

European Commission  
Directorate-General for Taxation and Customs Union  
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Luxembourg, 30 July 2024

**Object: Directive on Administrative Cooperation in the Field of Direct Taxation evaluation - Public Consultation**

Dear Madam,  
Dear Sir,

The Association of the Luxembourg Fund Industry (ALFI) is the representative body of the Luxembourg investment fund industry and counts among its members investment funds and asset management firms but also a large variety of service providers of the financial sector.

ALFI welcomes this consultation on the Directive on Administrative Cooperation (DAC) and takes this opportunity to provide its views and comments.

Investment funds and the asset management industry are generally within the scope of DAC and have implemented and complied with all the requirements of the initial DAC and its subsequent amendments. They have contributed to the exchange of information in tax matters as data providers under the DAC reporting requirements and have therefore gained first-hand experience of its functioning from this perspective. ALFI has opted to respond to this consultation solely through comments in this supplementary document as it does not have global quantitative data to provide an informed and relevant feedback as to the extent of tax avoidance and evasion, tax base erosion and profit shifting, as well as tax optimisation practices and whether or not they have been reduced as a result of the introduction of DACs. In our view, the national tax authorities and other EU competent observatories in this field are better placed to provide feedback in this respect.

### ***Consistency with other legislations at EU and international level***

We note that international and EU tax measures, including parts of the DAC, have often been designed on the business model of multinational groups of enterprises (MNEs). A model that is however not entirely shared by investment funds and related structures. This difference is mainly due to the fact that the industry

is shaped by binding EU based regulatory rules, such as the UCITS Directive<sup>1</sup>, the AIFM Directive<sup>2</sup>. It is also subject to the supervision of competent national authorities (NCAs).

The fact that EU tax rules have been designed and applied as such to investment funds and the industry more globally has almost systematically raised questions in relation to possible interpretations, notably for concepts and notions used in DAC, and the corresponding uncertainties. With each new amendment to the DAC, the industry has had to find the best way to deal with the relevant requirements considering the specific characteristics of investment funds in order to ensure full and appropriate compliance.

For investment funds, the need for consistency with other legislation is therefore twofold.

Firstly, in terms of consistency between EU tax rules, market participants would favour, where possible and relevant, a common taxonomy between the different EU tax directives and the use of the same concepts or notions with the same definitions. They would also encourage to avoid redundancies and overlaps between tax rules that are supposed to apply to one situation, even if for different purposes.

In fact, each EU tax directive sets out its own general principles, concepts and definitions. It then leaves it to the Member States to implement them in their respective tax systems, allowing each jurisdiction a degree of flexibility to adapt and interpret them to its own needs and requirements. In an increasingly international and competitive context, a certain degree of harmonisation between Member States in the implementation of these tax directives would nevertheless be welcome to develop the EU single market.

Secondly, in the specific case of investment funds, we would recommend going a step further to improve the consistency of the applicable texts not only with other tax rules or anti-money laundering rules, but also, as far as possible, with the regulatory rules applicable to the fund industry. Greater consistency, particularly at EU level, ensuring, as far as possible and relevant, that a particular notion or concept receives the same definition or is interpreted in line with the existing regulatory rules or practices would be welcome.

Back in 2015, investment funds were already identified by the European Commission as vehicles suitable for playing an economic role in financing the economy as part of its action plan for a Capital Markets Union serving people and businesses. At the time, they were then intended to channel household and corporate savings to, among other things, infrastructure projects considered to be part of the recovery of the European economy. This approach was reiterated in the 2020 Action Plan for a Capital Markets Union and still seems to be one of the objectives of the new European Commission. To enable investment funds to play their full role in this context, greater account should be taken of their specific features when introducing any new tax measure and care should be taken to ensure consistency with other rules applicable to investment funds, particularly regulatory rules. Such a holistic approach seems to us to be the best way to make tax law more effective in pursuing its objectives while making it simpler to apply for taxpayers and market players.

### ***Legal certainty and relevance***

As mentioned above, market participants have identified the need for a greater effort to define and/or clarify certain terms and concepts, particularly when new tax legislation is introduced. DAC 2 seems to us to be the best example of good practice in this area to date. Indeed, a very significant and useful effort to help market players was made at OECD level to help them introduce and operate the Common Reporting Standard (CRS). At the time, a number of guidelines and manuals were published by the OECD to promote common understanding and interpretation of CRS at international level.

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<sup>1</sup> Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)

<sup>2</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010

In this respect, DAC 2 has helped to simplify the implementation of the CRS in the EU and has enabled a common approach to its requirements. Even if it had been achievable, a sufficient level of harmonisation would have been much more difficult to achieve if a large volume of bilateral agreements had had to be put in place.

Past experience with DAC has shown that common interpretations of certain concepts and a harmonised application of clear and predictable administrative procedures are essential to avoid taxpayers being confronted with divergent interpretations in the Member States. Similar approaches as the one of CRS should thus be developed at EU level when introducing any new tax rules. This would ensure a sufficient level of convergence and consistency and would avoid repetition and redundancy. The aim would be to strike a balance between flexibility, understood as adaptation to Member States' specific environments or sectors, such as investment funds, on the one hand, and harmonisation of interpretations across the EU on the other.

Legal uncertainty is a source of risk which inevitably translates into an increase of the administrative burden, inefficiencies and related additional costs. ALFI is therefore of the opinion that such an approach would help ensure legal certainty for both taxpayers and tax authorities and limit such burden and costs.

### ***Costs and administrative burden***

No matter how complex, introducing and implementing new tax legislation invariably represent a challenge for investment funds. It also entails new administrative and IT changes and related new additional costs, particularly when it comes to the exchange of information on tax matters and the related reporting obligation as provided for by the various DACs.

One way of reducing the high level of administrative burden and costs and streamlining processes across the EU could be to introduce standard templates of computerized forms for documents that have not yet been the object of such digitalization, e.g. self-certifications forms of investors required under DAC 2.

In that context, it could also be relevant to introduce or systematize the use of European Digital Identity Wallet EU ID and of the European Digital Identity.<sup>3</sup> This could make it possible to avoid paper documents and reduce the administrative burden, thereby improving the level of access to cross-border investments.

ALFI calls for those costs to be taken in due consideration by lawmakers when introducing new tax requirements related to DAC. It is in fact well established that additional costs have a direct impact on the performance of investment fund structures which will make it more expensive to do business in the EU and may act as a disincentive to investment.

### ***Objectives, usefulness and efficiency of DAC - Objectives of data collection***

DAC, including through its subsequent amendments, have enabled the exchange of information in the field of taxation (either upon request or on a mandatory automatic manner), in particular with regard to

- financial accounts (DAC 2);
- advance cross-border rulings and advance pricing arrangements (DAC 3);

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<sup>3</sup> REGULATION (EU) 2024/1183 of the European Parliament and of the Council of 11 April 2024 amending Regulation (EU) No 910/2014 as regards establishing the European Digital Identity Framework

- country-by-country reports for multinational enterprise groups (DAC 4);
- reportable cross-border arrangements by intermediaries (DAC 6).

In addition, DAC 5 allows tax authorities to access anti-money laundering mechanisms, processes, documents and information kept by financial institutions and similar entities.

It may thus legitimately be considered that, to date, a significant volume of tax information is already provided and available to national tax authorities through the application of the exchange of information under DAC 2 to DAC 6. This is particularly true for DAC 2, where the completeness of the information collected (mainly by means of standardised self-certification forms) and then exchanged should already enable the tax authorities to carry out tax assessments of natural and legal persons resident for tax purposes in the respective Member States.

This volume is poised to further increase as additional tax information will soon be reported to national tax authorities through DAC 7 (income earned by sellers on platforms and providing a framework for joint tax audits by Member States' tax authorities) and DAC 8 (stronger EU tax cooperation through crypto assets, e-money and tailored compliance measures).

We note that a Special Report of the European Court of Auditors released on 26 January 2021 on the exchange of tax information in the EU concluded as follows<sup>4</sup> “[...] *We found that the system has been well established, but more needs to be done in terms of monitoring, ensuring data quality and using the information received. We recommend that the Commission enhances the coverage of the EU legislative framework and develops monitoring and guidance. We also recommend that Member States make better use of the information they receive.*” We further note that a study of the European Parliamentary Research Service on the implementation of the EU requirements for tax information exchange released in February 2021<sup>5</sup> reached similar conclusions.

While acknowledging that DAC is an efficient tool to foster tax transparency, ALFI calls on lawmakers to minimize the number of DAC rules while focusing on their efficiency. To that end, it should be ensured that the data already collected are actually being used by national tax authorities to effectively fight and reduce tax avoidance and evasion, tax base erosion and profit shifting, as well as tax optimisation practices. Further, for any new tax rule, including under DAC, it should be ensured from the outset that the effective use Member States will make of data collected is clearly defined, i.e. it is made sure that any data collection has clear purpose or reasons.

### **Competitiveness of the EU market**

Finally, ALFI is of the opinion that DAC efficiency should also consider the competitiveness of the EU market and its capacity to attract non-EU investment. This is intended as the competitive disadvantage in relation to other markets outside the EU that do not apply similar measures and whose market players do not have to bear the associated administrative burdens and costs. In this area, too, reducing the number of rules while focusing on their efficiency is a key element for both fighting tax avoidance and making the EU market an attractive one.

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<sup>4</sup> Special Report of the European Court of Auditors: [Exchanging tax information in the EU: solid foundation, cracks in the implementation](#) – January 2021

<sup>5</sup> [Implementation of the EU requirements for tax information exchange](#) – European Implementation Assessment – European Parliamentary Research Service – PE 662.603 – February 2021

We are grateful in advance for your attention and remain at your disposal for any additional information or any assistance you may wish to receive.

Sincerely yours,

ALFI