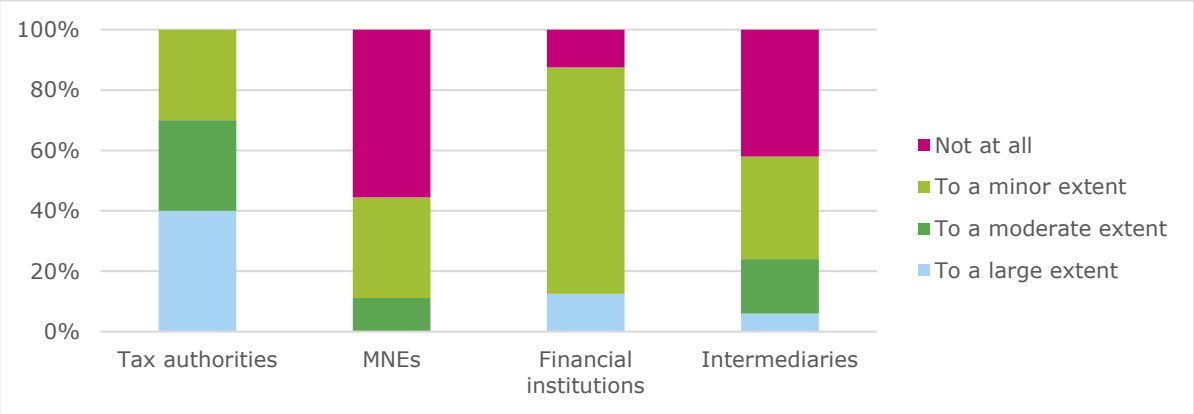
The view is less positive among private stakeholders, with about 40% of interviewees reporting that DAC had no effect in this respect, and a similar share reporting that the impact has been minor. This can be explained either by a perception the opportunities provided by DAC to increase tax fairness have been only limitedly exploited, or that the role of DAC is minor compared to other initiatives.

[284] Ravishankar V., UN Environmental Programme Finance Initiative (PRI) (2021), What is tax fairness and what does it mean for investors? - Discussion Paper, available at: https://www.unpri.org/governance-issues/what-is-tax-fairness-and-what-does-it-mean-for-investors/9077.article

[285] European Commission (2020), Communication from the Commission to the European Parliament and the Council an Action Plan for Fair and Simple Taxation Supporting the Recovery Strategy, COM(2020) 312 Final, Brussels, 15.7.2020

[286] Targeted consultation of tax authorities

Figure 93. Stakeholders' perceptions of DAC contribution to increasing tax fairness in the EU



Source: Targeted consultation

7.3 Summing up

In this section, the impacts generated by DAC, or, in other words, the extent to which it has achieved its general objectives, are assessed. The analysis starts from the first objective, that is the safeguard of Member States tax revenue. Such a safeguard can result from audit and control activities relying on the information obtained by tax authorities via DAC tools, as well as from the deterrence effect and the increased transparency that DAC generates.

The safeguard of tax revenue can be measured via data from Member States, as well as the economic literature. In both cases, estimates are subject to a significant degree of uncertainty. As for the former, the available national data points remain limited, albeit the coverage is growing, and their accuracy cannot be independently verified. As for the latter, the economic literature does not specifically focus on DAC tools, so that results need to be extrapolated to produce relevant estimates.

Even under these caveats, the evidence, as supported by the view of tax authorities and private stakeholders, suggest **that the Directive is effective in contributing to safeguarding Member States tax revenue**. There is a general consensus, supported by the available data from Member States, that DAC1 and DAC2 allowed to identify hidden tax basis and to increase compliance, via both enforcement and deterrence. While data are not available from all Member States, data coverage is increasing, and data are consistently pointing out to this conclusion.

While there are no data form Member States concerning DAC4, the economic literature suggests that CbCR has the capacity to increase the effective tax rate for multinationals. Albeit the effect is likely smaller compared to public CbCR, the magnitude of the issue at stake is so large that benefits are in the area of few billion EUR. However, the robustness of these estimates, which is indirectly obtained from the economic literature on an adjacent policy area (public CbCR) is lower, compared to the analysis of benefits from DAC1 and DAC2. Finally, small benefits also arise from the fewer and more targeted use of non-AEOI tools. **Total tax benefits are estimated at about EUR 6.8 billion per year; albeit large in absolute terms, they correspond to only about 0.3% of EU direct tax revenue.**

Estimates are summarised in Table 16 below. For DAC1, DAC2 and non-AEOI, these are presented as reported tax benefits, that is based on the benefits reported by Member States, and estimated EU tax benefits, i.e. extrapolated at EU level based on the available data. For DAC4, estimates are based on the economic literature.

Table 17. DAC tax benefits (EUR million)

	Reported	Estimated EU	Literature-based
DAC1	50 – 150	200 – 390	-
DAC2	330 – 680	700 – 1,070	-
DAC4	-	-	4,200 – 8,500
Non-AEOI	10 – 50	50 – 120	-

Source: Authors' elaboration.

As for the other general objectives, they can be accomplished only in so far as the Directive helps protecting Member States' direct tax revenue. First, **DAC contributes to the functioning of the Internal Market by limiting the opportunities for tax evasion and avoidance for companies and individuals operating cross-border**, thus removing or limiting tax-reducing distortions. Here, the assessment is positive, though the achievement is only partial, because DAC only concern procedural (i.e. reporting, information exchange) rules, and does affect distortions engendered by the existing substantive tax rules. Positive results could be noted when it comes to the harmonisation of reporting requirements, with respect to DAC2, DAC4 and – in the future – DAC7, as well as, to a limited extent, on cross-border litigation.

Secondly, **DAC increases the fairness of the EU and national tax systems**. Albeit this accomplishment remains difficult to measure, there is a consensus, supported by evidence, that DAC contributed to reduce the room of manoeuvre for individuals and corporations to hide tax bases abroad and escape fair taxation. However, DAC, can only be supportive to the broader tax framework: if certain aspects or practices are not covered by the substantive tax rules, no amount of information exchange can address the issue. In this respect, DAC is one of the tools, together with other EU and international initiatives, contributing to making sure that a fairer amount of taxes is paid in the right Member State.

8. EFFICIENCY

This Section provides the evaluation of the Efficiency criterion, i.e. the costs generated by the DAC and its cost-effectiveness. More in detail,

- Section 8.1 assesses the costs for the public sector;
- In Section 8.2, the administrative burdens for the private sector are quantified;
- Section 8.3 compares the data on costs with the estimates of benefits (discussed in Section 7 above).

Judgement Criteria	Indicators
JC#7.1 Level of costs and cost savings borne by tax authorities	• Adjustment costs (investment, operating) due to AEOI • Adjustment costs due to other forms of ACDT • Share of expenditures financed by EU budget (particularly Fiscalis) • Cost savings compared to pre-Directive situation • Administrative burdens due reporting obligations
JC#7.2 Level of costs and cost savings borne by the private sector	• Administrative burdens for financial institutions due to DAC2 AEOI • Administrative burdens for MNE due to DAC4 AEOI • Administrative costs and burdens for intermediaries/companies due to DAC6 AEOI • Administrative burdens for online platform operators due to DAC7 AEOI
JC#7.3 Extent to which costs are commensurate with the outcome achieved	• Comparison of costs and benefits • Stakeholders' views on whether the additional costs were justified based on the results achieved

8.1 Costs for the public sector

In this sub-section, the costs for tax authorities are quantified. They consist of three categories:

- adjustment costs for AEOI activities;
- adjustment costs for other forms of administrative cooperation; and
- administrative burdens for reporting.

This will be then compared with the tax benefits achieved by DAC in general, and by the various tools specifically. The methodology for the analysis of the costs for the public sector is shown in Box 17 below.

In the previous evaluation, due to the more limited data on tax benefits, the analysis also covered the cost savings generated by DAC tools to tax authorities. For instance, EOIR, while requiring a certain effort by the receiving tax authority to search and transmit the information requested, represent a saving compared to the previous methods for obtaining the same information. This is due to two reasons: first, the study focuses on a period during which DAC was already in force, in this assessment costs are more appropriately compared to the benefits obtained rather than the pre-existing tools. Second, the time lag since the adoption of DAC makes it difficult to retrieve data on the burdens generated by the pre-existing tools. However, and importantly, there is a general consensus data DAC reduced burdens for tax authorities. This also means – as specified throughout the text – that the following estimates are net of these cost savings and do not represent the net additional burdens of DAC-

Box 17. Data sources and methodology: costs for the public sector

DAC generates two kinds of costs on tax authorities: adjustment costs linked to the operation of and IT systems for AEOI and non-AEOI activities, as well as administrative burdens due to periodical reporting obligations. More in detail:

- For AEOI, Member States provide detailed data on their adjustment costs in the Yearly Assessment. Data are disaggregated per AEOI (DAC1 to 4, DAC6 and DAC7) and type of cost (implementing costs, recurring and other costs). Data series are consistent between 2018 and 2022, with no changes to the data collected; for DAC6 and DAC7, only 2021 or 2022 data are available, in line with the timing of their implementation. The rate of reply is good: for DAC1, DAC2, DAC4 and DAC6, on average 17 to 18 Member States provided data on costs, albeit not always disaggregated by type. The response rate is lower for DAC3 and DAC7, but still good, with 12 Member States providing data. For DAC3, this may be explained by the lower amount of investment required by this exchange, and the resulting lower associated costs. For DAC7, the lower response rate is due to its very recent implementation. The response rate is rather stable throughout the years, except for a decline in 2020 (compared to 2019), most likely due to COVID-19 constraints on tax authorities' resources.
- For non-AEOI activities, data have been retrieved via the targeted consultation of tax authorities. Between 7 and 13 Member States were able to provide data on the personnel's time and resources spent to operate non-AEOI tools.
- Administrative burdens from these reporting obligations have been quantified via the SCM, based on the data provided by tax authorities during the targeted consultation. Between 16 and 21 Member States provided data on the time and resources spent. The relevant parameters are as follows: (i) population: 27 tax authorities; (ii) frequency: annual for each report, except for the questionnaire on the relevance of Annex IV, which is biennial; (iii) time spent per occurrence was retrieved (in person/days) from tax authorities during the targeted consultation; to estimate the time spent by the normally-efficient authority, the median of the distribution has been calculated; and (iv) the time spent was monetised based on the EU salary of an associate professional.[287] The BAU factor is 0, i.e. tax authorities report this information only because of the information obligation; hence, administrative costs and burdens coincide.

Results have been extrapolated at EU level by weighting existing data points by the size of the economy, direct tax revenues and tax authorities' operating expenditures. Each country has been assigned a weight based on (i) the GDP in purchasing power parity (from Eurostat); (ii) revenues from direct taxes (from Eurostat); and (iii) tax authorities' operating expenditures (from OECD). Based on these weights, existing data covered between 60% and 80% of the EU total for all DACs, except for DAC3 (for which the coverage is around 50%). The EU total has then been calculated assuming that missing countries have born similar levels of costs compared to the Member States which provided data.

8.1.1 AEOI adjustment costs

Table 17 below provides an overview adjustment costs per DAC from 2018 to 2022 at EU level. **Set-up costs for AEOI at EU level fall in the range EUR 19 – 48 million.** They are higher in 2018 and in 2021 (following the implementation of DAC4 and DAC6 respectively). **Recurring costs fall in the range EUR 17-32 million,** and they tend to increase with time, following the introduction of new AEOI tools and the increase in data usage.

DAC1 and DAC2 generate the highest recurring adjustment costs. Recurring adjustment costs for DAC1 vary between EUR 4 and 10 million, while for DAC2 between EUR 8 and 12 million. This can be explained by the larger amount of data handled, as well as by the point-to-point communication architecture.[288] **Recurring adjustment costs are lower for DAC3, at about EUR 1 to 3 million per year,** due to the smaller amount of data exchanged, the centralised architecture, and the lower sophistication of the tools. **DAC4 is in between, with recurring adjustment costs ranging between EUR 3 and 9 million per year.** As for recurring DAC6 costs, they are estimated at about EUR 6 million in 2021 and 2022.

[287] Eurostat, Mean earnings by sex, age and occupation - NACE Rev. 2, B-S excluding O.

[288] This was further confirmed by tax authorities during the targeted consultation: 22 out of 23 tax authorities agreed or partly agreed to the following statement: '*costs are highest for DAC1 and DAC2 and lowest for DAC3*'.

Table 18. AEOI adjustment costs, EU extrapolation, 2018-2022 (EUR million)

	2018		2019	
	Implementing	**Recurring**	**Implementing**	**Recurring**
DAC1	12.0	4.3	7.3	7.1
DAC2	15.0	7.5	3.1	11.8
DAC3	1.1	1.6	0.8	2.1
DAC4	19.8	3.7	9.2	6.2
DAC6	-	-	-	-
Total	**48**	**17**	**20**	**27**
	2020		**2021**	
	Implementing	**Recurring**	**Implementing**	**Recurring**
DAC1	3.0	9.4	3.4	7.7
DAC2	7.2	11.9	2.7	11.2
DAC3	0.8	2.0	0.2	2.6
DAC4	8.2	2.7	1.0	6.6
DAC6	-	-	30.3	5.8
Total	**19**	**26**	**38**	**32**
	2022			
	Implementing	**Recurring**		
DAC1	0.4	9.9		
DAC2	0.7	9.6		
DAC3	0.3	0.8		
DAC4	0.5	8.9		
DAC6	9.1	5.7		
DAC7	3.2	2.5		
Total	**14**	**37**		

Note: These estimates do not represent net costs, as the associated cost savings could not be quantified.
Source: Authors' elaboration on Yearly Assessment.

The time trend of costs is similar for all DACs and consistent with the findings of the previous evaluation: **significant set-up costs occur following the implementation of new AEOI tools, and then decrease and stabilise over time**, while **recurring costs increase.** This was confirmed by tax authorities during the targeted consultation.[289] More in detail, recurring increase over time in line with the increasing usage of data and information for risk analysis, tax determination, or other purposes. They tend to stabilise in a narrow range (e.g. 10-12 EUR million for DAC2, 7-10 EUR million for DAC1); yearly variations may be due to national factors, such as changes in the number of resources dedicated to DAC, or special campaigns or enforcement actions.

Total adjustment costs for DAC1 and DAC2 have decreased considerably compared to the previous evaluation. EU level costs for DAC1 in the 2015-2017 period were estimated at EUR 74 million; in the subsequent three-year period (2018-2020), total DAC1 costs, including non-annualised implementing costs, amounted to EUR 43 million, decreasing by more than 40%. At the same time, recurring costs rose from EUR 13 to 21 million, i.e. by 60%. For DAC2, in 2017 total costs amounted to EUR 53 million, mostly for the development of the IT system. Total adjustment

[289] 20 out of 23 tax authorities agreed or partly agreed to the following statement: '*for each DAC, significant costs are incurred for implementation and set-up, then total costs decrease in the subsequent years*'.

costs in subsequent years hovered around EUR 15 to 20 million, with recurring costs having the lion's share.

Focusing on national data, Table 18 below presents the median costs per Member State. Focusing on recurring costs, **a typical Member State can be expected to spend about EUR 350,000 per year on AEOI**. Average costs, however, are considerably higher, due to much higher costs in a limited number of Member States (for example, Germany[290]). Higher-than-average costs were also incurred in smaller Member States, such as Belgium, Denmark and Portugal. Finally, higher-than-average costs were also reported by Luxembourg for DAC2, DAC3 and DAC4; this can be explained by its importance as financial and cross-border economic centre[291]. Consistently, several of these countries (e.g. Belgium, Luxembourg and Denmark) also featured higher-than-average costs in the previous evaluation period.

Table 19.Average and median AEOI cost per Member States, 2018 – 2022 (EUR)

	Setup costs		Recurring costs	
	Median	Average	Median	Average
DAC1	21,000	35,000	73,000	360,000
DAC2	37,000	41,000	95,000	447,000
DAC3	3,000	6,000	22,000	70,000
DAC4	45,000	51,000	64,000	250,000
DAC6	87,000	166,000	57,000	414,000
DAC7	100,000	35,000	35,000	156,000
Total	293,000	334,000	346,000	1,697,000

Note: These estimates do not represent net costs, as the associated cost savings could not be quantified.
Source: Authors' elaboration on the Yearly Assessments

8.1.2 Costs of other forms of administrative cooperation

Based on the data provided by the Member States in the targeted consultation, the recurring adjustment costs of three forms of administrative cooperation could be quantified: EOIR, PAOE, and simultaneous controls. For each of these tools, the analysis tries to estimate the cost per occurrence, and then multiply it by the usage of each tool, as reported in the CACT statistics. For two other forms of cooperation, SEOI and assistance to notification, data do not allow for a robust quantification.

Exchange of Information on Request

A tax authority can ask specific information about a taxpayer to another Member State via an EOIR. The request, which can originate from a local tax official, is transmitted by the CLO of the sending country to the CLO of the receiving country via the DAC EOIR standard forms. When receiving the request, the CLO will confirm successful receipt within seven days. The request is analysed to determine whether the information is available at central level, at local tax offices, or requires an interaction with the taxpayer or an intermediary. Based on the targeted consultation[292], it is estimated that information is already available in about 30% of cases (15% at central level, and

[290] The impact of Germany on total costs is very large also considering that other large EU Member States (i.e., France, Italy and Poland) could not provide data or did so only for some of the years covered.

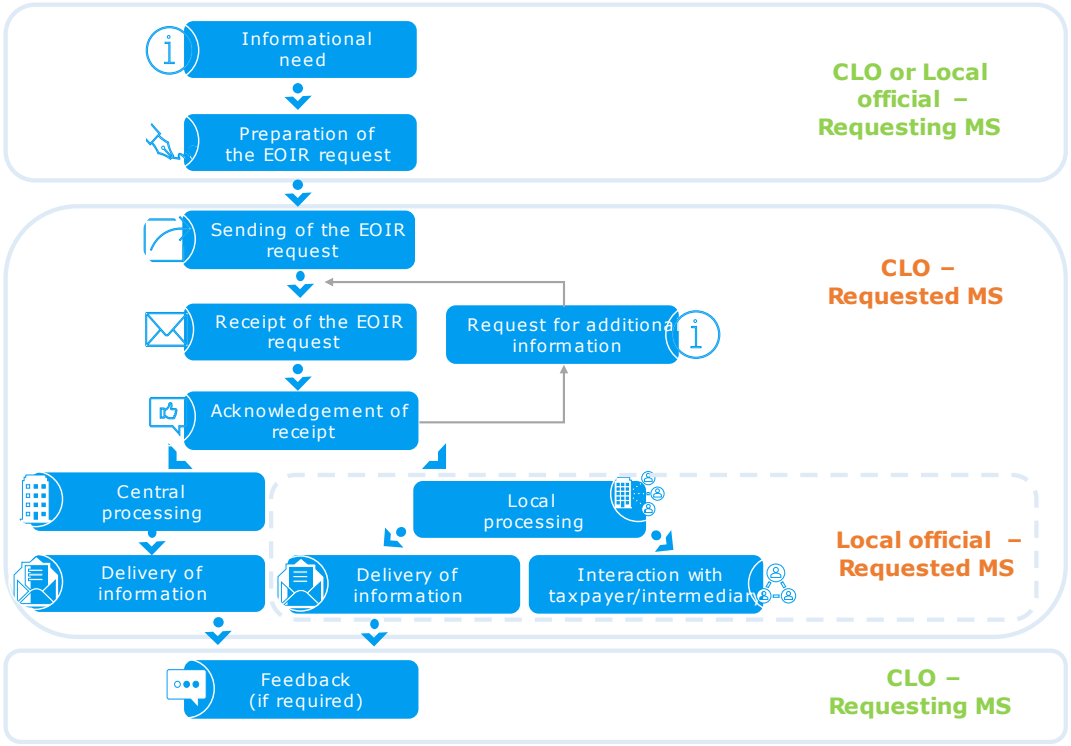
[291] These conclusions will be validated via the targeted consultation.

[292] The estimates represent the median distribution of the various categories of EOIR, rounded to sum up to 100%.

15% at local level[293]), and in 70% of cases needs to be retrieved on purpose. The information can be obtained from the taxpayer or the intermediary by issuing a written request for information to the taxpayer, in person by a tax official, or by examining documentary records.

If the information is available to the tax authority, the receiving CLO has two months to respond to the request. If not, the request should be addressed within three months, or, upon informing the sending country an explanation, up to six months. Once the information is collected, it is then delivered by the CLO of the requested Member State to the requesting CLO, which may be requested to provide feedback on the quality of the information received. The administrative activities for processing an EOIR are depicted in Figure 94.

Figure 94. EOIR – Administrative process



Source: Authors' elaboration

The cost of submitting information by the receiving Member State – obviously – varies depending on whether and where the information is available. The typical values, based on the median of the distribution, range from 0.4 person/days when the information is available at central level, 0.9 person/days when the information is available at local level, and 2.6 person/days when the information needs to be retrieved on purpose. These are monetised based on the average EU salary of an associate professional[294]. Based on the total number of EOIR and the above estimates of the availability of information, **recurring adjustment costs for receiving tax authorities are of about EUR 4 million per year**. The yearly estimates are shown in Table 19.

[293] This varies depending on the structure of the country and of the tax authority and it is widely different across federal, regional or centralised states.

[294] That is considered equivalent to a specialised civil servant. Data are retrieved from Eurostat, Mean earnings by sex, age and occupation - NACE Rev. 2, B-S excluding O.

Table 20. Recurring adjustment costs – EOIR

	2018	2019	2020	2021	2022
EOIR (number)	9164	9027	9145	8677	9346
Total costs (EUR)	4,200,000	4,100,000	4,200,000	4,000,000	4,300,000

Note. These estimates do not represent net costs, as the associated cost savings could not be quantified. Source: Authors' elaboration on targeted consultation

PAOE and simultaneous controls

In the targeted consultation, tax authorities were asked to estimate the time spent to initiate and participate to a PAOE and a simultaneous control. The time is spent mostly in preparing the request, preparing for the joint activities, retrieving the necessary information, and participating to the joint activities.

There are no significant differences between the efforts required by the two tools. Typically – based on the median values – a tax authority initiating a PAOE spends about 19 person/days, and the receiving country spends about 15 person/days. For simultaneous controls, the estimates are respectively of 19 and 17.5 person/days respectively.

Recurring adjsutment costs are relatively low, given the low number of occurrences per year. In 2018 and 2019, they are estimated at about EUR 1 million. Following COVID-19, the usage of these tools decline, and so did the costs, estimated in between EUR 600,000 and 700,000. Importantly, part of these costs is supported by the Fiscalis programme. Full estimates are shown in Table 20 below.

Table 21. Recurring adjustment costs – PAOE and simultaneous controls.

		2018	2019	2020	2021	2022
PAOE	Number	57	42	29	26	26
	Costs	400,000	300,000	200,000	200,000	200,000
Simultaneous Controls	Number	118	187	84	117	95
	Costs	500,000	800,000	400,000	500,000	400,000
Total costs		900,000	1,100,000	600,000	700,000	600,000

Note. These estimates do not represent net costs, as the associated cost savings could not be quantified. Source: Authors' elaboration on targeted consultation

8.1.3 Administrative burdens of reporting

Member States must comply with a number of reporting obligations under DAC, to provide the European Commission with data about its implementation, and namely:

1. The Yearly Assessment on AEOI;
2. The Questionnaire on the Functioning of the Directive;
3. The AEOI Statistics;
4. The CACT Statistics on the other forms of administrative cooperation; and
5. From 2022, the questionnaire on the relevance of Annex IV on DAC6 hallmarks.

The burdensomeness of the various obligations varies. The least burdensome is the preparation of the Annex IV questionnaire (1.5 person/days every two years, i.e. 0.75 per year), followed by the CACT statistics (2 person/days). Four person days are typically spent for collecting and submitting AEOI statistics and for filling and submitting the Questionnaire on the Functioning of the Directive.

The most burdensome obligation is the Yearly Assessment, which is estimated to take 12 person/days, often involving cooperation of various units and offices. These estimates are largely in line with that of the previous evaluation, confirming the robustness of the estimation. The only exception is the Yearly Assessment, which, at the time, was assessed to require 3 person/days. However, the data provided by tax authorities in this targeted consultation are rather consistent, with 13 data points out of 20 clustering in the 10 to 20 person/days range.

All data are shown in Table 21 below. A tax authority would typically spend about one person/month, about 23 person/days, for filling DAC reporting obligations, for an average cost across EU Member States of EUR 5,175. At EU level, total burdens amount to about EUR 140,000, approximately half of which for Yearly Assessments.

Table 22. DAC reporting obligations – Total administrative burdens for tax authorities (EUR per year)

	AEOI Statistics	CACT Statistics	YA	QFD	Annex VI DAC6	Total
Person/days	4	2	12	4	0.75	22.75
Cost per occurrence	910	455	2729	910	171	5175
Total	**25000**	**12000**	**74000**	**25000**	**5000**	**141000**

Source: Authors' elaboration on targeted consultation.

8.2 Administrative costs and burdens for the private sector

In this sub-section, the administrative costs and burdens generated by various DAC provisions on businesses are assessed and quantified when possible. These include:

1. DAC2 costs for financial institutions;
2. DAC4 costs for MNEs;
3. DAC6 costs for intermediaries and businesses; and
4. DAC7 for platforms.

For each provision, the administrative activities carried out by businesses and their compliance strategy is first described, followed by the assessment and quantification of the costs incurred. The assessment is provided for set-up costs, i.e. the costs borne by businesses for familiarising with and implementing the provision, and recurring costs and burdens, i.e. the costs for operating the data collection and reporting system every year. The main data source for the cost assessment is the targeted consultation, complemented by secondary sources whenever possible (including the previous evaluation).

8.2.1 Administrative burdens from DAC2

In this section, the administrative burdens borne by financial institutions because of DAC2 (data collection and transmission) are calculated. These costs are often borne jointly for CRS and DAC2 altogether, and no disentanglement is possible between the two. Pure DAC2 costs are therefore lower than the estimates provided below.

Data for DAC2 AEOI are submitted by financial institutions to tax authorities, for their subsequent exchange. Only accounts held by customers resident in another Member State are in scope of DAC2 AEOI (the so-called reportable accounts). The data concern both the customers (e.g. personal data, TIN, company identifiers) and their accounts and financial assets (e.g. account value, dividends).

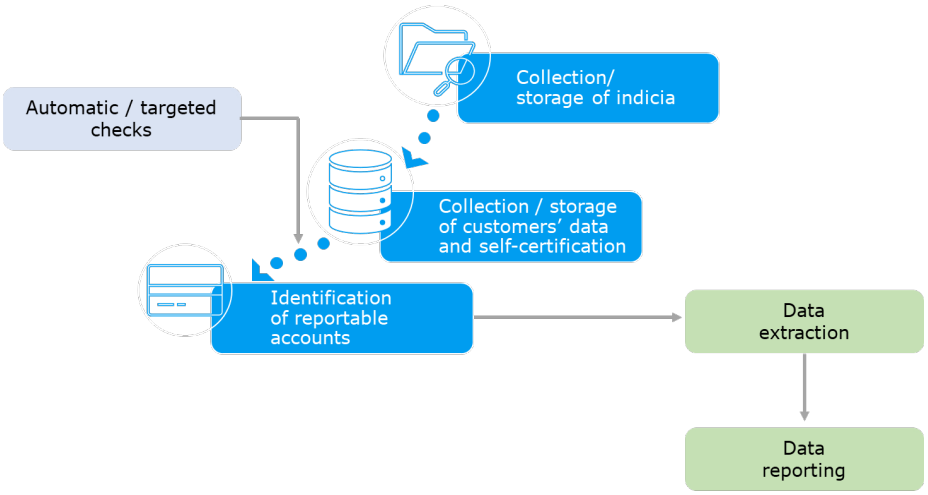
The identification of reportable accounts requires collecting certain pieces of information from new and existing customers. For new customers, data and indicia about tax residency are asked during the onboarding procedure. The data collection is often embedded in the broader Know Your

Customer/Anti-Money Laundering (KYC/AML) procedure. First, for all new customers, the financial institution collects and checks personal data, which could be indicia of foreign residence (e.g. address, phone number). Then, either for all customers or only for those with some indicia of foreign residence, the financial institution asks customers to fill a self-declaration of fiscal residence. Automatic checks are performed on indicia and the self-declaration, and further clarifications may be sought in case of discrepancies. Customers which are fiscally resident in another Member State are asked to provide additional information (e.g. the TIN of their residence country).

For existing customers, after the entry into force of DAC2, the financial institution had to identify reportable accounts based on indicia (which include the ones mentioned above, as well as other, e.g. frequent transactions with foreign counterparts). Customers with indicia are then contacted, on a routine or ad-hoc basis, to fill the self-declaration and provide the necessary additional data. This can be done in connection with other administrative procedures (e.g. periodic KYC/AML or MiFID procedures) or dedicatedly for DAC2. Not all existing customers comply with the request, and repeated interactions may be necessary. The bulk of the work on existing customers was performed at the entry into force of DAC2, as part of set-up activities.

Once a year, financial institutions report the data required for reportable accounts to their tax authority. Data are automatically extracted, formatted and transmitted from the financial institution's internal database. The administrative activities are shown in Figure 95 below.

Figure 95. DAC2 - Administrative activities.



Source: Authors' elaboration.

DAC2 is among the costliest provisions for private stakeholders. This is for two reasons: data origin and scope. Unlike DAC1 and DAC3, data are not generated by tax authorities, but collected from private stakeholders; unlike DAC4 and DAC6, reporting concerns a very larger number of entities (more than 26 million accounts in 2021[295]). The previous evaluation, which was carried out just after the implementation of this provision, estimated that the initial costs amounted to several hundred million EUR in the few countries for which data were available, with recurring burdens likely much lower. This is largely confirmed by the present assessment.

[295] Cf. Section 0 above.

Box 18. Data sources and methodology: DAC2

Data to populate the SCM for the quantification of administrative burdens from DAC2 have been provided by 18 financial institutions or federations, via interviews and the survey. These include data from 6 very large institutions, as well as from 9 small and medium financial institutions, originating from six Member States across the various EU regions. In addition, to the data provided by single institutions, three federations provided aggregated or specific data about their members or whole Member States. Data include the number of accounts and clients reported, for both new and existing customers, and cover about 2.4 million reportable accounts (that is more than 10% of the total). Financial institutions and their federations were asked to estimate the additional time spent for onboarding clients, the set-up costs, as well as the ongoing costs. Between 11 and 13 institutions could provide full or partial estimates for the various cost categories. Eurostat data on earning statistics per occupation have been used to monetise the time spent by the internal personnel.[296]

Data on the population were estimated based on the 2022 Facts and Figures report by the European Banking Federation and the European Central Bank statistical warehouse. The population includes all EU banks (5,263 in 2021) and an estimate of other financial institutions covered by DAC2. As for other financial institutions (e.g. custodian banks, certain investment entities, specialised insurance companies), no detailed information exists on the number of those covered by DAC2 reporting duties. As a proxy, it is considered that this population corresponds to half of the bank population (i.e. about 2,600 other financial institutions).[297]

Significant difference in cost estimates exist within the population, which is hence segmented between large banks on one side, and medium and small banks and other financial institutions on the other side. The banks directly supervised by the ECB (99) are considered to be large banks, while the rest is considered to be medium or small banks. Within these two groups, cost estimates are consistent. As required by the SCM methodology, outliers are excluded from the estimation of the cost of the normally efficient firm. This is typically identified by considering the median cost within each segment, to reduce the impact of extreme values on the estimates.

As for the BAU factor, the analysis focuses on the costs of DAC2 reporting, data handling and processing, as well as of obtaining additional data from customers compared to what is necessary for business purposes (or for compliance with other regulation). DAC2 information is obtained, handled and reported by financial institutions only because of the binding IOs, and hence the BAU factor is 0, and administrative costs and burdens coincide.

Set-up costs include the costs for the following activities: (i) familiarisation with the new rules; (ii) adjustment to the IT system and design of internal procedures for collecting, checking, validating, storing and reporting DAC2 data; (iii) review of existing accounts and identification of those potentially reportable; (iv) training of front-office personnel for data collection during customer onboarding and from existing customers; and (v) retrieval of additional data and self-certification from existing customers.

These costs were mostly incurred between 2015 and 2017[298], and are therefore only partly relevant to this study. Nevertheless, these are quantified to fill the gaps in the previous evaluation, which was too close to the implementation to provide full estimates.

Based on the data provided during the interviews, the normally efficient set-up costs for a large bank can be estimated at EUR 4,500,000, with a typical range between EUR 1 and 14 million, and few very large banks above that range. For a medium or small bank and other financial institutions, estimated costs are significantly lower, at EUR 100,000, with a typical range between EUR 70,000 and EUR 400,000. These estimates are based on the data provided by 18 among financial institutions (large and small) and business federations. The cost differential is consistent with the

[296] Eurostat, Mean earnings by sex, age and occupation - NACE Rev. 2, B-S excluding O.

[297] This is largely consistent with the number of companies in this market segments. Cf. i.a. EFAMA, Asset Management in Europe Report.

[298] The first reporting year was 2016 (to be reported in 2017)

scope of the activities required, with large banks having much higher IT costs and a significantly larger cohort of existing customers to be identified and reported. These estimates do not include training costs, which in some cases were absent or included in the periodic personnel training, while in few others were very large ('*all front office personnel had to be trained*'[299]).

Considering the population concerned, DAC2 setup costs reached EUR 1.2 billion at EU level. Given the cost differential between segments, large banks, albeit being 1% of the population concerned, bore more than one third (36%) of the burdens. Set-up cost estimates are summarised in Table 22 below.

Table 23. DAC2 – Set-up costs.

	Costs per financial institution (EUR '000)	Total EU costs (EUR mn)
Large banks	4,500	446
Medium / small banks and other institutions	100	776
Total	-	1,222

Source: Authors' elaboration on targeted consultation.

Recurring administrative burdens due to DAC2 include those incurred for the following activities: (i) maintenance and update of the IT system; (ii) dedicated personnel for implementing and supervising compliance, and supporting other company's functions and front-office personnel; (iii) periodical training for new and existing front-office personnel. They also include the onboarding costs borne by front-office personnel, quantified separately below.

As anticipated in the previous evaluation, and confirmed by the targeted consultation, recurring DAC2 burdens are significantly lower compared to set-up costs. This is consistent with all regulatory costs – both public and private – linked to AEOI, the systems for which are typically more burdensome to implement than to run. The difference is more considerable for large banks, because of the very high set-up costs incurred at implementation stage. For large banks, annual recurring burdens are estimated at nearly EUR 200,000; for medium and small banks and other financial institutions, these amount to EUR 70,000.[300] Considering the population concerned, total EU recurring burdens for DAC2 are estimated at about EUR 560 million, most of which falling on small and medium banks.

On top of the burdens estimated above, DAC2 also requires additional time for onboarding new clients fiscally resident in other Member States. Interviewees stated that, in the vast majority of cases, the procedure is very smooth and only takes a couple of minutes, with no difference between smaller and larger institutions, to fill the self-validation and collect and check additional pieces of information (e.g., the foreign TIN). In a small minority of cases, the situation may be complex, and more time is required. While the range can be very large, with extreme difficulties at times it is estimated that an additional interaction of 15 minutes with the new customer is typically sufficient. For onboarding, administrative burdens are estimated around EUR 5 million. Table 23 below sums up recurring DAC2 burdens.

[299] Targeted consultation

[300] These estimates do not include training costs; however, unlike for the implementation phase, fewer interviewees reported training costs.

Table 24. DAC2 – Recurring administrative burdens

	Recurring burdens - central level		Onboarding burdens (EUR mn)	Total recurring burdens (EUR mn)
	Costs per financial institution (EUR '000)	*EU total (EUR mn)*		
Large banks	195	51	-	-
Medium / small banks and other institutions	70	525	-	-
Total	**-**	**576**	**5**	**581**

Source: Authors' elaboration on targeted consultation.

Table 24 below provides the estimates of the recurring administrative burdens generated by DAC2 over the evaluation period; they are indexed with the GDP price deflator to account for inflation. Recurring administrative burdens hoover around EUR 500 – 600 million per year. They are expected to remain around this level in the near future, unless significant changes are introduced in the DAC2 reporting framework (e.g. in terms of reportable accounts, due diligence or data required).

Table 25. DAC2 – Recurring administrative burdens (2018-2022, EUR million)

	2018	2019	2020	2021	2022
Recurring burdens	495	507	517	531	568

Source: Authors' elaboration on targeted consultation.

8.2.2 Administrative burdens from DAC4

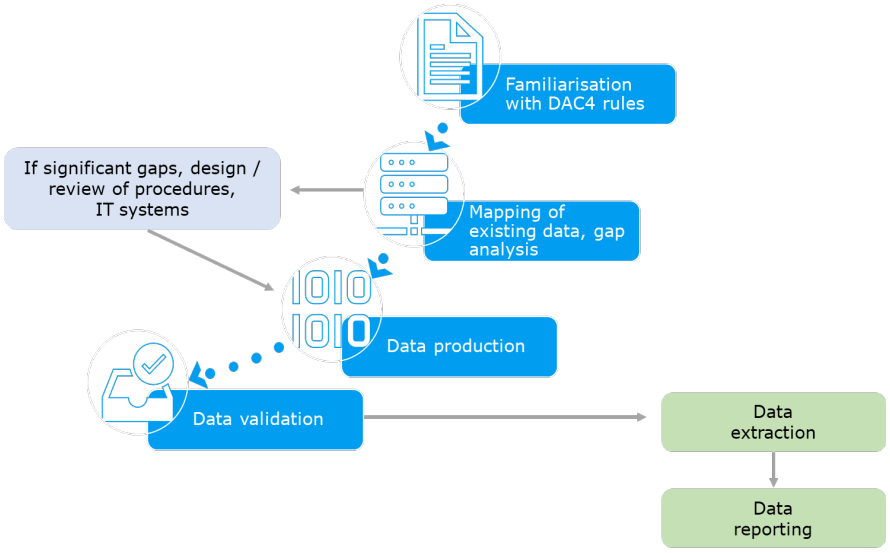
Under DAC4 provisions, MNEs must submit the CbCR to the tax authority in which their parent entity is established. The CbCR includes detailed data on *inter alia* revenue, profits and taxes paid in the jurisdictions in which the MNE operates. Data are submitted by the parent entity once per year, concerning the previous fiscal year.

The data required for the CbCR originate from the company's accounting system, which MNEs manage via an Enterprise Resource Planning (ERP) system. The ERP system could either already include most of the CbCR data at the required level disaggregation, or need a certain adaptation to produce the data needed for CbCR starting from accounting figures.

Similarly to other AEOI requirements, burdens are generated by set-up and recurring activities. As for the former, MNEs had first to familiarise with the new obligation and identify the data required. Then, the tax and accounting teams would need to map the existing accounting information against CbCR requirements, identify data gaps, collect, produce or disaggregate accounting data to fill the gaps. Costs depend first and foremost on the size of the company, being more significant for large-scale SMEs and on whether data are already available in the ERP system (as discussed in Box 19 below).

Once the ERP system is setup to provide the information required, recurring burdens are generated by the extraction and verification of the data, and the compilation, verification and submission of the CbCR. The administrative activities are shown in Figure 96. The methodology and data sources are described in Box 19 below.

Figure 96. DAC4 - Administrative activities.



Source: Authors' elaboration.

Box 19. Data sources and methodology: DAC4

Data to populate the SCM for the quantification of administrative burdens from DAC4 have been provided by 11 entities, including 4 business federations (and members thereof) and 7 MNEs, via interviews and the survey. Data include the set-up and recurring costs incurred by the companies, distinguishing among IT costs, external consultants' fees, personnel costs and training costs.

The population of MNEs concerned can be inferred from DAC4 statistics, and it is estimated at 4,750.[301] As it is often the case for IOs consisting of or requiring the collection of data from the MNEs' internal systems, costs per company vary between large-scale and small-scale entities. Large-scale MNEs are very complex entities, with a significant presence in more than 5 Member States and a turnover in excess of EUR 10 billion; they are estimated to represent 10% of MNEs[302]. Small-scale SMEs have a lower turnover and operate in fewer Member States; they represent the vast majority (90%) of MNEs.

Costs also depend on the extent to which CbCR data could be extracted from the ERP systems or not. In the former case, initial compliance efforts are limited to familiarisation and mapping. Otherwise, the efforts could become significant, as they may require adaptation of the accounting and ERP systems (with the ensuing IT costs), as well as additional efforts to collect and produce the information required. Based on the targeted consultation, the set-up efforts were limited for the majority of companies, since all or most of the information was already available or could be easily adjusted to match CbCR requirements. Hence, it is assumed that the process was more complex for 20% of MNEs (uniformly across both large- and small-scale entities)

Similar to DAC2, the analysis focuses on the specific costs of DAC4, i.e. the extraction, handling and reporting of CbCR data; they did not include the costs of producing the basic accounting and other data. Hence, hence the BAU factor is 0, and administrative costs and burdens coincide.

As for set-up costs, three levels are identified: (i) the highest costs were incurred by large-scale entities which had to undergo significant adaptations to their accounting / ERP systems (2% of the overall population[303]); (ii) medium costs were incurred by large scale entities which did not have to undergo significant adaptations and by small-scale entities which had to undergo significant

[301] This is the maximum value across the 2019-2021 period; 2018 was discarded due to very high value linked to the progressive application of DAC4. Outliers, i.e. years in which data for one country were much higher than the preceding or subsequent years, were removed.

[302] European Commission, DG TAXUD, Luchetta, G., Giannotti, E., Dale, S. et al., (2022), VAT in the digital age – Final report. Volume 1, Digital reporting requirements, Publications Office of the European Union.

[303] I.e. 20% of large-scale entities.

adaptations (26% of the population[304]); and (iii) low costs for small-scale entities which had not to undergo significant adaptations (72% of the population). At EU level, total set-up costs amount to about EUR 90 million; these are shown in Table 25.

Table 26. DAC4 – Set-up costs

	Cost per company (EUR)	#MNEs	Setup costs (EUR mn)
High	100,000	95	10
Medium	50,000	1,235	62
Low	5,000	3,420	17
Total		4,750	88

Source: Authors' elaboration on targeted consultation.

When it comes to recurring burdens, these are different between large scale and small-scale companies, at EUR 45,000 and 8,000 per year respectively. At EU level, they amount to more than EUR 50 million per year. These are shown in Table 26.

Table 27. DAC4 – Recurring administrative burdens

	Cost per company (EUR)	#MNEs	Recurring burdens (EUR mn)
Large-scale	45,000	475	21
Small-scale	8,000	4,275	34
Total	-	4,750	56

Source: Authors' elaboration on targeted consultation.

Table 27 below provides the estimates of the recurring administrative burdens generated by DAC4. (indexed with the GDP price deflator to account for inflation). Total annual burdens generated by DAC4 amount to between EUR 46 – 56 million per year.

Table 28. DAC4 – Recurring administrative burdens (2018-2022, EUR million)

	2018	2019	2020	2021	2022
Recurring administrative burdens	46	47	48	52	56

Source: Authors' elaboration on targeted consultation.

8.2.3 Administrative costs and burdens from DAC6

Under DAC6, taxpayers and intermediaries have to report cross-border arrangements creating a potential risk of tax avoidance. Reportable arrangements are identified by five hallmarks. In a nutshell, the hallmarks distinguish arrangements creating a specific risk of tax avoidance, or other arrangements which may be designed for this purpose (in the latter case, reporting may be subject to the main benefit test).

Reportable data include information about the taxpayers and the intermediaries concerned, as well as the arrangements. The reporting obligation concerns both new arrangements, which are initiated in the period in which DAC6 is in force, as well as existing arrangements and those initiated after 25.06.2018.

To comply with the Directive, taxpayers and intermediaries had to carry out the following activities:

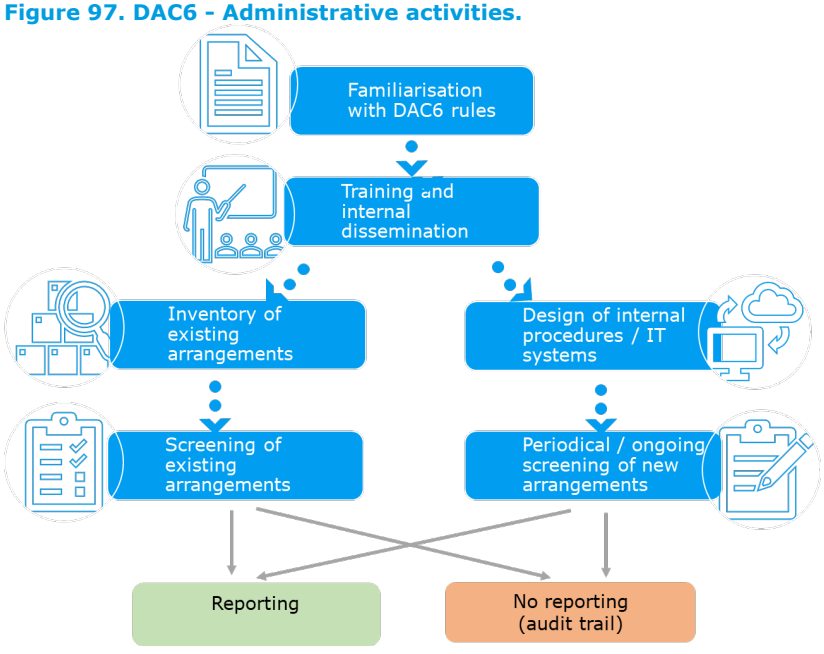
- First, they had to familiarise with the DAC6 rules. For taxpayers, this was often done in cooperation with external consultants.

[304] The remaining share of large-scale entities and 20% of small-scale entities

- Then, they had to disseminate information about DAC6 throughout the company. Typically, DAC6 is managed by the central tax function. However, arrangements are drafted and supervised by local tax departments or by the finance departments; therefore, these other departments had to be trained about DAC6 requirements, and in particular on what to 'look for' in arrangements, which may then trigger DAC6 reporting.
- Concerning existing arrangements, taxpayers and intermediaries had to create an inventory of existing arrangements potentially concerned. The term arrangement is potentially very broad, and include any contractual provision corresponding to the hallmark descriptions or fulfilling the purposes indicated therein. In practice, relevant arrangements can be found often in corporate finance transactions, transfer pricing agreements, contracts concerning trademarks and intellectual property rights. However, they can also be included in certain (typically more complex) business transactions.
- Once the inventory of arrangements is made, taxpayers and intermediaries had to screen whether: (i) they constitute an arrangement according to DAC6; and (ii) they meet any generic or specific hallmark, applying the main benefit test when relevant. Those meeting the above criteria had to be reported; for the others, reasons for not reporting are typically recorded in case of future checks (i.e. in an audit trail).
- Concerning the new arrangements, the largest entities, i.e. those which are concerned by DAC6 on a continuous basis, set up a system to have potentially reportable arrangements to be flagged, for the subsequent review by the company function competent for DAC6. In the vast majority of cases, this was done by designing procedures and setting up communication systems between the DAC6 'champions' and the other company functions. In a limited number of cases, a dedicated IT system was setup. Smallest entities, which may be concerned by DAC6 reporting duties on an occasional basis, are unlikely to set up a screening system, and would rather resort to external consultants on a need basis.
- New arrangements are first screened and eventually reported. While in the initial phase most companies required external support to design the procedures and learn when an arrangement is reportable, now large entities have in-sourced the screening and reporting process, except for more complex arrangements or legal grey areas. Smaller taxpayers among those concerned by DAC6 would still outsource screening and compliance to an external advisor.

The administrative activities are depicted in Figure 97 below. The methodology and data sources are described in Box 20 below.

Figure 97. DAC6 - Administrative activities.



Source: Authors' elaboration.

Box 20. Data sources and methodology: DAC6

Data to populate the SCM for the quantification of administrative burdens from DAC6 have been provided by 18 entities, including 5 business federations (and members thereof), 7 tax intermediaries and 7 MNEs, via interviews and the survey. Data include the set-up and screening (recurring) costs incurred by the companies, distinguishing among IT costs, external consultants' fees, personnel costs and training costs. Entities were also surveyed about whether and the extent to which the information is outsourced to external consultants, as well as about the number of arrangements screened and reported per year.

Determining the population concerned by DAC6 is difficult, as the number of reporting entities cannot be inferred from the available statistics. In addition, not only intermediaries and taxpayers that have to report arrangements bear DAC6 costs, but also those that only perform the screening activities. Based on the information collected during the targeted consultation, the following considerations apply:

- Businesses concerned include taxpayers and intermediaries[305]. However, to quantify administrative burdens, only the former are relevant. Intermediaries will pass the cost of DAC6 compliance activities to their customers.
- As for taxpayers, the most significant category consists of MNEs, which are all concerned, to a various degree, by DAC6. Based on Eurostat data, about 130,000 MNEs operate in the EU.[306]
- Entities other than MNEs may also enter into potentially relevant arrangements; the latter group is tentatively estimated to correspond to an additional 20% of entities concerned. However, given the considerable uncertainty about this population, these are not incurred in the main cost quantification, but only as an additional scenario.

The population is shown in Table 28 below.

Table 29. SCM Population: DAC6.

	Population
Very large MNEs	
Large MNEs	8,250
Small-scale MNEs	117,000
Total	130,000
Other entities (non-MNEs)	*23,400*

Source: Authors' elaboration on Eurostat

Differently from other IOs under DAC, for DAC6 there is a positive BAU factor. In particular, companies would have to screen perspective arrangements for legal and fiscal compliance even if DAC6 were not there. At the same time, DAC6 requires an additional screening, in line with the hallmarks identified in the Directive. Although, during the interviews, efforts were made to obtain information on DAC6 additional activities, the screening inevitably falls within the more general legal and compliance control. Therefore, for screening costs, a BAU factor of 0.2 is used to calculate administrative burdens.

Administrative costs for companies emerge from (i) set-up costs, which include the costs of familiarising with the obligation, screening and reporting existing arrangements, and setting up procedures for new arrangements; and (ii) recurring costs, emerging from the screening and reporting on new arrangements.

Importantly, screening costs are often larger than reporting costs, because of the number of arrangements concerned. Based on the data from the targeted consultation, the number of arrangements screened by a MNE can vary between few tens to more than one hundred. Only few of them are reported, with a ratio than can be of more than 100 arrangements screened for one reported. This ratio is considerably higher for intermediaries (5-10% of the arrangements screened

[305] •As well as hybrid entities (e.g. financial institutions) that are called to comply both as taxpayers for their own arrangements, as well as intermediaries.

[306] Cf. Eurostat, Multinational enterprise groups in EU-EFTA countries by controlling country - experimental statistics. The total figure is reduced to account for those operating in EFTA countries, which include Switzerland.

are reported), but this may be explained by the fact that intermediaries are more commonly involved in non-standard operations, which are more likely to fall under a hallmark. Importantly, DAC6 has been in force for few years, and learning is still occurring, which may lead in the future to a refinement of the screening process, which may become more targeted and thus less cumbersome.

As shown by the cost data reported by interviewees, the impact of DAC6 can be very different across various types of companies:

- There is a small number of MNEs with a large number of existing or new arrangements potentially relevant to DAC6. These companies have to undergo a more significant effort, including the setting up of a capillary screening process. To estimate the number of these very large MNEs, the number of those subject to DAC4 reporting requirements is considered.
- There are other large MNEs, which enter into few, and often standard, DAC6-relevant arrangements. These companies still had to undergo set-up costs and to design a compliance system for new arrangements, but on a lighter scale. To estimate this segment, the amount of large-scale MNEs is considered (10% of the MNE population), subtracting the ones belonging to the first segment.
- For the vast majority of MNEs, DAC6 becomes relevant only on an occasional basis. These companies often had very limited familiarisation costs and have to screen one or few arrangements per year. Hence, they would not invest in a dedicated compliance system, but rather be reactive and spend some internal personnel time (5 hours) when relevant arrangements occur.

Table 29 below presents the cost per each type of MNEs for the various administrative activities. As emerging from the targeted consultation, total set-up costs and annual screening costs vary significantly across population segments. Costs of disclosure, to the contrary, are uniform, and are estimated between EUR 300 (for simple arrangements, estimated at 90% of the total) and EUR 3,000 (for complex arrangements, estimated at 10% of the total).

Table 30. DAC6 – Cost per occurrence

	Cost per occurrence (EUR)		
	Set-up (total)	**Screening (annual)**	**Reporting (per disclosure)**
Very large MNEs	150,000	45,000	-
Large MNEs	10,000	12,000	-
Small-scale MNEs	3,000	163	-
Total	-	-	300 – 3,000

Source: Authors' elaboration on targeted consultation.

Table 30 below presents the total EU costs generated by the various activities. Set-up costs were the most prominent, at more than EUR 1.1 billion, most of which falling on a small number of very large MNEs. The familiarisation of small-scale MNEs account for about one third of such costs. As anticipated, screening costs are a multiple of reporting costs, with the former accounting for about EUR 330 million and the latter for about EUR 11 million (considering the number of disclosures in 2022[307]). In the case of screening, most of the costs fall on very large MNEs, while smaller entities bear a fraction of total costs.

[307] 2022 is considered a more typical year, given that the number of disclosures in 2020 and 2021 is inflated by the reporting of existing arrangements.

Table 31. DAC6 – Set-up, screening and reporting costs (EUR million)

	Set-up (total)	Screening (annual)	Reporting (per disclosure)
Very large MNEs	713	214	-
Large MNEs	83	99	-
Small-scale MNEs	351	19	-
Total	1,146	332	11

Source: Authors' elaboration on targeted consultation.

Table 31 below provides the estimates of the recurring administrative costs and burdens generated by DAC6 (indexed with the GDP price deflator to account for inflation); to quantify reporting costs, the 2022 number of disclosures is considered. From 2020 onwards, recurring administrative burdens generated by DAC6 amounted to about EUR 240 – 280 million. Importantly, these estimates reflect the start of the exchanges; the economies of learning are likely to reduce these burdens in the coming years, similarly to what occurred for DAC2.

Table 32. DAC6 – Recurring administrative costs and burdens (2020-2022, EUR million)

	2020	2021	2022
Recurring administrative costs	305	326	343
Very large and large MNEs	*287*	*307*	*323*
Small-scale MNEs	*18*	*19*	*20*
Recurring administrative burdens	244	260	274
Very large and large MNEs	*230*	*246*	*258*
Small-scale MNEs	*15*	*15*	*16*

Source: Authors' elaboration on targeted consultation.

In the scenario in which the population of concerned entities also includes companies other than MNEs (as discussed in Box 20 above), administrative costs and burdens increase slightly. In 2022, recurring administrative costs amount to EUR 346 million, and recurring administrative burdens to EUR 277 million. This corresponds to an increase of about EUR 3 million, or 1% of the base estimates.

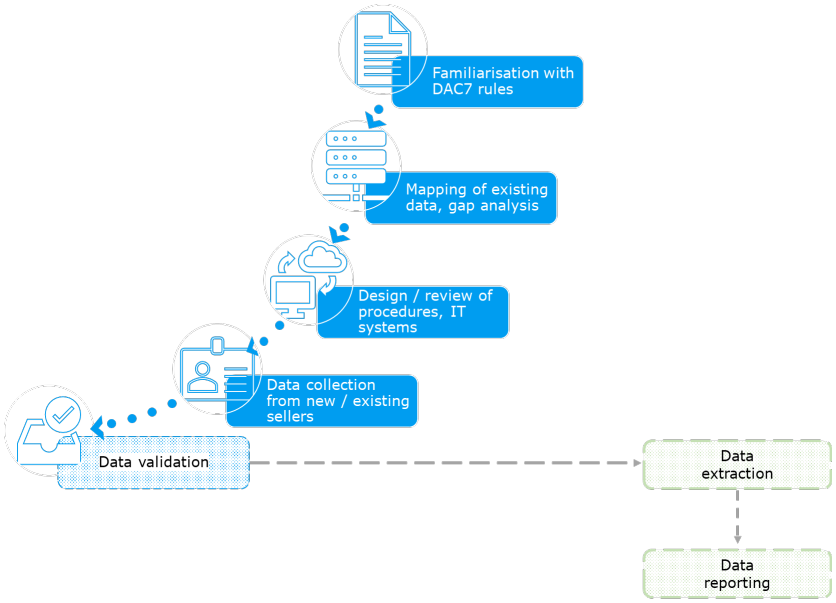
8.2.4 Administrative burdens for DAC7

The recently introduced DAC7 requires platform operators to submit information about sellers of goods and providers of transport, personal or property rental services using their platforms. The information includes sellers' data (e.g. personal identifiers, tax identification codes), data about sale revenues and platform fees, as well as other specific data (e.g. information about the property rented). The information is to be reported to the Member State of main establishment; the measure applies from 2023 onwards, with the first exchange foreseen in 2024.

As of the time of this study, platform operators are in the process of setting up the system to collect and report the data required. Preliminarily, the operators have to familiarise with the new rules and to determine whether and which platforms fall in scope of DAC7. This is often done in cooperation among different company functions (e.g., tax, legal, regulatory / IT compliance, product / user management), with the support of external consultants for the most complex case. Then, the operators are mapping the data they already have, to identify gaps. Typically, platforms did not collect certain data (e.g., date of birth, TIN, data about the rented property), which will have to be requested to both new and existing customers. This also requires revising the onboarding procedure for new sellers, devising new data collection procedures for existing sellers, as well as making the

necessary adjustment to the front- and back-end IT systems. Then, the data collection process will be launched; in a number of cases, platform operators reported that they have already adjusted their onboarding procedures, but have often not started collecting data from existing sellers. Once data are collected, they will have to be validated by the platform. This includes internal consistency checks, data format check (e.g. on TIN), as well as verification against public internally searchable databases, such as VIES for VAT numbers. Data will then have to be extracted and reported to the tax authority of the country of main establishment. The administrative activities are shown in Figure 98 below; those which will only be carried from 2024 onwards are dotted.

Figure 98. DAC7 - Administrative activities.



Source: Authors' elaboration.

The analysis of administrative burdens from DAC7 is only provisional, given the timing of the study. Only partial information about set-up costs is available, and the costs incurred they depend on each the company's internal state of project advancement. In other words, certain platforms may have incurred higher costs so far only because they have started earlier with compliance activities. Also, no information could be retrieved from operators of small platforms, which, in most cases, have only very recently started compliance activities. The lack of data for this population segment (which represents most of the operators concerned by DAC7[308]) prevents the quantification of costs at EU level.

The data provided by large platform operators suggest that set-up costs go from less than EUR 300,000 to EUR 1.8 million. The most important cost component is internal personnel, and in particular the IT technicians that need to design and set up the data collection systems and internal databases. Most operators also resorted to external consultants, with fees often higher than EUR 100,000.

[308] The Study VAT in the Digital Age estimates that 1,831 platforms operate in the EU (some of them in sectors not covered by DAC7). In this population, there is a very small cluster of 11 mega platforms, and about 200 large platforms. The large majority (86%) of the population consists of small and very small platforms. Cfr. European Commission, Directorate-General for Taxation and Customs Union, Luchetta, G., Giannotti, E., et al., (2022), VAT in the digital age – Final report. Volume 2, The VAT treatment of the platform economy, Publications Office of the European Union. https://data.europa.eu/doi/10.2778/78412

The VAT in the Digital Age Study quantified the costs for platforms operators generated by a number of reporting obligations (DAC7, Article 242a of the VAT directive[309], as well as national legislations). Annual burdens were estimated at EUR 135 million, most of which consisting of set-up costs. It was not possible to separate costs for the various legislation (or forthcoming ones, such as CESOP), because a number of systems and activities were designed to comply jointly with the various reporting requirements. Also, the Study concerned a number of sectors (e.g., finance, advertising) which are not in scope of DAC7. Therefore, DAC7 costs are going likely to be lower than the above estimate.

In the IA of DAC7, set-up costs were estimated around EUR 400,000 per company, falling over 600 to 2,000 platforms. Based on this review, these costs are representative of the efforts incurred by large platforms, but – similarly for other DACs – are likely to be (significantly) lower for smaller entities, as acknowledged in the IA itself[310].

Finally, another possible cost for platform operators consists in the business disruption due to the additional data collection. Platform onboarding depends on the ease of the process, which, in turn, also depends on the amount of data required and the completion time. DAC7 adds few or several data points to the onboarding process (depending on how detailed it currently is), with thus a potential negative impact in this respect. Also, platform operators will have to go back to existing customers to get the additional data required, with unclear consequences for those who will not comply. Also in this case, however, it is too early to tell. Some platforms have started to ask for additional data to new users, but no evidence of significant disruption (or lack thereof) emerged yet.

8.2.5 DAC administrative burdens for the private sector

Table 32 below shows the total estimated of recurring administrative burdens generated by DAC on the private sector in the period 2018-2022. In 2018-19, before the entry into force of DAC6, they hoover at about EUR 550; with the entry into force of DAC6, they increase to EUR 800 – 900 million. The costliest provision over the period is DAC2; however, as time goes by, these costs tend to decrease. DAC6 is also estimated to be rather expensive in this period, precisely because of the initial compliance efforts. In the last two years, DAC4 generated about 6% of total costs.

Table 33. DAC – Recurring administrative burdens for the private sector (EUR million)

	2018	2019	2020	2021	2022
DAC2	495	507	517	531	568
DAC4	46	47	48	52	56
DAC6	0	0	244	260	274
Total	**541**	**554**	**809**	**843**	**898**

Source: Authors' elaboration on targeted consultation.

8.3 Summing up: cost-effectiveness of the Directive

Table and Table 35 below summarise the analysis of cost and benefits generated by the Directive. These are based on the analysis carried in Section 7.1 (for benefits) and 8.1 and 8.2. for costs, where the full estimates, the methodology and the associated limitations are described in detail. The analysis is comprehensive, since most relevant costs and a number of significant benefits could be assessed in quantitative terms (albeit not the cost savings for tax authorities). To ease

[309] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

[310] '*[These cost estimates] do not necessarily reflect the actual costs incurred by platforms, especially of those having to report a relatively low number of sellers.*' IA DAC7, at p. 40.

comparison, the analysis is presented on an annual basis, considering data from the 2021-2022 period. A number of limitations and uncertainties remain, which are highlighted in the relevant parts of the text and discussed further below.

The analysis is based on costs and benefits as reported by tax authorities, private stakeholders and in the economic literature. As discussed with the Client, the cost-effectiveness comparison is based on the following principles: (i) the scope of costs and benefits is homogeneous, i.e. the costs of the various DAC provisions are considered only when the benefits could be quantified; (ii) recurring burdens are compared to recurring benefits, excluding set-up costs. The analysis is presented in two steps. First, all costs and benefits are presented. Then, to test the robustness of the results via a sensitivity analysis, two scenarios are considered, in which more conservative estimates of benefits are taken into account.

Annual recurring adjustment costs and administrative burdens from DAC are estimated at about EUR 650 million. From a distributional perspective, most (93%) of the burdens accrue to private stakeholders on which reporting obligations, in particular DAC2, fall. Recurring costs and burdens for tax authorities represent less than 7% of total costs. They amount to about EUR 42 million per year, the bulk of which is linked to AEOI. The estimate of burdens on public authorities should be considered as very robust, since all or nearly all Member States are able to provide detailed estimates of these costs. As for private stakeholders, data originate from dedicated interviews and survey, which makes the underlying estimates accurate; however, for certain DACs, the number of interviewees is limited, at about 10 to 15 entities.

Table 34. Recurring burdens from DAC (EUR million)

Costs	Total
AEOI recurring adjustments costs	37
Non-AEOI adjustment costs	4,9
• *EOIR*	*4.3*
• *PAOEs and SCs*	*0.6*
Reporting burdens for tax authorities	0.1
Total costs for tax authorities	**42**
Administrative burdens DAC2	550
Administrative burdens DAC4	54
Total burdens for private stakeholders	**604**
Total	**646**

Note. These estimates do not represent net costs, as the associated cost savings could not be quantified. Source: Authors' own elaboration

As mentioned above, the estimate of benefits is subject to larger uncertainties. On the one side, only a minority of Member States is able to track and monitor the tax benefits from DAC, and the accuracy of the data could not be independently verified. Also, the largest share of benefits is attributed to DAC4, based on a conservative application of the impacts of public CbCR, but as discussed above, a number of caveats apply. Considering these limitations**, total DAC benefits fall in the EUR 5 – 10 billion range, with a central estimate of EUR 6.8 billion**. Considering only tax benefit estimates based on data from tax authorities (DAC1, DAC2 and non-AEOI), DAC benefits amount to about EUR 1.2 billion.

Table 35. Benefits of DAC (EUR million)

Benefits	Central estimate	Low Range	High Range
DAC1	240	50	390

DAC2	880	680	1070
DAC4	5,600	4,200	5,600
Non-AEOI	60	10	110
Total Benefits	**6,780**	**4,900**	**9,800**

Note. Non-AEOI benefits include those due to EOIR, PAOE and simultaneous controls. Source: Authors' elaboration

Based on this analysis, **the recurring burdens due to DAC are more than commensurate with the benefits generated.** Under the various sensitivity scenarios (see Box 21 below), **the annual net benefits are in between 500 and 6,100 billion**. Net benefits remain positive and significant even considering the uncertainties linked to the quantification of DAC4 impacts. Even under the most conservative estimates, i.e. those carried out based on primary data on tax benefits provided by a growing number of Member States, benefits are at least two times the burdens incurred. In the other scenarios, they are between eight to 10 times larger than the costs incurred.

Figure 99. Cost-effectiveness ratio

	COSTS	BENEFITS	COST-EFFECTIVENESS RATIO
Comprehensive scenario	EUR 650 mln	EUR 6,70 mln	**~10**
Low-range scenario	EUR 650 mln	EUR 4,900 mln	**~8**
Data based scenario	EUR 650 mln	EUR 1,180 mln	**~2**

Notes. Cost and benefit figures rounded up to the tens of millions. Costs include recurring adjustment costs and administrative burdens from DAC provisions for which benefits could be quantified. These estimates do not represent net costs, as the associated cost savings could not be quantified. Source: Authors' own elaboration

Box 21. Sensitivity scenarios for cost-effectiveness analysis

Three scenarios are considered for the cost-effectiveness analysis:

- The comprehensive scenario, based on the central estimates of all costs and benefits;
- The low-range scenario, based on the low-range estimates of all costs and benefits;
- The data-based scenario, that consider only data collected from stakeholders and tax authorities and excludes the literature-based estimates of DAC4 benefits.

As shown in Figure 99 above, the cost-effectiveness analysis is robust across the three scenarios:

- In the comprehensive scenario, benefits are significantly higher than costs, with a cost-effectiveness ratio of about 10 and annual net benefits of about 6.1 billion.
- In the low-range scenario, benefits remain higher than costs, with a cost-effectiveness ratio of about 8 and annual net benefits of about 4.3 billion.
- In the data-based scenario, DAC4 benefits are excluded. In this case, net benefits amount to EUR 500 million, with a cost-effectiveness ratio of about 2.

9. COHERENCE

This section analyses the internal and external coherence of the Directive, investigating synergies and conflicts of DAC with other EU policies and internationally, mainly with respect to OECD. It thus answers Evaluation Question #8 *'To what extent are the Directive and its provisions are coherent with other EU and international policies, strategies, and interventions?'*.

Judgment criteria	Indicators
JC #8.1 Extent to which the Directive's provision are consistent with other related EU policies	• Existence of conflicting or synergies • Existence of gaps and overlaps
JC#8.2 Extent to which the Directive's provision are consistent with OECD other international policies	• Existence of conflicts or synergies • Existence of gaps and overlaps Existence of operational and technical inconsistencies

The analysis of both JC#8.1 and #8.2 was carried out preliminary through desk research of EU and international agreements and guidelines linked to the operating environment of the DAC. The desk research involved the review of the legal texts of the European directives and regulations and of the OECD initiatives, together with commentary and accompanying studies (e.g., impact assessment) and the academic literature. The information gathered was then triangulated with the consultations of public and private stakeholders.

9.1 Consistencies with other EU provisions

The Directive operates together with other legislative initiatives aimed at establishing a fair tax system, at tackling tax evasion and tax fraud and at fostering transparency. The coherence of these legislative tools with DAC will be analysed in the following sub-sections to investigate the existence or not of synergies and/or conflicts, both for taxpayers (in particular as information reporting entities) and tax authorities.

The assessment of coherence is done with respect to the overall Directive or specific tools. As for the overall Directive, the EU provisions considered are:

- Regulation for administrative cooperation VAT[311]
- Regulation for administrative cooperation in excise duties[312]
- Asset recovery directive[313]
- General Data Protection Regulation (GDPR)[314]

[311] Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (recast)

[312] Council Regulation 389/2012 on administrative cooperation in the field of excise duties and repealing Regulation (EC) No 2073/2004

[313] Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures

[314] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance)

Other Directives are analysed for their interactions with specific DAC tools, namely:

- Anti-money laundering[315] directive with DAC2/DAC5/DAC6
- Anti-tax avoidance directives (ATAD1 and ATAD2) with DAC3/DAC4/DAC6
- Corporate Sustainability Reporting Directive (CSRD)[316] as it covers reporting standard for MNEs relatable to DAC4 and
- VAT Directive[317] for its interactions with DAC7

All provisions analysed with their DAC relevant provisions are listed in Figure 100 below.

Figure 100. EU provisions covered by the analysis of coherence

EU policy strategy and intervention	DAC relevant provision
Regulations on administrative cooperation on indirect taxes (VAT and excise)	All DAC
Asset recovery Directive	All DAC
Anti Money Laundering Directive (AMLD)	DAC2/DAC5/DAC6
Anti-Tax Avoidance Directive (ATAD)	DAC3/ DAC4/DAC6
Corporate Sustainability Reporting Directive (CRSD)	DAC4
VAT Directive	DAC7
General Data Protection Regulation (GDPR)	All DAC

Source: Authors' elaboration

Administrative Cooperation in VAT matters and in the field of excise duties

The Regulations on administrative cooperation on VAT matters and in the field of excise duties are complementary to DAC in terms of scope, as they concern indirect taxes. All three acts equip national authorities with similar tools and share the same IT network through which information is exchanged, i.e., the CCN. The synergies among these legislative instruments are mirrored also by the structure of national CLOs, which, as mentioned in Section 3.1.2, often directly deal with administrative cooperation across two or three of these fiscal domains. Specifically, the remit of the majority of CLOs dealing with ACDT also includes VAT matters, and few of them excise duties.

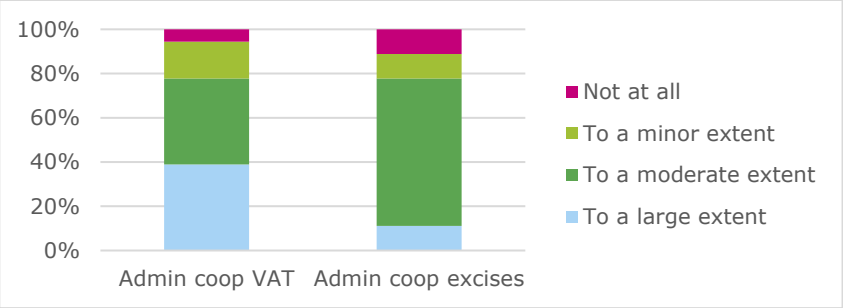
As shown in Figure 101, tax authorities find that there is a large or moderate degree of coherence between DAC and the administrative cooperation in VAT (78%) and in the field of excise duties (78%). However, during the interviews with national tax authorities, only a few of them assessed the degree of coherence between the Regulation in the field of excise duties and DAC, because of the different departments involved. Conversely, more details were provided concerning the consistency between DAC and administrative cooperation in VAT matters .

[315] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance)

[316] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (Text with EEA relevance)

[317] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

Figure 101. Degree of coherence between DAC and Administrative Cooperation in VAT matters and in the field of excise duties according to tax authorities



Source: Targeted consultation

The tools provided by the Regulation on administrative cooperation in VAT matters and DAC are the same: AEOI, EOIR, SEOI as well as simultaneous controls and joint audits. Nonetheless, tax authorities pointed out a difference in the wording of an equivalent instrument: **joint audits** – provided by DAC, and **administrative enquiries carried out jointly** - VAT Regulation. Through both tools, the requesting authority are given the power to access premises, interview individuals and examine records following the legislation of the hosting State. The procedure is then concluded with the adoption of a common enquiry report.[318] Considering the identical nature of the administrative cooperation tools, tax authorities have suggested adopting the same wording, to avoid misunderstanding in national transposition and implementation.

In addition to the tools provided by DAC, the Regulation on administrative cooperation in VAT matters implemented further mechanisms, namely the **Eurofisc** – a network of national tax analysts collaborating in the identification of cross-border VAT frauds, and the **VAT Information Exchange System** (VIES) - a search engine allowing the verification of the VAT number of EU taxable persons. This last mechanism is also relevant in view of the implementation of DAC7. Specifically, platforms will be likely to use VIES to validate the VAT numbers collected from Reportable Sellers.

Finally, the latest amendment of the Regulations on administrative cooperation on VAT matters introduced the **Central Electronic System of Payments** (CESOP). CESOP is a European database including information reported by payment service providers on cross-border payments and their beneficiaries[319]. The objective of this new measure is to give EU tax authorities the instruments to detect e-commerce VAT fraud carried out by sellers established in another Member State or in a non-EU country. Some platforms and financial institutions mentioned the overlap of datapoints to be collected under DAC7 and CESOP in some specific cases, resulting in duplicated efforts.

Asset Recovery Directive

While DAC provides the framework for identifying unpaid taxes and hidden tax bases, the Asset Recovery Directive[320] establishes the framework for the mutual assistance among Member States on the recovery of claims related to taxes, duties and related measures levied in another country. The Asset Recovery Directive shares with DAC a number of tools: EOIR, PAOE, and assistance in notification. The EOIR ensures a more effective and efficient communication among national tax

318 Regulation (EU) No 904/2010 Art. 28 and DAC Art. 12a

319 More in detail, payment service providers offering payment services in the EU will have to transmit information on the beneficiary who receive more than 25 cross-border payments per quarter to the administrations of the Member States. CESOP was established through the Council Regulation (EU) 2020/283 of 18 February 2020 amending Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in order to combat VAT fraud.

320 Asset Recovery Directive 2010/24

authorities to recover claims arising in the claimant Member State, though common forms, and format.

No coherence issues were identified in the analysis, to the contrary, the Asset Recovery Directive benefits from DAC provisions, as the information gathered under DAC might trigger freezing and confiscation orders of financial assets held abroad[321]. The cooperation between the two schemes is in some EU countries also visible from the CLO organisation: in one third of Member States, the CLOs also deal with asset recovery matters.

Anti-Money Laundering Directive

The Anti-Money Laundering Directive[322] (AMLD) aims at preventing the use of the EU financial system for the purposes of money laundering and terrorism financing. *Inter alia*, it requires credit and financial institutions, as well as other specific legal entities (e.g., accountants, intermediaries, legal professionals), to hold complete, accurate and up-to-date information on **beneficial ownership** (BO), that can be easily accessed by the competent authorities.

BO is the key element of interconnection between the AMLD and DAC and a key aspect of both directives. The main link between AMLD and DAC was the access granted to BO information collected under the AMLD through EOIR, with the introduction of DAC5. Because of this high level of intertwinement, the lack of correct transposition and implementation issues raised at national and EU level, has somehow slowed down the correct data access to the AML databases in selected Member States[323]. In addition, under DAC2, financial institutions are required to share information on the identification of beneficial owner (i.e., the controlling person) for accounts of passive non-financial entities (NFE). BO has also a direct connection with DAC6 Hallmark D.2, under which cross-border arrangements making legal or beneficial ownership chains non-transparent must be reported. Both these types of information might have been collected for the purposes of the AML, hence the two legislative frameworks complement each other.

However, the directives do not aways coincide when it comes to definitions and procedures:

- **Definition of BO.** The concept of BO is not fully consistent, mainly because of the different objectives of the Directives. On the one hand, under AMLD, the beneficial owner coincides with account holder, or with the person which 'ultimately owns or controls a legal entity through direct or indirect ownership'. Moreover, the AMLD sets a 25% benchmark of shareholding as indication of ownership. On the other hand, DAC2 'controlling persons' means the natural person who exercise control without any indication of the percentage of shareholding. Despite the different definitions, one common element is the reference in both Directives to the Financial Action Task Force (FATF)[324] Guidelines, which recommends setting a minimum threshold to determine beneficial ownership and indicates 25 % ownership interest – so the same as AML - as benchmark. Specifically, DAC provides that the term 'controlling person' in line with FATF Guidelines. Moreover, this issue has been addressed in DAC8 referring to the AMLD for the definition of beneficial owner with respect to reporting crypto-asset service providers[325].

321 Report from the Commission to the European Parliament and the Council on the operation of the arrangements established by Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures

322 Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

323 See Section Uptake DAC5 4.8.5

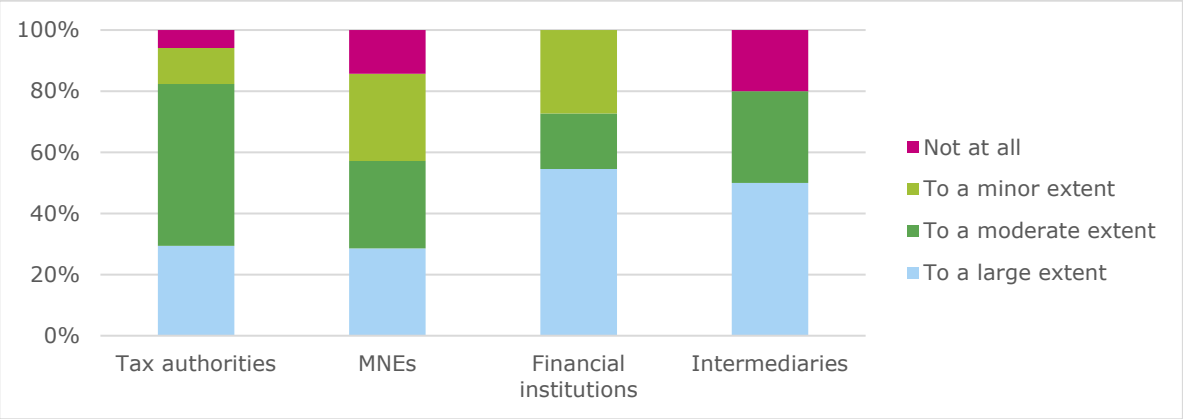
324 The FATF is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CFT) standard.

325 DAC8, Annex III, Section IV, letter E (9)

- **Identification of beneficial ownership**. For DAC2, the identification of the beneficial owner is provided for specific financial asset. Hence, a controlling person is identified when a direct interest exists to a single financial asset or where the individual holds the asset through a passive NFE. For AMLD instead all entities are relevant. Also, from a procedural point of view the identification of the beneficial owner DAC2 requires tax residence and TIN, while the AMLD does not.
- **Due diligence and compliance.** The due diligence procedure under DAC2 relies mostly on self-certification, i.e. on the information provided by the account holder. The reporting financial institution will check that the information provided is reasonable enough and that the AML/KYC documentation is correctly filled. The same procedure typically allows to gather both DAC2 and AML/KYC data, with the former typically plugged into the latter requests, which are broader. If there is a change of circumstances signalled by the account holder, then the bank will update the data received. Differently AML the BO information rely on alert systems based on the chain of control and specific thresholds.

These issues have been discussed with stakeholders, who acknowledged the differences described above especially with regards to DAC2 and AMLD. However, in their opinion, **these do not pose major difficulties and the Directives considered as complementary and to reduce the compliance efforts for the financial operators**, which use the information collected for AML purposes without having to request it again from their customers. The differences in the terminology and procedures are in general justified because of the different scopes and seen more as potential areas of improvement than as conflicts. Similarly, stakeholder have not reported any major problem on the coherence between DAC5 and AMLD; rather, the introduction of DAC5 has been welcomed as a simplification in reporting by most of them (Figure 102).

Figure 102. Degree of coherence between DAC and AMLD



Source: Targeted consultation

In July 2021, the Commission presented the 'Anti-money laundering and countering the financing of terrorism legislative package'[326] to review the AMLD6[327] and related Regulations[328]. Through this revision the Commission has proposed to replace 'certain rules in a Directive with more harmonised and directly applicable rules in a Regulation', as well as to introduce a new AML Authority. These

326 https://finance.ec.europa.eu/publications/anti-money-laundering-and-countering-financing-terrorism-legislative-package_en

327 Proposal for a Directive of the European Parliament and of the Council on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849

328 New regulation on AML/CFT; Revision of the 2015 Regulation on Transfers of Funds

measures aim at limiting the challenges deriving from the different transposition and at harmonising the type of information to be collected through the AMLD and shared among tax authorities, also via DAC tools. The Proposals indeed stem from the aforementioned issues, such as the definition of BO, and consider additional areas of improvement with regards to the information to be accessed by tax authorities. The proposal envisages a further widening of the information to be collected for AML purposes, including information on beneficial ownership for real estate[329] which can further enhance the synergies with DAC. Moreover, the Proposal suggests the creation of a cross-border interconnection between the central BO register and the central electronic data retrieval systems, which will be developed and operated by the Commission, requiring Member States to ensure the update of and access to information in the national mechanisms[330]. This shall further ease the access to BO information.

Anti-Tax Avoidance Directive

The Anti-Tax Avoidance Directive (ATAD)[331] contains anti-abuse measures, which Member States should apply against corporates' common forms of aggressive tax planning, in four specific fields:

- interest limitation rules, to discourage artificial debt arrangements designed to minimise taxes;
- exit taxation rules, to prevent companies from avoiding tax when re-locating assets;
- general anti-abuse rules, to counteract aggressive tax planning when other rules don't apply;
- controlling foreign companies' rules, to deter profit shifting to a low/no tax country.

As ATAD primarily targets corporate tax avoidance throughout the EU, there is a strong link with DAC3, DAC4 and DAC6. ATAD and DAC share the general objective of preventing tax avoidance and reducing aggressive tax planning. Indeed, ATAD and DAC4 were part of the same Anti-Tax Avoidance Package presented in 2016.

Recently, synergies among DAC3 and ATAD have been discussed during Commission WG ACDT and SG AEOI on the review of DAC3 summary information[332]. In particular, it was suggested to include the requirements listed in ATAD - such as Hybrid Entities[333] and the General Anti-Abuse Rules (GAAR)[334], as indicators of potential tax risk within the specifics of the ruling shared.

The objective of DAC6 to disincentivize intermediaries and taxpayers to design and adopt tax avoidance scheme is coherent with the logic behind ATAD. The means adopted by the two directives differs, and this is mirrored also in the type of arrangement targeted. For ATAD, the GAAR applies to arrangements 'put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the applicable tax law, are not genuine having regard to all relevant facts and circumstances'[335]; in the context of DAC6 agreements, the tax advantage criteria is only relevant for those Hallmarks subject to the main benefit test. In this respect, DAC6 and ATAD can be considered as complementary as arrangements reported under part of Hallmarks C and all Hallmarks D and E will cover schemes that might not be necessarily reported under GAAR.

[329] Proposal AMLD, Article 16

[330] Proposal AMLD6, Article 10

331 Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the Internal Market; this also includes Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries, also referred to as ATAD2

332 WG ACDT, 51st Meeting – Virtual Meeting, 3rd March 2022; WG ACDT, 52nd Meeting – Virtual Meeting, 10th October 2022; SG AEOI

333 Article 9 of ATAD1 and ATAD2 related to hybrid mismatches with third countries.

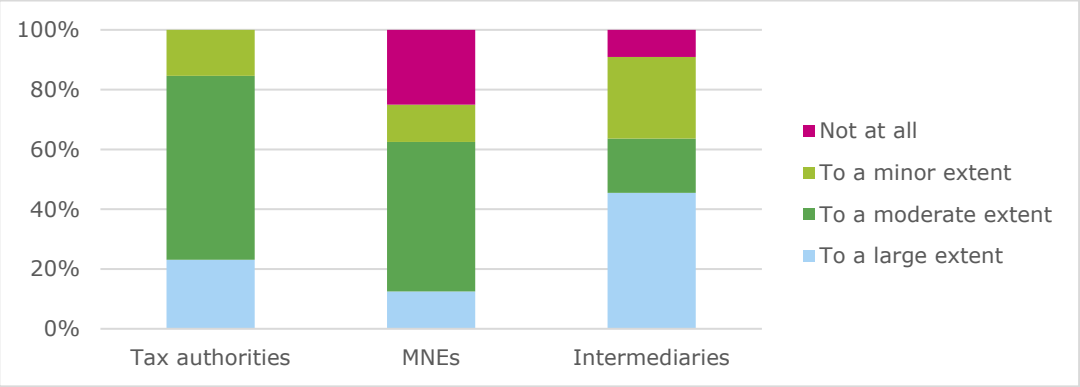
334 Article 6 ATAD1

[335] ATAD, Article 6

Some commentaries consider that the broad definition adopted in both directives both for high-level concepts[336] (e.g., tax avoidance and aggressive tax planning) as well as the operational rules (e.g., hallmarks[337]) have been differently implemented in Member States, hence creating potential coherence issue[338].

The feedback on the consistency between DAC6 and ATAD during the targeted consultations was mixed (Figure 103). Among private stakeholders, some deemed that the two directives are not necessarily interlinked and that DAC and ATAD create different layers of bureaucracy following their own goals. Others find that the two provisions complement each other well. For instance, DAC6 disclosures can help tax authorities identifying recurring circumstances (such as recurrent cross-border payments to a company/individual established in a tax haven), useful for the application of the controlled foreign company rules provided by ATAD.

Figure 103. Degree of coherence between DAC and ATAD



Source: Authors' elaboration on targeted consultation

Overall, the interaction between ATAD and DAC does not pose any major issue on coherence. Conversely, the tools provided by DAC and ATAD rules complement each other to flag tax avoidance. The further iterations of exchange of information, especially under DAC6, might confirm this trend or possibly underline the differences in national transpositions.

Corporate Sustainability Reporting Directive

The EU framework sets out the general financial and non-financial reporting principles, to ensure the clarity and comparability of financial statements and increase transparency. The framework was amended in 2021 with adoption of the Corporate Sustainability Reporting Directive (CSRD),[339] which added a new requirement on the public **disclosure of income tax information by multinational groups with annual consolidated revenue of more than EUR 750 million**[340]. This amendment was first proposed in 2016, in the same timeframe of DAC4. Both Directives share the objective of

[336] For instance, ATAD's tax avoidance has been considered as more balanced to the one adopted in DAC6 provisions as it weights exclusive tax advantage and advantages characterized by the potential pursuit of both a tax advantage and a non-tax advantage (such as a company reorganization).

[337] Cfr Section 5

[338] Purpura, A. (2023), DAC6: Some (potential) Incompatibility Profiles with Article 6 ATAD. Intertax, 51(1), and Haslehner, W., & Pantazatou, A. (2022). Assessment of recent anti-tax avoidance and evasion measures (ATAD & DAC6). Think Tank European Parliament.

339 Directive (EU) 2021/2101 of the European Parliament and of the Council of 24 November 2021 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches (Text with EEA relevance)

340 The disclosure requirements apply to EU-based MNEs. Also, non-EU-based MNEs with revenue of more than EUR 750 million when controlling: (i) A 'medium-sized' or 'large' subsidiary 'governed by the national laws' of a Member State; or (ii) a qualifying branch in any of the Member States in the EU must report under the newly adopted Directive.

providing tax administration with the most complete set of information to ascertain aggressive tax planning. To avoid duplicating efforts and administrative burdens, undertakings are allowed to present the information required under the CSRD based on the template provided in Annex III to DAC[341].

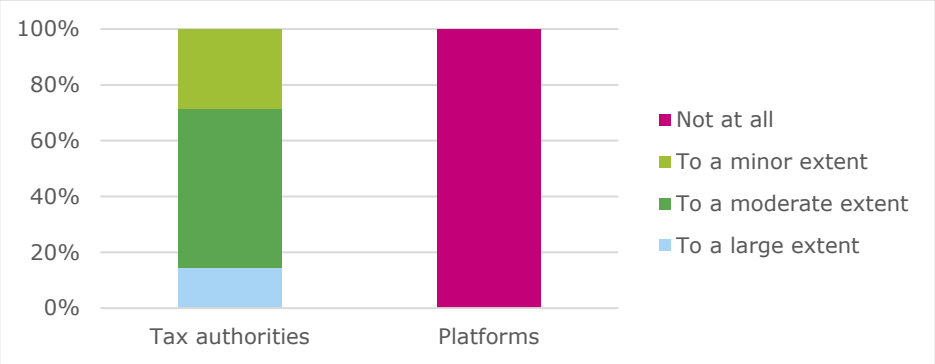
The two reporting requirements do not create major issues in coherence. In fact, few stakeholders have reported any contradiction nor duplication. Only some businesses see the upcoming introduction of the public CbCR as additional compliance effort, in view of the further explanation that might be due to the general public and suggested to adopt a more risk-based approach for requiring companies this type of reporting.

VAT Directive

Article **242a of the VAT Directive**[342], requires platforms to keep records of supplies they facilitate. Specifically, they must include **data on the supplier** (name, postal address and electronic address or website of the supplier, including, if available the VAT identification number and the bank account number) **and on the transaction** (a description of the goods and services, their value, the information to determine the place and time of supply). Through these records, national tax authorities must be able to verify that VAT has been accounted for correctly.

Similarly to CESOP, the information to be collected for the purpose of Art.242a is partly overlapping with DAC7 requirements. The different focuses of the directives – for Art 242a VAT and transaction and DAC7 sellers and income - implies the collection and validation of additional data points on both sides. For platforms, as shown in Figure 104, this results in a fragmented legislative framework which, rather than creating synergies, requires additional costs for the collection and exchange of only slightly different information.

Figure 104. Degree of coherence between DAC and Art 242a



Source: Authors' elaboration on targeted consultation

General Data Protection Regulation

The General Data Protection Regulation (GDPR)[343] protects individual's rights on the use and processing of their personal data. This includes, inter alia, ensuring easier access to an individual's own data, the right to erasure, and the right to know when their personal data has been breached.

341 Provided that the report on income tax information specifies which reporting framework was used.

342 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

343 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

The interaction with the GDPR and DAC is relevant because personal data collected in one Member State are shared between EU tax authorities. More in detail, under Article 25 of DAC, Member States are considered as data controllers while the Commission are deemed as data processors, with all the ensuing obligations.

For the exchanges out of the scope of the DAC, it is not unanimous among the tax authorities' interviews whether the data safeguards currently available to data subjects are appropriate, given the volume of information and number of third countries with which personal data are exchanged, especially following DAC6 and DAC7[344] amendments. Specifically, among some of them a concern has emerged when the exchange of information occurs between an EU Member State and a third country with less stringent rules on data protection: in this regard, some Member States would welcome a more EU co-ordinated effort on this aspect. Furthermore, the uncertainty of how the data will be treated has in some cases hindered the implementation of recent international initiatives, e.g., Platforms Multilateral Competent Authority Agreement (MCAA).

Other tax authorities consulted, however, do not see any issue in the interaction between DAC and the GDPR, as they trust that being both legal obligations for EU Member States, there is no room for spillover effect. During interviews, it was however mentioned that, to address these concerns and to reach an EU-wide conclusion on the interaction between the GDPR and AEOI with third countries, the Working Party on Tax Questions: Direct Taxation is currently analysing the existing legal framework and existing safeguards.

Another topic related to the interaction between DAC and GDPR concerns the data minimisation principle. This principle means that a data controller should limit the collection of personal information to what is directly relevant and necessary to accomplish a specified purpose and retain it only for as long as is necessary to fulfil that purpose. In the context of DAC this means that as controllers for the central directory, Member States should ensure the deletion of the information collected and uploaded for DAC3 and DAC6 purposes once the GDPR or national retention period is elapsed or when the deletion is necessary for manifest error. To this end, systems and processes for the compliance to the GDPR were discussed and adopted at WG ACDT and SG AEOI level[345]. Private stakeholders have also raised concerns with regards to DAC7, as it provides that only reportable sellers above a certain amount shall be reported. In practice this means keeping track of reportable seller over time, which leads them to assume on a possible risk of a divergence with the GDPR principle of collecting information only with a specific purpose.

9.2 Consistencies with international provisions

The consistency between the international and European framework has been highlighted as essential by public administrations and reporting entities. Differences in the definitions or procedures between the EU and OECD regulations might indeed cause grey areas for domestic legislation hence on the implementation of the rules.

At international level, administrative cooperation in direct taxation dealt within the OECD tax transparency framework. The scope and legal instruments through which the OECD and EU initiatives are implemented are different. The legal basis for the exchange of information under the OECD framework are the so called Multilateral Competent Authority Agreement (MCAA). The MCAA provides a standardised and efficient mechanism to facilitate AEOI and avoids the need for bilateral

345 Operationally, the possibility to delete data from the central directory was introduced in 2020, first providing only partial deletion and then with complete deletion of the information. According to some Member States this resulted in non-XSD compliancy of partly deleted messages which could not be extracted from the Central Directory with the same XSD schema that is used to submit messages. Cf. SG AEOI 18th Meeting – Brussels, 30 October 2019, 31-34.

agreements. OECD standards are however not legally binding. DAC and its amendments have often been used to give binding value to OECD standards in the EU.

Particularly relevant for DAC are the initiatives adopted by the Global Forum on Transparency and Exchange of Information for Tax Purposes, and the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS). The former includes the Common Reporting Standards (CRS); as for the BEPS, the OECD/G20, adopted an Action Plan including 15 Actions, three of which are directly linked to DAC provisions. Another OECD initiative worth mentioning in this analysis is the Two Pillar Initiative, and in particular Pillar II. This is because Pillar II and DAC4 have a similar scope of application (i.e., MNEs and large-scale domestic groups that have a combined annual group turnover of at least EUR 750 million) and although the contents of the applicable rules is quite different some datapoints required might overlap. The correspondence is shown in Figure 105 below.

Figure 105. International provisions covered by the analysis of coherence

International provisions	DAC relevant provision
OECD CRS	DAC2
OECD BEPS Action 5	DAC3
OECD BEPS Action 12	DAC6
OECD BEPS Action 13	DAC4
OECD Two Pillar initiative	DAC4
Model rules for platforms	DAC7

Source: Authors' elaboration

The following sections will analyse in greater detail the synergies and differences between EU and OECD initiatives.

Common Reporting Standards

The Common Reporting Standards (CRS) introduced legal definitions and standards for AEOI on financial assets held abroad and EOIR. The focus of CRS is on tax residents holding financial assets in other jurisdictions that have signed a CRS agreement with the home jurisdiction. The implementation of these standards is monitored and reviewed by the OECD Global Forum, which also provides assistance to national authorities.

The regulation of exchange of information on financial assets through CRS aimed at establishing a global common framework in the wake of the US's FATCA (see Box 22 below) and the early EU initiatives in this area[346]. To ensure a common implementation across the EU of the exchange of information introduced with CRS, DAC2 was subsequently adopted.

Box 22. FATCA

FATCA was the first global initiative adopted for the exchange of information on direct taxation concerning American citizens. Under FATCA non-US financial institutions should report the financial assets held by US persons. The assets that should be reported are those worth more than US$ 50,000[347]. To regulate the

[346] Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments.

[347] A Pre-existing Entity account with a balance or value that does not exceed US$ 250,000 does not have to be reported until it exceeds US$ 1 million.

exchange of these information, intergovernmental agreements were entered upon between local governments and financial institutions and US tax authorities. Depending on the arrangement for the transfer of information, the intergovernmental agreements are classified as Model 1 or Model 2: (i) under Model 1, authorities in the other jurisdiction collect and exchange data with US authorities; (ii) under Model 2, the financial institution directly transfers the data to the US. All EU countries, except for Austria, signed Model 1 conventions.

The information required under FATCA are broadly the same as for DAC2 and CRS, with some differences. The first difference concerns the identification of the account holder: FATCA relies on citizenship, while CRS/DAC2 considers only fiscal residents. This different modality of identification it might occur to consider an account holder an American citizen according to the US law, but who has only a tenuous connection with that country (commonly referred as 'accidental American'). The status of accidental American might result in the denial of banking services by EU financial institutions because of FATCA-based costs as well as being subject to US burdensome compliance, not proportionate to their actual situation[348]. The second difference is that under CRS/DAC there are no minimum thresholds for reporting financial accounts and no registration requirements for the reporting financial operator, as opposed to FATCA. Finally, on the operational side reporting entity for FATCA there is a specific Form FF1 Model 1 (Participating Financial Institution) to self-certify financial institutions' classification, while this lacks at CRS level.

Overall, according to stakeholders the differences of the US and OECD and EU framework the inconsistency among the two frameworks impact on the due diligence accuracy. Financial institutions reported that very often clients do not understand the concept of fiscal residence, resulting in 'best guess' answers on the self-certification. While performing reasonableness check many of these errors remain unnoticed. Also, the due diligence for the residence of High-Value Accounts as been reported as requiring additional resources as well as initially creating some discomfort for the different deadlines set (June for FATCA, December for CRS).

The definitions and standards adopted by DAC2 mirror to a great extent those adopted through the CRS. Also, the format used for the data exchange is the same. Throughout the implementation of both frameworks, the OECD and the Commission coordinated to address technical adjustments and reduce reporting burdens[349]. In the past, little inconsistencies have been reported by financial operators and tax authorities. However, stakeholders adopted the necessary strategies to address these inconsistencies[350]. Compared to other OECD and DAC provisions, the interaction between CRS and DAC2 is the smoothest, so much that some operators use only the CRS framework, because of its broader geographical scope, and are still able to comply with DAC2.

BEPS Action 5

BEPS Action 5 on 'Harmful tax practices', provides the rules governing the exchange of ATRs/APAs, implemented at EU level through DAC3. Action 5 and DAC3 slightly differ for the scope of application and on how the information are exchanged. Specifically, DAC3 applies to any cross-border ATR and APA, except for those exclusively related to natural persons[351], while BEPS Action 5 applies to six specific categories including those exclusively concerning natural persons. On the operational side, differently from DAC3, under BEPS Action 5, ATRs/APAs are exchanged point to point with the jurisdictions that may be affected by the ruling or agreement. The template to share the data is

[348] Garbarino, C. (2022) for the Policy Department for Citizens' Rights and Constitutional Affairs, FATCA legislation and its application at international and EU level: - An update, PE 734.765 - September 2022, available at: https://www.europarl.europa.eu/RegData/etudes/IDAN/2022/734765/IPOL_IDA(2022)734765_EN.pdf

349 As mentioned in Section 3.1.1 in the WG ACDT and SG AEOI, efforts were made in coordination with the OECD to align IT aspects, specifically, to align the size of the DAC2 message to the CRS standard (250MB uncompressed) and remove the limitation to the maximum number of records per message; cf WG ACDT 42nd Meeting – Brussels, 6th February 2018 and SG AEOI 27th Meeting – Online, 16 March 2022. This cooperation was also confirmed during the Covid-19 when the deferral of three months for AEOI with 5 non-EU countries (Monaco, San Marino, Liechtenstein, Switzerland, and Andorra), cf WG ACDT 47th Meeting – Virtual Meeting, 16th June 2020

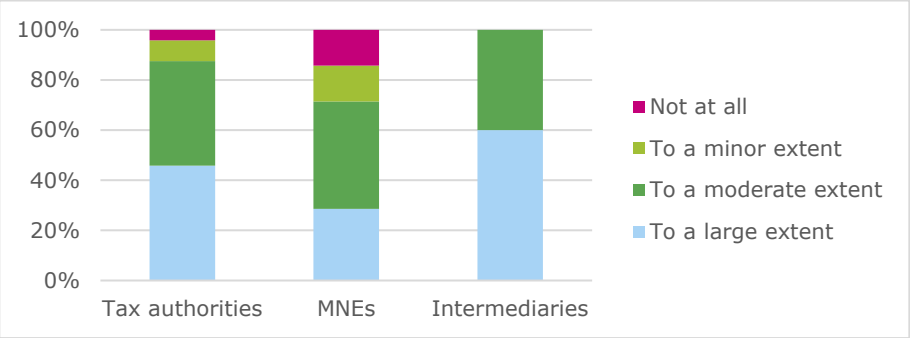
350 Operationally, the different timelines for the collection of information between EU and non-EU required some effort to the collection of data during different period of the year. Now, according to CRS and DAC2 the deadline by the end of September, DAC: within nine months following the end of the calendar year or other appropriate reporting period to which the information relates.

[351] With the entry into force of DAC8, also some ATR/ATA concerning natural persons will be exchanged under DAC3 AEOI. Cfr. Section 2.1.

also different, and the compatibility of the types of exchanges to avoid double compliance effort were discussed at EU level with national tax authorities starting from 2018[352].

In 2020 the OECD's published the 'Review of the Transparency framework'[353], i.e., the document providing the terms of reference and the methodology by which the peer reviews would be conducted. The 2020 Review introduced some amendments with regards to the information to be shared on rulings/APA's under BEPS Action 5. The change in the content of the information exchanged was discussed also during SG AEOI to harmonise DAC3 and the OECD framework. Some of the amendments proposed include new data requirements to be added, risk assessments indicators and review of rulings included in 'other category'[354]. These changes have not yet taken effect. Beyond these operational modifications, stakeholders have not reported any other major coherence issues concerning the EOI under the two frameworks, as showed in Figure 106.

Figure 106.: Degree of coherence between DAC and BEPS 5



Source: Authors' elaboration on targeted consultation

BEPS Action 13 and OECD Pillar II

BEPS Action 13 requires MNEs to prepare a CbCR with aggregate data on the global allocation of income, profit, taxes paid and economic activity among tax jurisdictions in which it operates. The CBCRs are then shared with tax authorities of these jurisdictions.

OECD Pillar II lays out Global Anti-Base Erosion Model Rules applicable to MNEs:

- an Income Inclusion Rule, imposing top-up tax on a parent entity in respect of the low taxed income of a constituent entity;
- an Undertaxed Payment Rule (later renamed Undertaxed Profit Rule), denying deductions or requiring an equivalent adjustment to the extent the low tax income of a constituent entity is not subject to tax under an Income Inclusion Rule;
- the Subject to Tax Rule, allowing source jurisdictions to impose limited source taxation on certain related party payments subject to tax below a minimum rate.

Both BEPS Action 13 and the OECD Pillar II concern MNEs with annual revenue over EUR 750 million and relate both to base erosion and profit shifting issues, and in this respect they can both be related to DAC4 reporting requirements and information exchange. However, the distinct objectives and functions pursued by these two OECD initiatives influence their degree of coherence with DAC4.

Specifically, BEPS Action 13 adopted at OECD level the 'Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting'. The purpose of CbC reporting is to enhance tax transparency and improve the ability of tax authorities to assess transfer pricing and

[352] Cf SG AEOI, 16th Meeting – Brussels, 30 January 2019

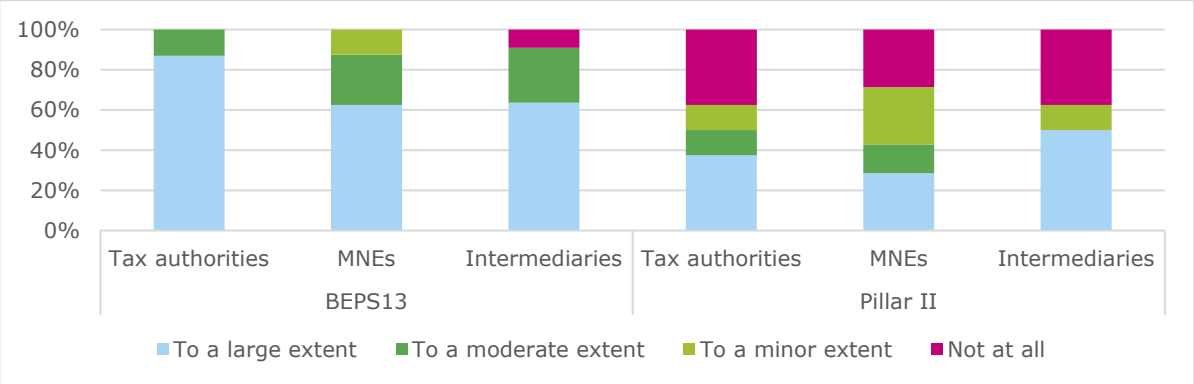
[353] OECD (2021), BEPS Action 5 on Harmful Tax Practices – Transparency Framework: Peer Review Documents, OECD, Paris, available at: https://www.oecd.org/tax/beps/beps-action-5-harmful-tax-practices-peer-review-transparency-framework.pdf

[354] SG AEOI, DAC3 Summary Information 30th Meeting – Virtual, 6 March 2023

other BEPS-related risks. The format adopted by BEPS Action 13 was taken into account for designing Annex III of DAC4, to minimise the compliance burden.

Pillar II envisages the adoption of domestic and treaty-based tax rules[355] to ensure that MNEs pay their fair share of taxes in the jurisdictions where they operate. The potential overlapping of the datapoint to be collected for Pillar II led some stakeholders to suggest that it can replace DAC4/Action 13. Others believe that the difference in the objectives between Pillar II and DAC4 will not allow to use the former's data to comply with DAC obligations. Rather the information collected under both frameworks will complement each other and the two systems might interact (Figure 107).

Figure 107. Degree of coherence between: DAC and BEPS13 and DAC and Pillar II



Source: Authors' elaboration on targeted consultation

DAC6 and BEPS Action 12

Action 12 on 'Mandatory disclosure rules' (MDR) includes recommendations regarding the design of disclosure rules for aggressive tax planning schemes. This Action does not constitute a minimum standard, allowing for revisions and changes to the provisions outlined in the BEPS Action as well as not being subject to peer review. DAC6 is based on the OECD work, however its scope is wider with different implementation requirements. OECD MDR cover only cross-border arrangements similar to those covered by DAC6 Hallmarks D. Specifically, the hallmarks covered by the OECD MDR include:

- 'CRS Avoidance Arrangement' i.e., those 'designed to circumvent, or has been marketed as or has the effect of circumventing CRS Legislation' to which are related another set of specific hallmarks (i.e., the use of an account, product or investment that is not a financial account, but has features that are substantially similar; the conversion or transfer of a financial account, or of sums of money and/or financial assets from a financial account to a not reportable account, etc.)[356]
- 'Opaque Offshore Structures', including those arrangements with a generic element of not allowing to accurately identify the BOs as well as specific tax planning techniques that can be used to achieve this outcome, such as the use of undisclosed nominees.

355 OECD 2021, Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy. More in detail Pillar II provides (i) an Income Inclusion Rule (IIR), which imposes top-up tax on a parent entity in respect of the low taxed income of a constituent entity; and (ii) an Undertaxed Payment Rule (later renamed Undertaxed Profit Rule), which denies deductions or requires an equivalent adjustment to the extent the low tax income of a constituent entity is not subject to tax under an IIR; and a treaty-based rule (the Subject to Tax Rule) that allows source jurisdictions to impose limited source taxation on certain related party payments subject to tax below a minimum rate

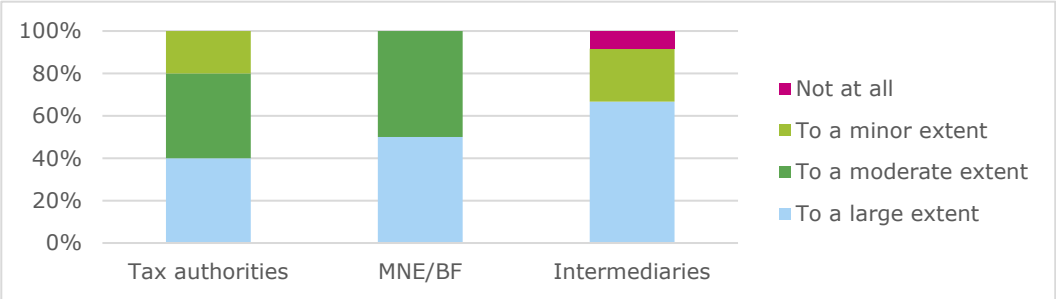
356 OECD Model Rules, Rule 1.1: CRS Avoidance Arrangement

As a result, the scope DAC6 is wider than OECD MDR, as it provides four additional Hallmarks to identify reportable cross-border arrangements. The difference in scope is mirrored also in the definitions adopted, e.g. reporting persons and reportable arrangements. For instance, in the OECD MDR the definition of intermediaries includes any person responsible for the design or marketing of a CRS avoidance arrangement or opaque offshore structure, or that provides relevant services in the scope of the hallmarks covered by the OECD MDR[357]. Conversely, under DAC intermediaries are 'any person that designs, markets, organizes or makes available for implementation or manages the implementation of a reportable cross-border arrangement'. This is because the scope of cross-border arrangements to be reported under DAC6 is wider compared to the OECD MDR. Therefore, the definition was thought to be broad enough to encompass the widest possible range of cases. Nonetheless, as mentioned also in section 5the breath of the definitions potentially differentiates the transposition and implementation within national legislations.

Operationally, the wider scope of DAC6 required a EOI format different from the OECD one. During the implementation of DAC6, the inconsistency of the formats resulted in IT glitches and additional efforts, which were discussed at EU and national level[358].

Stakeholders consulted reported the divergence between the OECD MDR and DAC6, suggesting it creates additional compliance efforts for both public and private stakeholders. Despite DAC6 specifically refers to the OECD commentaries as a source of interpretation, this does not ensure the same level of consistency at EU level on all the remaining Hallmarks. On the contrary, the difference in scope has created some uncertainties when there are inconsistent national transpositions of the Hallmarks not covered by the OECD. However, this aspect does not influence the perception of DAC6 coherence of with OECD MDR, but rather the application at EU level (Figure 108).

Figure 108. Degree of coherence between DAC6 and BEPS12



Source: Authors' elaboration on targeted consultation

Model rules for platforms

In 2020, the OECD/G20 Inclusive Framework on BEPS approved the '**Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy**'[359], which provide common standards to EOI on transactions and income realised via online platforms. In 2021 the OECD developed an optional module that allow interested jurisdictions to implement these Model Rules with an extended scope, covering also the sale of goods and the rental of means of transportation[360]. More recently, the OECD XML Schema for such reporting was published, reflecting

[357] OECD Model Rules, Rule 1.3: Intermediary

[358] SG AEOI M016 – Minutes – 4; SG AEOI M017 - 00 – General – 10: SG AEOI M017 – Minutes – 2

359 OECD (2022), Model Rules for Reporting by Digital Platform Operators XML Schema: User Guide for Tax Administrations, OECD, Paris

[360] OECD (2021), Model Reporting Rules for Digital Platforms: International Exchange Framework and Optional Module for Sale of Goods, OECD, Paris. Member States were timely informed about the developments of the additional Module to be adopted by the OECD during the SG AEOI (cf SG AEOI 24th Meeting – Online, 3 June 2021).

the already existing IT-based exchanges under the OECD's Model Reporting Rules for Digital Platforms and DAC7.

The scope of DAC7 did not fully coincide with the OECD Rules, as initially the latter did not cover the sale of goods and the rental of means of transportation. However, this was the adopted an optional module to also cover these areas of the gig economy. Some definitions and rules set in OECD Model Rules for Reporting Platform Operators are not exactly mirrored the by DAC7. For instance, the definition of 'Excluded Platform Operator' under the OECD Model Rules refers to an operator that 'facilitates the provision of Relevant Services for which the aggregate Consideration at the level of the Platform over the previous calendar year is less than EUR 1 million'; such a de minimis exception is not present under DAC7.

Nonetheless, the OECD and the EU coordinated their efforts to minimise the reporting burdens though the adoption of the same XML schema for both frameworks[361]. Stakeholders consulted have not reported major coherence issues with regards to the operational aspects nor with the definitions and obligations set, but rather worries on the different national implementations, given the breadth of some definitions[362].

9.3 Summing up

The Directive and its provisions are overall coherent with other relevant EU initiatives, especially for those providing the same or similar instruments for administrative cooperation in different tax areas (VAT, excises, asset recovery). Small inconsistencies mostly derive from the different objectives followed by the other EU Directives, such as in the case of AMLD and ATAD. However, differences have not resulted in serious conflicts. Rather, significant synergies exist, such as between DAC2 and AMLD.

In few circumstances, the legal framework is fragmented, with duplications. This is for instance the case for platforms, which are subject by several existing and forthcoming reporting regulations (242a VAT Directive, CESOP). The datapoints required under the two different frameworks complement each other as they are driven by the different aims and scope of the legislations (i.e., DAC7 goal is to improve the EOI on the platforms' income subject to direct taxation, while VAT Directive and CESOP target VAT fraud). However, the overlap of some datapoints resulted in duplicated efforts and burdens for implementation. This was aggravated by the adoption of national reporting rules and differences in the national implementations of the EU Directives, creating multiple layers of obligations.

With respect to the international initiatives, the degree of coherence of DAC is relatively high. In several cases, DAC provisions were adopted as a direct consequent of the OECD initiatives, directly taking over definitions and operational processes (e.g., same XML schemas). The best examples in this respect are DAC2 / CRS and DAC4 / BEPS Action 13. This was however not always the case. for DAC6, which goes further beyond what is provided by the OECD rules and guidelines. The lack of correspondence between the OECD MDR and DAC creates uncertainty among private stakeholders when there are inconsistent national transpositions or unclear definitions. However, rather than an issue related to coherence this can be interpreted as a necessity for clearer and harmonised guidance on the interpretation of DAC provisions.

361 SG AEOI 27th Meeting – Online, 16 March 2022

362 Section 5

10. EU ADDED VALUE

This section presents an assessment of the **EU added value of DAC**, that is an evaluation of whether the outcomes and the impacts achieved are additional compared with national or international interventions. It thus requires comparing the benefits achieved with what would have emerged should DAC had not been adopted (the so-called counterfactual).[363]

In the case of DAC, the counterfactual consists of other international policies in the area of ACDT, and, first and foremost, OECD standards and actions. Next to those, Member States could make use of bilateral agreements and treaties, as well as national disclosure programmes. It is therefore assumed that, were DAC absent, Member States would cooperate among each other mostly via the OECD standards.

In this respect, most, but not all, DAC provisions have their counterparts in the OECD standards and actions:

- DAC1 AEOI has no comprehensive correspondence, since it can be included in bilateral treaties based on the Model Tax Convention, or replaced by the bilateral transmission of information in line with the OECD Standard Transmission Format, which is however not mandatory.
- There is a very close correspondence for the following provisions: DAC2 and OECD CRS; DAC3 and BEPS Action 5; DAC4 and BEPS Action 13.
- For the following provisions, there is a partial correspondence between EU and OECD actions, albeit the former are wider in scope and disclosure: DAC6 and BEPS Action 12, DAC7 and Model Rules for Reporting by Platform Operators[364].
- Other forms of cooperation (e.g. EOIR) are included in the OCED conventions, [365] and can be incorporated into bilateral treaties.

The EU added value of DAC can be measured over two dimensions:

- **Added efficiency gains**, because DAC introduces quicker, smoother or less burdensome forms of cooperation, also considering the effects of the **EU funding** (captured by JC #9.1);
- **Added effectiveness**, because DAC allows to generate more benefits compared to other forms of international cooperation, (captured by JC #9.2).

While the evidence points out that DAC generates added value across both dimensions, the analysis below is largely qualitative, given that it was hardly possible to retrieve or estimate relevant quantitative data.

Judgment criteria	Indicators
JC #9.1 Extent to which the results generated are additional compared to national/international initiatives	• Additionality of the Directive with respect to effectiveness • Additionality of the Directive in guaranteeing a homogeneous implementation of international provisions • Additionality of EU financial support
JC #9.2 Extent to which the efficiency of the tools and mechanisms of the Directive is superior to possible alternatives	• Stakeholders' perception of the advantages of having EU-wide systems, procedures, and tools compared to national or international alternatives • Additional costs and cost savings generated by the systems and provisions connected to the Directive

[363] Better Regulation Toolbox – Tools #46 and #47.

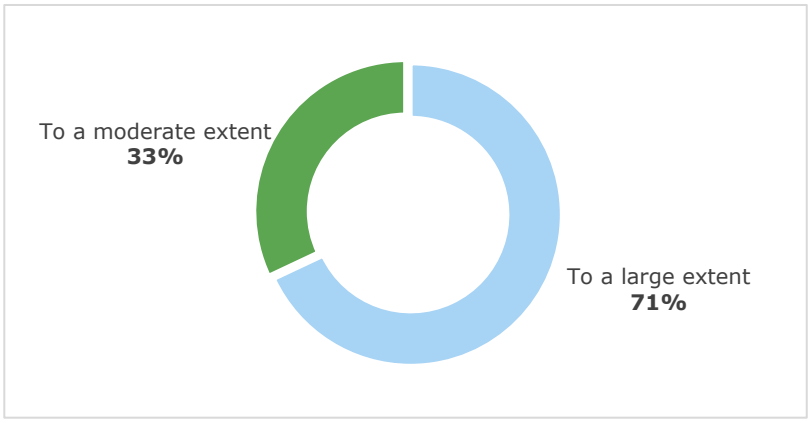
[364] OECD (2022), Model Rules for Reporting by Digital Platform Operators XML Schema: User Guide for Tax Administrations, OECD, Paris

[365] Convention on Mutual Administrative Assistance in Tax Matters; articles of the Model Tax Convention, in particular Article 26, and the associated Commentary.

10.1 Added efficiency gains

All tax authorities agree that **DAC is superior to international or national alternatives in terms of efficiency**, with two thirds or respondents pointing to a major efficiency gain in this respect (see Figure 109 below). This also emerges clearly from the qualitative contributions and the analysis of the various provisions.

Figure 109. Perception of tax authorities of DAC superiority to international or national alternatives in terms of efficiency



Source: Targeted consultations

The basic efficiency gain concerns the **binding nature of the DAC framework**. Being an EU Directive, their provisions bind Member States to engage in ACDT ('national norms are grounded on the same legal basis, with very little room for deviation; this is beneficial compared to solely national mechanisms'[366]). The engagement of Member States does not need to result from the negotiations of bilateral agreements, which are burdensome to negotiate and less predictable. Also, the mechanism for enforcing compliance with international treaties take longer and are less effective compared to EU law. Finally, changes to legal provisions – a common occurrence for ACDT – would take significantly more time and be more uncertain if the framework relied only on international legislation. In economic terms, **DAC, being an EU Directive, significantly reduce the transaction costs (i.e., the institutional attrition) for engaging in ACDT compared to its international alternatives.**

The DAC framework also leads to making ACDT more routinary. This means that national tax authorities get more experienced with the instruments at their disposal, on how to send and receive information to their EU partners, on the nature and content of the information received ('EU Member States apply the tools more promptly and are more experienced in all kinds of administrative cooperation than the average OECD members'[367]). Also, the knowledge and awareness of DAC tools is deeper compared to that of international initiatives. All this results in more information being exchanged compared to international and bilateral exchanges. The routinisation and the larger amount of information results into **learning economies,** that reduce the burden of the exchange and improve data usage.

From an operational perspective, DAC is considered more efficient because it is not only a legal framework, but **it comes with an underlying IT architecture**, including an IT infrastructure for exchange at central level, common specifications and interfaces for local IT infrastructures, safe communication channels, common automatically processable format for data exchange. In this

[366] Targeted consultation

[367] Targeted consultation

respect, DAC is clearly superior because no international or national alternatives offer the same level of operationalisation for the exchanges. An example comes from the comparison of DAC3 and BEPS Action 5. Under DAC3, the information is automatically exchanged following the upload of the ATR/APA in the dedicated central directory; the upload is done in a common format, which is automatically processable, and the information is stored in the Directory for future uses. Under BEPS Action 5, the ATR/APA must be communicated to the concerned jurisdiction directly, via a point-to-point system, with non-uniform formats, not always automatically processable.

In this respect, the role of **Fiscalis programme to fund the IT infrastructure also generates value, in the form of economies of scale**. Under the Fiscalis 2020 iteration of the programme, more than EUR 20 million were earmarked for the DAC IT infrastructure, including the development of the IT systems and the support to the CCN[368]. As already evidenced in the previous evaluation, developing (partly) common IT systems and interfaces at EU rather than national level generates **economies of scale**, i.e. the common investment required is lower than the sum of 27 separate IT programmes. At the same time, funding a common infrastructure reduces transaction costs in the information exchange, that would result from the development of national software or schemas.

From the point of view of private stakeholders, DAC provides added value by avoiding the cost of fragmentation of reporting requirements. Financial institutions and intermediaries operating in multiple EU jurisdictions, as well as MNEs covered by DAC4, face a single set of reporting requirements, including the associated technical specifications. This means that they do not have to familiarise with different local applications of the international principles, and do not face unnecessary duplicated costs for the tailoring of IT systems and data collection and reporting procedures.

Finally, as for non-AEOI cooperation, the tax authorities confirmed, as in the previous evaluation, that **EU tools are more efficient compared to their OECD alternatives**. This is particularly true for the 'oldest' tool, that is EOIR, which can be activated also with non-EU countries. However, in the word of one tax authority, 'based on DAC, the e-forms to formulate the requests ensure compliance with the information exchange and the inclusion of necessary information, which can be accessed and processed more easily'.

Here again, the additionality of EU funding is crucial. It is commonly accepted that, without Fiscalis, a lot of the more interactive forms of cooperation, in particular PAOEs and simultaneous controls, would not happen. In other words, tax authorities would be significantly less likely to use these tools if these were to be financed via national resources only. Under Fiscalis 2020 programme, almost EUR 1 million supported more than 40 instances of PAOEs and simultaneous control, involving at least 14 Member States[369].

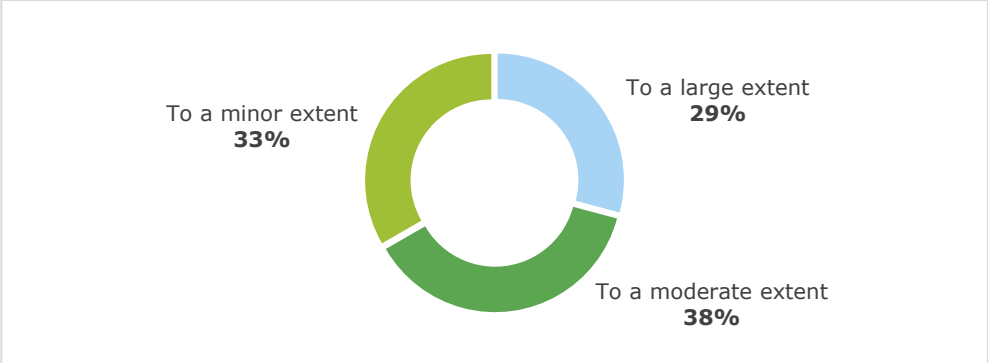
10.2 Added effectiveness

Most tax authorities consider that **the same results achieved by DAC could not be obtained by relying merely on national and international initiatives** (see Figure 110 below). Among tax authorities, three quarters of the respondents to the targeted consultation consider that the same results would be likely only to a minor or moderate extent. This is due to the higher quality and usability of the data exchanged under DAC, compared to other international forms of exchange, which is turn enabled by the DAC IT architecture, as discussed above.

[368] *Cfr* Section 6.6 and Volume 2 – Section 7

[369] *Cfr* Section 6.6 and Volume 2 – Section 7

Figure 110. Perception of tax authorities of the additionality of DAC results compared to national/international initiatives



Source: Targeted consultation

The assessment of the additional effectiveness of DAC varies across its provisions, in particular depending how more or less similar (in terms of scope and operational support) they are compared to their OECD counterparts. In this respect, the additional effectiveness is considered negligible or limited when it comes to DAC2, DAC3 and DAC4, because of the small differences with OECD initiatives. For these provisions, the additionality costly concern efficiency aspects, and tax authorities usually consider that there are no major differences in terms of the scope of and benefits from of these exchanges.

The situation is different for other DACs. As for DAC6, its scope goes further than similar international initiatives or pre-existing national disclosure requirements. Albeit its benefits did not materialise so far, it can be anticipated that a share of those will be additional. Similar considerations were made in the targeted consultation concerning DAC7, which will allow obtaining tax information about platform sellers also from non-resident platforms, even those established in a country in which no such an AEOI is established.

A quantification of the additional benefits is possible for DAC1 and other forms of ACDT:

- For DAC1, most of the benefits of DAC are additional compared to international and bilateral initiatives, which do not foresee such an extended system of automatic exchange of information on incomes, albeit bilateral exchanges via the OECD standards remain possible. Here, it can be estimated that at least 80% of the benefits estimated for DAC1 AEOI represent DAC's EU added value. Considering the estimates presented in Section 7 above, the additional benefits amount to between EUR 40 and 310 million per year.
- For other forms of administrative cooperation, here the additionality comes both from DAC provisions, which are more advanced and provides a superior communication framework, as well as from the associated EU funding. In this case, at least 90% of the benefits can be considered additional, corresponding to EUR 10 – 100 million per year.

Based on conservative estimates, which do not consider at all the additionality emerging from provisions that are very close to their OECD counterparts, **the additional benefits can be assessed as falling between EUR 50 and 400 million per year**. This does not consider other non-quantifiable effects of DAC which, according to the views reported by tax authorities in the targeted consultation, results in more information being exchanged compared to the international initiatives, and in a better usage of the data obtained, because of economies of learning, familiarity with the standards, and automatic processing.

10.3 Summing up

There is consensus among tax authorities and sufficient evidence to affirm that **DAC generates positive EU added value compared to the international, bilateral and national initiatives**

in the field of ACDT. This consists both in efficiency gains and additional effectiveness, i.e. additional benefits. The main reasons of additionality are as follows:

- For DAC1 and, to some extent, DAC6, the EU framework is unique and provides Member States with instruments that have no correspondence or similar scope in the international instruments.;
- DAC is a binding EU Directive, which greatly facilitates implementation, compliance and enforcement of the ACDT framework;
- DAC is operationalised by an IT architecture (made of central and local infrastructure, formats, communication channels), which is only partly there in the case of international initiatives.
- The EU supports DAC via central funding, which is especially relevant for the IT architecture and the more resource-intensive forms of AC (simultaneous controls, PAOE).
- DAC introduces common reporting requirements across the EU, avoiding that MNEs bear additional costs to adapt to the local requirements.

All this results in a multiplicity of positive additional effects. Common infrastructure generates economies of scale, and the binding nature of the framework reduces transaction costs for negotiation and exchange among Member States. A better framework is conducive to bigger exchanges compared with international peers, which in turn increase the awareness of and familiarity with DAC. More exchanges mean more experience, and hence learning economies in data processing and usage.

A fraction of these additional benefits can be quantified, those linked to DAC1 and other forms of AC, which are the tools for which DAC improves more significantly compared to the international initiatives. For these tools, additional benefits could be estimate at between EUR 50 and 400 million per year, considering the benefits estimated for the latest two years.

11. CONCLUSIONS

11.1 Overview of main findings

This Section summarises the findings of the full-fledged evaluation of DAC. In line with the EU Better Regulation policy, the Directive has been assessed across the five standard evaluation criteria (effectiveness, efficiency, relevance, coherence and added value). The evaluation focuses on the 2018-2022 period. In addition, the analysis also covered the Directive's transposition and implementation, as well as the uptake of the various DAC tools, and namely:

1. DAC1 automatic exchange of information on incomes;
2. DAC2 automatic exchange of information on financial assets;
3. DAC3 automatic exchange of information on ATRs and APAs;
4. DAC4 automatic exchange of information on CbCR;
5. DAC5 access to domestic AML information for DAC purposes;
6. Other forms of administrative cooperation, including on request, spontaneous, presence in administrative offices and enquiries (PAOE) and simultaneous controls; and
7. More limitedly given the time elapsed since its adoption, DAC6 AEOI on cross-border arrangements and DAC7 AOEI on platform transaction.

Overall, **the evaluation of the Directive is positive**, with some limitations and a number of possible improvements discussed below. DAC and its amendments have been transposed without major problems, although implementation is considered burdensome by the tax admnistrations. In this respect, the Directive leads to the exchange of substantial volumes of information, which is growing over time. Importantly, DAC information is increasingly processed, matched, and used both for control purposes and to foster compliance. The Directive provisions have generated significant tax benefits, that more than offset the costs. In addition to important investments in terms of human resources and IT developments for the public services – the Commission and Member the States, a large part of the costs fell on private stakeholders.[370] Together with other EU and international initiatives, it is one of the tools that contributes to a fairer EU tax system. DAC provisions are largely coherent with other EU provisions and international initiatives and capable of generating added value.

Transposition and Implementation

The transposition of DAC into national legislation has not posed any major issues. The large number of infringement procedures are mostly non-substantive, concerning delays in notification only, which can be explained by the legislative and operational work required at national level. Stakeholders consider **the implementation of DAC as burdensome,** both because of the necessary IT investment and operational adjustment to the functioning of national tax authorities, and because the frequency of the legislative revisions, the pace for which is mostly dictated by international developments. Linked to the operationalisation of DAC, tax authorities have raised concerns regarding the need for the adoption of procedures to safeguard personal information exchanged and the compliance with the retention period laid out in the GDPR in the Central Directories.

Some implementation issues are relevant only to some Member States, due to national legal or policy limitations. For instance, DAC1 AEOI information on incomes is not available to all Member States for all categories. In this respect, also following the recommendations of the ECA and EP, the Commission has made some harmonisation efforts, proposing a minimum of categories to be

[370] Cf. Table 33 in Section 8.3 above.

exchanged by each Member State (also following the recommendations of the ECA and EP), and has raised the bar further with DAC8, which introduced a general obligation to exchange all DAC1 categories of data. Finally, the analysis has also identified certain differences in the implementation of the latest amendments, in particular DAC6. This could have been prevented had a common guidance been endorsed by all Member States, as it has been the case for other DAC provisions.

The European Commission has followed up or is following up on most of the ECA and EP recommendations through the latest legislative initiative (e.g. including crypto-assets in the scope of DAC) and non-legislative actions (e.g. setting up Member States expert visits). While some of the proposed provisions in DAC8 were not retained by the Council, the final text addresses most of the recommendations received. The majority of recommendations addressed to Member States were also followed up on, as confirmed by the growing availability of Tax Identification Numbers (TINs) in DAC2 exchanges, the improved quality,, processing and use of DAC1 and DAC2 data. In other cases, notably regarding the inclusion of TINs in DAC1 exchanges, there remains room for improvement, although DAC8 tackles this aspect.

Uptake

Between 2018 and 2022, the volume of information exchanged under DAC1 and DAC2 has continued to grow, confirming the pattern emerging in the 2019 evaluation for the. Under DAC1, exchanges concerned, on average, more than 8.6 million taxpayers per year, and corresponded to some EUR 55 billion worth of incomes. The geographical composition of DAC1 exchanges reflects the size of EU economies. Income from Employment and Pensions accounted for 70% of taxpayers and 98% of the value, while exchanges on other categories of income were comparatively less significant, particularly in terms of value. The increase in the volume of data exchanged does not depends on the increase in the number of categories of income on which Member States are able to exchange information, which, since 2018, has increased only marginally.[371] As for DAC2, annual exchanges concerned some 25 million of accounts per year on average and EUR 1.7 trillion, with Luxembourg remaining the largest sender of information.

DAC3, DAC4 and DAC6 also led to the exchange of a substantial volume of information, with a stable trend. Under DAC3, about 1,600-1,700 rulings per year have been exchanged. In total, between 2017 and 2022, 25,660 ATRs/APAs were uploaded in the dedicated central directory, with a handful of countries (including the Netherlands, Poland, Italy, and Luxembourg) originating most of the rulings. Since 2020, both the Netherlands and Luxembourg reduced drastically the number of ATRs/APAs exchanged, as a consequence of internal policy reforms. Since the launch of DAC4 in 2018, tax authorities collected over 26,000 CbCRs from their reporting entities, leading to some 86,500 exchanges among Member States. Germany, France, and the Netherlands are the top senders of DAC4 information, with the highest bilateral flows occurring among neighbouring countries. Finally, during the first two years of exchanges, around 46,000 cross-border arrangements have been exchanged under DAC6, with Germany, also in this case, being the top sender of information.

As regards non-AEOI cooperation mechanisms, the trends identified by the previous evaluation are broadly confirmed. EOIR and SEOI both have irregular trends over time, mostly depending on national decisions, but are used regularly by tax authorities, and have returned to pre-COVID-19 levels in 2022. PAOEs and simultaneous controls have also been employed by most tax authorities, albeit some of them have never participated. Interactions with tax authorities suggest that this may be due to a combination of lack of resources and scarce awareness and habit

[371] As of 2021, eight countries were able to send information on all five original income categories, and another nine on four of them. In contrast, seven countries have available, and thus exchange, information only for three categories, and Cyprus only for two.

regarding their use. Overall, their use has been decreasing since 2020, also due to COVID-19 restrictions.

Relevance

The Directive aims to tackle two main challenges: the erosion of Member States' tax base as a consequence of increased globalization; and the risk of an unharmonized policy response. Public and private stakeholders agree that these issues represent a problem for society.

The issues covered by DAC provisions are not all equally relevant in quantitative terms. Financial assets held by EU citizens in Member States other than that of residence are significant: deposits at financial institutions and investments in other EU countries amount to respectively 9% and 18% of gross financial assets held by EU residents. Profit shifting by MNEs also represents a large phenomenon. MNEs with a parent jurisdiction in the EU accumulated close to EUR 1,600 billion profit before income taxes in 2018. Estimates suggest that nearly one tenth of the profits (and 14% of foreign profits), corresponding the about EUR 150 billion, was recorded in parent jurisdictions that can be classified as offshore financial centres. Instead, the relative importance of the categories of income covered by DAC1 appears comparatively much lower. Cross-border employees represent somewhere between 1 and 4% of the total workforce, and their income represent an average of 2% of the total compensation of the workforce. Similarly, cross-border pensioners represented 2% of the total number of pensioners in the country of residence, and the amount paid to these pensioners represented 1.5% of total pension payments.

Stakeholders have a positive opinion of the fitness for purpose of the Directive. More in detail, the analysis of fitness was carried out with specifically for the various DAC tools. **Very few issues were reported with respect non-AEOI tools.** As regards AEOI, **the most discussed issue concerns DAC6 reporting requirements**. According to both public and private stakeholders, several aspects related to DAC6 are neither clearly defined nor can be easily applied. The lack of clarity, exacerbated by the lack of guidelines endorsed by all Member States, also leaves room for different interpretations and applications at national level.[372] On the one hand, given the recent launch of this provision, some difficulties may be natural upfront difficulties in implementation. On the other, some provisions have clearly emerged as problematic, particularly as regards the definition of certain hallmarks and of the main benefit test, and the definition of intermediaries subject to reporting. Another issue concerned the difficulties of by financial institutions in collecting client's foreign TIN for DAC2 and in verifying its correctness. The process is particularly problematic for pre-existing clients. More generally, for both DAC1 and DAC2 the identification of the tax residency of taxpayers is often problematic, especially since the taxpayer may have difficulties in reporting it correctly. As regards DAC3, issues remain with the summaries uploaded on the central directory, which, even when compiled correctly, are often insufficient to perform a risk assessment; in this respect, a new template has been agreed with the Member States and will be available as of 2024. Finally, one of the key issues with DAC4 is the perduring difficulty by tax authorities in correctly identifying and monitoring their reporting entities.

Effectiveness – Outcomes

Tax authorities largely agreed that the framework set up by the Directive is conducive to administrative cooperation and shared their appreciation on the operational tools and systems entailed by it. They also confirmed that the interaction among different provisions and tools is one of the strengths of the Directive.

The assessment of the achievement of the Directive's specific objectives started from an **analysis of the usability of the information exchanged, in terms of completeness, quality, and timeliness**. DAC1 and DAC2 exchanges display a high degree of completeness, as the information

[372] Discussed more in detail in Sections 5.2.2 and 5.2.3 above.

shared include detailed and granular data, concerning both content and identifiers. The only exception has to do with the inclusion of the TIN of the receiving country in DAC1 exchanges, whose availability has remained low (about 2% of taxpayers concerned). As regards DAC3 and DAC4, tax authorities lamented the varying quality of the information exchanged. For DAC4, in particular, not all Member States are able to ensure that the CbCRs are collected from local MNEs, which may affect the completeness of the information. No problems emerged with the timeliness of exchanges.

Between 23 and 25 countries systematically match DAC1 and DAC2 data, and most of them also match DAC3, DAC4 and DAC6 information. **Matching rates are rather high for DAC1 and DAC2, mostly about 85-90% of the information received**, recording an increase compared to the previous evaluation, in particular with respect to automatic matching. Matching rates are also high and increasing for DAC3 and DAC4, and matching has worked well in the first year of DAC6. Once matched, tax authorities use information for various purposes. In most recent years, **all tax authorities reported using DAC1 and DAC2 information for tax control purposes**, and particularly for risk assessment and audits. DAC3 and DAC4 information is also used by most Member States, although not systematically by all. Non-AEOI tools are also praised as valuable for identifying tax fraud and evasion, especially EOIR.

AEOI, and in particular DAC1 and DAC2, is also used to foster spontaneous tax compliance, through notifications to generate disclosure and awareness campaigns. The evaluation also investigated the extent to which DAC resulted in a behavioural change among taxpayers. The feedback collected suggests that **DAC had a deterrent effect on individual taxpayers, although it cannot be quantified in a sufficiently precise manner**. As regards in particular DAC2, tax authorities reported an effect on the disclosure of financial assets abroad, and on the taxes paid on them. **The deterrent effect on corporations is perceived by stakeholders to be not (or not yet) as significant**, and the effect of DAC3 and DAC4 is often seen as compounded with other international activities and actions. Finally, DAC (and particularly DAC3 and, to a lesser extent, DAC4 and DAC6) have the potential to contribute to the transparency of tax rules.

Effectiveness – Impact

The Directive targets three, interrelated, general objectives. The first is **the safeguard of Member States' tax revenues**, by increasing the taxes collected or recouped from taxpayers with income, assets or operations in different Member States, either as a consequence of tax control activities, or from an increase in spontaneous tax compliance.

Despite the caveats associated with the quantitative analysis,[373] the evidence, as supported by the view of tax authorities and private stakeholders, suggest **that the Directive is effective in contributing to safeguarding Member States tax revenue**. Total tax benefits are estimated at about EUR 6.8 billion per year; albeit large in absolute terms, they correspond to about 0.3% of EU direct tax revenue. There is a general consensus that DAC1 and DAC2 allowed to identify hidden tax basis and to increase compliance, via both enforcement and deterrence. Together with non-AEOI, based on data from tax authorities, these tools generate about EUR 1.2 billion per year of additional tax assessed. While there are no data for DAC4, the economic literature suggests that CbCRs has the capacity to increase the effective tax rate for multinationals. Albeit the effect is likely smaller compared to public CbCR, the magnitude of the issue at stake is so large that benefits are around few billion EUR.

[373] The additional tax revenues generated by DAC were measured via data shared by Member States, as well as the economic literature. In both cases, estimates are subject to a degree of uncertainty, which is larger for DAC4. As for DAC1 and DAC2, the available national data points remain limited, albeit the coverage is growing, and their accuracy cannot be independently verified. As for DAC4, the economic literature does not specifically focus on DAC tools, so that results need to be extrapolated to produce relevant estimates.

The Directive has two further objectives, that is contributing to the smooth functioning of the Internal Market and increasing the fairness of the EU tax system. They can be fulfilled to the extent that the Directive safeguards Member States' tax revenues. **DAC positively contributes to the functioning of the Internal Market through two channels**. First, it limits the opportunities for tax evasion and avoidance for companies and individuals operating cross-border, thus removing or limiting tax-reducing distortions. Second, it obtained positive results in harmonising reporting requirements for private sector operators, with respect to DAC2, DAC4 and – in the future – DAC7, as well. **DAC also increases the fairness of the EU and national tax systems**. Albeit this accomplishment remains difficult to measure, there is a consensus, supported by evidence, that DAC contributed to reduce the room of manoeuvre for individuals and corporations to hide tax bases abroad and escape fair taxation. However, DAC can only be supportive to the broader tax framework: if certain aspects or practices are not covered by the substantive tax rules, no amount of information exchange can address the issue. In this respect, DAC is one of the tools, together with other EU and international initiatives, contributing to making sure that a fairer amount of taxes is paid in the right Member State.

Efficiency

Under the efficiency criterion, the study estimated both set-up and recurring adjustment costs and burdens for private and publica stakeholders alike. **Annual recurring adjustment costs and administrative burdens from DAC are estimated at about EUR 650 million.**

From a distributional perspective, most (93%) of the burdens accrue to private stakeholders. In 2018-19, before the entry into force of DAC6, recurring administrative burdens hoover at about EUR 550; with the entry into force of DAC6, they increase to EUR 800 – 900 million. The costliest provision over the period is DAC2; however, as time goes by, these costs tend to decrease. DAC6 is also estimated to be rather expensive in this period, precisely because of the initial compliance efforts. In the last two years, DAC4 generated about 6% of total costs.

Recurring costs and burdens for tax authorities account for less than 7% of total costs. DAC1 and DAC2 generate the highest costs, while costs for DAC3 are lower and DAC4 falls somewhere in between. In general, the finding of the previous evaluation has been confirmed: implementing costs are significant when new DACs are implemented but then decrease and stabilise over time, while recurring costs increase. The costs associated with non-AEOI provisions are relatively low, mostly due to their more limited usage, at some EUR 1 million per year and further decreasing since 2020 as a consequence of the lower recourse to advanced cooperation mechanisms (PAOE and SCs), also due to the COVID-19 pandemic. Finally, reporting costs for Member States towards the Commission are in the order of EUR 140,000 per year, half of which for the compilation of the Yearly Assessment.

Given the uncertainties of the estimation of benefits, the comparison of costs and benefits is made over three scenarios:

- The **comprehensive scenario**, based on the central estimates of all costs and benefits;
- The **low-range scenario**, based on the low-range estimates of all costs and benefits;
- The **data-based scenario**, that consider only data collected from stakeholders and tax authorities and excludes the literature-based estimates of DAC4 benefits.

According to the cost-effectiveness analysis **the recurring burdens due to DAC are more than commensurate with the benefits generated.** Under the various sensitivity scenarios, **the annual net benefits are in between 500 and 6,100 million**. Net benefits remain positive and significant even considering the uncertainties linked to the quantification of DAC4 impacts. Even under the most conservative estimates, i.e. those carried out based on primary data on tax benefits provided by a growing number of Member States, benefits are at least two times the burdens incurred. In the other scenarios, they are between eight to 10 times larger than the costs incurred.

Coherence

The Directive interacts with a number of EU and non-EU legal provisions. The **Directive and its provisions are coherent with other relevant EU initiatives,** especially for those providing the same or similar instruments for administrative cooperation in different tax areas (VAT, excises, asset recovery). Small inconsistencies mostly derive from the different objectives followed by the other EU Directives, such as in the case of AMLD and ATAD. However, differences have not resulted in serious conflicts. Rather, significant synergies exist, such as between DAC2 and AMLD. In few circumstances, duplicated reporting requirements emerged. This is for instance the case for platforms, which are subject by several existing and forthcoming reporting regulations (Article 242a of the VAT Directive, CESOP). This is aggravated by the adoption of national reporting rules, creating multiple layers of obligations.

With respect to the international initiatives, the degree of coherence of DAC is also relatively high. In most cases, DAC provisions were adopted following the corresponding OECD initiatives, directly taking over definitions and operational processes. The best examples in this respect are:

- DAC2 / Common Reporting Standard (CRS);
- DAC4 / Base Erosion and Profit Sharing (BEPS) Action 13 and Country-by-Country Reporting (CbCR);
- DAC7 / Model Reporting Rules for Digital Platforms (MRDP);
- DAC8 / Crypto-Asset Reporting Framework (CARF).

In other cases, EU provisions differ from the scope of OECD model rules, e.g. for DAC3, to a minor extent, and DAC6, to a larger extent. In the case of DAC6, the lack of harmonisation on the interpretation at EU level, as well as the fact that EU provisions partly differ from the OECD Mandatory Disclosure Rules (MDR) has created uncertainty among private stakeholders and inconsistencies in national transposition.

EU Added Value

The assessment of EU added value seeks to evaluate the extent to which the results achieved are additional to what would have happened without the Directive, i.e. if the same cooperation had to be organized based exclusively on bilateral agreements and on existing OECD standards and actions. The EU added value can be measured in terms of added efficiency gains and added effectiveness gains. **All tax authorities agree that DAC is superior to international or national alternatives in terms of efficiency.** The main efficiency gains have to do with the binding nature of DAC under EU law, the underlying IT architecture and the uniform reporting requirements across the EU. The importance of EU funding – Fiscalis – in supporting the set-up of the IT infrastructure and the more resource-intensive forms of administrative cooperation (PAOEs, simultaneous controls) was also underlined. Hence, DAC is believed to be a better framework, which is conducive to bigger exchanges compared with international peers, which in turn increase the awareness of and familiarity with DAC. More exchanges mean more experience, and hence learning economies in data processing and usage. **The effectiveness gains vary, and are larger for the provision that do not have a correspondence at OECD level**, i.e. DAC1, non-AEOI tools and, partly, DAC6. In quantitative benefits, EU added benefits and can be assessed at least at EUR 50 to 400 million per year (pending the quantification of DAC6 benefits, which are too early to assess).

11.2 Lessons learnt

Based on the Evaluation findings and the feedback from stakeholders, **ten lessons learnt** have been elaborated, aimed at identifying areas in which the effectiveness and efficiency of the Directive could be improved and to eliminate obstacles to administrative cooperation. The various lessons learned are described in detail below, together with their rationale (i.e., the problems they aim at tackling) and, where relevant, their likely consequences.

Based on the Evaluation findings and the feedback from stakeholders, **ten lessons learnt** have been elaborated, aiming at identifying areas in which the effectiveness and efficiency of the Directive could be improved, and at eliminating obstacles to administrative cooperation. The various lessons learnt are described in detail below, together with their rationale (i.e., the problems they aim at tackling) and, where relevant, their likely consequences.

1. The scope of DAC1 is largely adequate. The analysis has shown that no sources of individuals' income which could present a significant risk to Member States' revenue remain out of the scope of DAC. This is particularly true after the approval of DAC8, which also covers non-custodial dividends, e-money and crypto-assets. The inclusion of new categories could have a significant deterrence effect, even when the volume of exchanges remains low. However, the expansion of DAC1 requires data collection and IT investments by national tax authorities, moving attention and resources away from data usage. Also, tax authorities are less likely to use small-volume data categories effectively. Furthermore, more than 95% of DAC1 exchanges, in terms of value, are concentrated in income from Employment and Pensions. Given how data are skewed, one thing that could be considered to make the inclusion of income from Employment and Pensions mandatory (as opposed to a general obligation to make some or all income categories mandatory).

2. Data use needs to become routinary. DAC data need to be used if costs – IT systems and reporting duties for public and private entities – are to be turned into benefits, i.e. to safeguard Member States' revenue. If data are not used, DAC still generates most of the costs, but with very limited benefits. For this reason, data use was rightly at the centre of the various DAC evaluations (including by ECA and the EP). In the 2018-2022 period, data use increased significantly. Compared to the 2019 Evaluation, nearly all tax authorities use part of the DAC data, in a significant number of cases with effective results. The aim, with the additional support of DAC8, should be to make data usage routinary, i.e. well integrated within the usual tax authorities routines. This means that DAC data must feed into national risk analysis systems automatically. In other words, it would be beneficial if risk analysis procedures would be designed taking into account the data which are or can be made available via DAC, together with all other domestic risk indicators. Also, when checks, verifications, re-assessments or audits are carried out, all data coming from DAC sources should be automatically put at the disposal of the responsible tax offices, rather than retrieved on demand. This would allow to overcome the limited awareness of DAC in peripheral tax offices. Finally, local tax authorities could receive warnings automatically when taxpayers under their supervision are concerned by a foreign ATR/APA, CbCR or potentially tax-harmful cross-border arrangements; this would strengthen the importance of DAC3, DAC4 and DAC6 as tools to assess taxpayers' risks. Routinisation is important because, rather than having tax officials pro-actively access DAC tools, DAC information would become salient to them when needed. This is crucial, especially when DAC information is of limited value when taken in isolation but needs to feed into broader risk assessment and control procedures. In this respect, automatisation of data processing and the consequent use would be further facilitated by a more systematic inclusion of taxpayers' TINs. However, for this to be feasible and useful, a unique verification tool should exist at EU level.

3. DAC3: the issue of poor summaries. Over the years, it has been repeatedly pointed out that DAC3 summaries are, oftentimes, of insufficient quality, as they do not provide the necessary information to the receiving tax authority. So far, efforts have been made to tweak the quality of information, in particular of that included in the summaries. However, this has not led to significant improvements, also because no 'quality check' is carried out of the data uploaded. In practice, tax authorities end up asking for the full ruling via the EOIR, which (i) is a duplicated effort; and (ii) defeats the purpose of uploading only basic information. A possible alternative would be to upload the full ruling in the dedicated Central Directory. This solution would raise issues in terms of business confidentiality and data security, that would need to be taken into account, also in the context of the current work on these areas. Importantly, to avoid massive fishing expeditions, the system may include technical nudges to a rational use of information, for instance by limiting the number of rulings a tax authority can access over a certain period of time, by requiring to indicate the reason

for accessing the ruling (e.g. by flagging the purpose) or by automatically informing the originating tax authority of the access. While presenting some risks, this solution would not be substantially different from the current situation, in which the same information is obtained via an EOIR, and would further increase tax transparency.

4. Easier improvements for DAC4. Some of the issues identified when it comes to DAC4 relates to the quality of the information exchanged between Member States and the fact that not all relevant MNEs are identified and thereby avoid reporting under the Directive. DAC4 offers two low-hanging fruits, i.e. improvements that do not require a significant effort. First, the IT schemas could be bettered to prevent menial errors, e.g. by not accepting non-sensical values for the variables concerned (e.g. negative number of employees).. Secondly, a census of companies subject to this requirement – linking tax authorities' information with business registries – should be available to ensure that all CbCRs are submitted and distributed forward. A thornier question – at EU and international level – is whether DAC4 should be upgraded to public CbCR, with the reports being put at the disposal of both tax authorities and the public, as it is already the case for certain information under Directive (EU) 2021/2021 of the European Parliament and of the Council of 24 November 2021 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches. The economic analysis suggests that being subject to public CbCRs has a positive and significant effect in terms of the taxes paid by MNEs, likely also linked to the transparency-induced deterrence. At the moment, DAC4 is meant to provide additional information to tax authorities for risk analysis purposes; if CbCR under DAC4 were to be public it would more directly tackle the amount and distribution of taxes paid by MNEs, with potentially an ensuing more direct impact on tax fairness.

5. DAC5 and the continuous relation with AML legislation. DAC continuously needs to be aligned with AML legislation, to maximise the use of AML information to fight tax evasion and the use of tax information to fight money laundering. This is further supported by the explicit acknowledgement that AML is among the possible uses of DAC information in DAC8. In this respect, DAC5 is working well, with no issues reported by tax authorities; at the same time, attention should be paid to the ongoing revision of the AML legislation (as already taken care in DAC8 with respect to the definition of beneficial owner).

6. DAC6: the noise and the signal. Given the timing of the Evaluation, DAC6, which is just in the first period of application, is unsurprisingly considered complex and burdensome by public and private stakeholders alike, with different national implementations emerging. Current problems are likely to partly dissipate in the near future, once tax authorities and intermediaries get more familiar with the requirements, and potentially through the Court of Justice of the European Union, which is expected to rule in the coming months on certain aspects of its provisions, but they are unlikely to disappear completely. One of the issues with DAC6 is that some of its provisions (e.g. the main benefit test and certain hallmarks) are vague. The Commission could thus consider publishing non-binding guidelines or other interpretative tools on DAC6, endorsed by all Member States. Also, the Commission could consider clarifying who is responsible for reporting, since currently instances of duplicated reporting by the taxpayer, the intermediary or even the financial institution involved may occur. Furthermore, the use tax authorities make of DAC6 information, especially in the field of risk assessment, must be consolidated by learning from past lessons and in particular experience of using DAC3 or DAC4 data. In this respect, DAC6 scope may be too wide, leading to the notification of many arrangements of potentially limited relevance. In other words, DAC6 risks delivering too much noise and little signal. Here, possible reductions of the amount of notifications could be considered, for instance introducing a *de minimis* threshold in terms of size of the tax advantage (both for single arrangements and overall for taxpayers, to avoid the artificial segmentation of arrangements). Another option would be a more clear definition of when an arrangement should be notified, i.e. in the pre-drafting phase (for instance, when the intermediary prepares a written opinion on possible arrangements), drafting phase or only when the arrangement enters into force. Also, the Commission could work with the Member States to reduce *gold-plating*, i.e. the inclusion

of arrangements with a limited tax evasion or avoidance potential within the DAC6 system. Again, it is too early to tell, but this aspect should be verified with tax authorities in a few years' time to see whether, how and at what level the amount of notifications will stabilise over time, and if tax authorities are capable of putting the information received to good use.

7. DAC7: implementation and duplication. Hopes are high with regard to DAC7, which tackles an area – the gig economy – where evidence exists of limited tax compliance by sellers, especially occasional ones. In this respect, once the provisions become operational, attention should be paid to national implementation, also at technical level, identifying possible instances of forum-shopping (i.e. non-EU operators massively registering for DAC7 in a certain country, possibly because of a laxer enforcement). Also, the Commission could consider adopting non-binding guidelines, Q&A documents or other interpretative tools endorsed by the Member States in the area of DAC7 too. Finally, DAC7 comes after or together with other reporting obligations for platforms, both at EU and national level. A fitness check of these obligations may be useful, with a view to identifying remaining gaps, but also duplications, and streamlining the reporting framework.

8. Continuing support to other forms of administrative cooperation. A general consensus exists that other forms of administrative cooperation are useful and work smoothly. Limited improvements seem necessary in this area. Nonetheless, a threshold could be set for the EOIR (e.g. in terms of taxable basis and expected effects), thereby reducing the number of very small requests and, as a result, improving the efficient use of this instrument. In addition, peripheral tax offices could be better involved in these activities. Finally, Fiscalis support to these tools, in particular to PAOEs and SCs, and joint audits as of 2024 remains crucial, because their current use would not be sustainable were they to be financed only via internal resources.

9. Trade-off between revision and implementation. With the approval of DAC8, DAC was amended 7 times in 12 years, which means an amendment every 20 months, on average. Most of these amendments were not minor, but rather resulted in the introduction of new forms of the AEOI and of the ensuing IT infrastructure. The pace of the amendments results from the adoption of agreements at OECD level, which the EU translates into Directive revisions. This approach is superior to Member States implementing the agreement on their own. Nonetheless, a clear trade-off exists between legislative revisions and implementation by Member States, which should be well considered because – again – DAC needs to be put to use to deliver benefits. Every time a new disclosure requirement is introduced, resources tend to be drained by set-up, testing and implementing actions. In smaller Member States, this often means that the limited personnel must switch to work on implementation, neglecting other tasks. While some legislative adjustments may require urgent actions, new major revisions (such as the introduction of new forms of exchange) could be calendarised in the medium term, e.g. every three years, informing tax authorities well in advance of future expansions under consideration. Also, given the number of amendments, the DAC legal text is very complex, including many sub-numberings of articles and a set of relevant rules in the Annex. In this regard, the Commission could consider a recast of DAC to improve the accessibility of the legal text.

10. Better reporting, maybe less reporting. Member States have to provide the European Commission with a wealth of information about DAC activities and exchanges, much larger than for many other tax legislations. The reason is clear: DAC is an act governing the work of tax administrations which is enacted by a government tier – the EU – with no tax administration on its own. Hence, monitoring the work of national agents requires data and information. At the same time, the quality of the information provided is only limitedly checked, partially defeating the purpose of the monitoring process. One possible solution to address the issue would be to have the submitted information should be reviewed – by the Commission or a third-party service provider – to avoid inconsistencies and basic mistakes (e.g. matching figures between sending and receiving parties, ensuring that numerical answers fall within a reasonable order of magnitude, verifying the consistency with past answers and asking clarifications on unclear answers). In some cases, more

detailed guidance could be provided to avoid the misunderstandings which are currently apparent in the data (e.g. the definition of initiated or participated SCs). Finally, it could be considered how to streamline the data collection process, by simplifying and reducing the volume of statistics and information collected yearly.