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Subsidiarity Grid

Accompanying the document

Proposal for a COUNCIL DIRECTIVE

on administrative cooperation in the field of taxation (recast)

{COM(2026) 308 final} - {SEC(2026) 186 final} - {SWD(2026) 165 final} -
{SWD(2026) 166 final}

Subsidiarity Grid

1. Can the Union act? What is the legal basis and competence of the Unions' intended action?
1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?
The legal basis of DAC relies on Articles 113 and 115 of the Treaty on the Functioning of the European Union (TFEU). The key objective of the DAC is to ensure that there is a robust legal instrument based on uniform conditions and harmonised practices to facilitate administrative cooperation and exchange of information in the field of direct taxation. This is necessary to ensure the proper functioning of the Internal Market and reduce the negative effects of tax fraud, evasion and avoidance in the EU.
1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?
In the case of direct tax policy, the Union's competence is shared.
<i>Subsidiarity does not apply for policy areas where the Union has exclusive competence as defined in Article 3 TFEU¹. It is the specific legal basis which determines whether the proposal falls under the subsidiarity control mechanism. Article 4 TFEU² sets out the areas where competence is shared between the Union and the Member States. Article 6 TFEU³ sets out the areas for which the Unions has competence only to support the actions of the Member States.</i>
2. Subsidiarity Principle: Why should the EU act?
2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2⁴:
- Has there been a wide consultation before proposing the act? - Is there a detailed statement with qualitative and, where possible, quantitative indicators allowing an appraisal of whether the action can best be achieved at Union level?
The evidence for the impact assessment report was gathered through various activities and from different sources: • 2025 Evaluation of the Directive on administrative cooperation.⁵ • 2021 Special Report of the European Court of Auditors.⁶ • 2024 Special Report of the European Cour of Auditors.⁷ • Study by an external contractor: "Evaluation of the Directive 2011/16 and its Amendments"⁸ • Study by an external contractor: "Study on a possible EU Taxpayer Identification Number (TIN) and its verification instruments"⁹

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E003&from=EN>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E004&from=EN>

³ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E006:EN:HTML>

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN>

⁵ COM(2025) 695 final Report from the Commission to the European Parliament and the Council on the evaluation of Council Directive 2011/16/EU on administrative cooperation in the field of taxation.

⁶ Special Report 03/2021: Exchanging tax information in the EU: solid foundation, cracks in the implementation.

⁷ Special Report 27/24: Combatting harmful tax regimes and corporate tax avoidance.

⁸ Evaluation of the Directive 2011/16 and its Amendments, 11 January 2024.

⁹ The final report of the study is scheduled for finalisation by mid-June 2026.

- Targeted consultation with Member States in the Working Party IV (WPIV) Commission Expert group on direct taxation.
- Outcome from work in the VISDAC Expert Team (Fiscalis program) which collected evidence through on-site visits to Member States tax administrations.
- Consultations in the expert group Platform on Tax Good Governance which gathers experts from business, interest groups and Member States.

In addition, the Commission also carried out a public consultation and call for evidence to support the initiative. The consultation remained open until 10 February 2026 and received a total of 60 written responses.

2.2 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the conformity with the principle of subsidiarity?

The explanatory memorandum as well as the impact assessment contains a section on the principle of subsidiarity with relevant qualitative and quantitative indicators that demonstrate the need for action at EU level.

The proposal fully observes the principle of subsidiarity as set out in Article 5(3) of the Treaty on European Union (TEU). The DAC and its 8 amendments are legal acts of the EU. The political objectives of simplification necessitate proposals to codify, simplify and clarify the existing framework to eliminate any overlaps and contradictions, cut unnecessary and low-value reporting and ensure consistent implementation, while not undermining the policy objectives of the legislation. Given the need to act an EU approach is the only option to ensure that there is a comprehensive and uniform solution that conforms with EU law, does not distort competition and maintains the level playing field. Individual actions taken by Member States could not achieve these objectives. At the same time, the current inefficiencies in the effective functioning of the DAC acquis, as identified in the 2025 DAC evaluation and the Special Reports of the ECA (2021 and 2024) are linked to several existing reporting and exchange obligations contained in the DAC, which can only be comprehensively and uniformly addressed by an EU legislative initiative.

2.3 Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?

No Union wide administrative cooperation cannot be achieved by a Member State acting alone. Bilateral or multilateral action that does not provide for a uniform regulation across the EU, would result in an unlevel playing field, and obstacles within the Internal Market, which would negatively affect the competitiveness of the Union.

(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?

The main purpose of the provisions in the proposal is to regulate administrative cooperation between Member States' tax authorities, in particular the exchange of information. This is by nature cross-border.

(b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty¹⁰ or significantly damage the interests of other Member States?

¹⁰ https://europa.eu/european-union/about-eu/eu-in-brief_en

Yes, If the administrative cooperation were to be set up at Member State level, on a bilateral basis, this would result in different solutions across the EU which would result in a fragmentation of the rules applicable in the Internal Market and inhibit the competitiveness of EU companies and SME's.
(c) To what extent do Member States have the ability or possibility to enact appropriate measures?
Member States could conclude bilateral or multilateral agreements to the extent that they do not conflict with existing EU legislation.
(d) How does the problem and its causes (e.g. negative externalities, spill-over effects) vary across the national, regional and local levels of the EU?
The issues that necessitate administrative cooperation among Member States are tax fraud, tax avoidance and tax evasion. In particular the cross-border dimension of certain activities creates a complex environment where it can be challenging to enforce tax rules and ensure tax compliance. These issues will appear in different forms in different Member States, depending on the structure of the economy of the Member State, its geographic situation and other factors. The concentration of certain industries in certain Member States will have an effect on which provisions of the Directive are applicable.
(e) Is the problem widespread across the EU or limited to a few Member States?
The problem exists in all Member States.
(f) Are Member States overstretched in achieving the objectives of the planned measure?
The planned measures will require Member States to make limited investments in the adaptations of some IT structures and to ensure that tax administrations have secure access to certain databases. This will mainly have one-off effects in terms of budget and staffing. In the longer term, the planned measures should achieve streamlining of processes and positive efficiency gains at Member States level.
(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?
Overall, Member States agree on the need to simplify the Directive in order to support the competitiveness of EU business. This assessment is supported by the fact that Member States unanimously supported simplification in the field of direct taxation and, on 20 March 2025, adopted Council Conclusions ¹¹ calling for efforts at EU, national and regional levels to ensure a clear, simple and smart regulatory framework that reduces administrative, regulatory and reporting burdens for businesses and public administrations without undermining the policy goals.
2.4 Based on the answer to the questions below, can the objectives of the proposed action be better achieved at Union level by reason of scale or effects of that action (EU added value)?

¹¹ European Council, *European Council conclusions, 20 March 2025*, EUCO 1/25, 20 March 2025, available at: <https://www.consilium.europa.eu/media/viyhc2m4/20250320-european-council-conclusions-en.pdf>

To fight tax fraud, tax avoidance and tax evasion that are cross-border there is a need for administrative cooperation. To ensure a level playing field and to protect the Internal Market, this is better achieved at EU level.
(a) Are there clear benefits from EU level action?
The added value of EU action is that it ensures that there is a coherent, uniform and complete solution at EU level, which achieves the targeted reductions in reporting burdens and associated administrative costs for EU businesses, and which could not be achieved by individual actions taken by Member States. Simultaneously, the improvements ensure that Member States are better equipped to use all information to maximise the benefits of the DAC.
(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the internal market be improved?
The proposal includes provisions that introduce common IT tools and more proportionate reporting obligations which contribute to the economies of scale. Common rules and reporting instruments (such as XML schema) in all Member States will contribute to the better functioning of the internal market by eliminating the potential obstacles that would result from 27 divergent national sets of rules.
(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?
Administrative cooperation could not be replaced by unilateral rules, but would need to be done through bilateral agreements. Such agreements would be burdensome to achieve and they would lead to a fragmented approach across the Internal Market and negative affect on the competitiveness of EU companies.
(d) Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, regional and local levels)?
Considering that the Directive regulates administrative cooperation among national administrations a common action at EU level outweighs any loss of competence of the Member States. A plethora of agreements at national and inter-regional level would lead to serious obstacles in the Internal Market.
(e) Will there be improved legal clarity for those having to implement the legislation?
The proposal is a recast with the inherent ambition to increase the clarity of the Directive. Furthermore, a number of improvements of the legal text are proposed in order to contribute to the improved legal clarity.
3. Proportionality: How the EU should act
3.1 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of proportionality?
Yes. The proposal codifies, simplifies and improves existing provisions of the DAC. The changes are very targeted and do not go beyond what is necessary to achieve the desired objective. In particular,

the changes fully preserve the current safeguards offered by the DAC and do not lower the existing level of protection against tax fraud, evasion and avoidance.

The added value of EU action is that it ensures that there is a coherent, uniform and complete solution at EU level, which achieves the targeted reductions in reporting burdens and associated administrative costs for EU businesses, in line with the political priorities of the Commission. At the same time, EU action will comprehensively address the current identified inefficiencies in the functioning of the DAC with targeted improvements to the existing acquis ensuring that tax administrations, reporting entities and taxpayers benefit from a more efficient and effective functioning of the DAC.

3.2 Based on the answers to the questions below and information available from any impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?

Yes, the proposed actions are the most appropriate way to achieve the intended objectives, as more proportionate reporting requirements leading to a reduction of administrative costs requires an amendment of the existing EU acquis. Conversely administrative cooperation is inherently a cross-border issue. Member States cannot achieve this on their own, they would have to engage in bilateral and/or multilateral agreements, which would create a series of patch-work solutions. Therefore, an EU approach is the only approach that allows for a comprehensive and uniform solution that does not distort the internal market.

(a) Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?

Given the need to act and the nature and extent of the problem, an EU approach is the only option to ensure that there is a comprehensive and uniform solution that conforms with EU law, does not distort competition and maintains the level playing field. Individual actions taken by Member States could not achieve these objectives. At the same time, the current inefficiencies in the effective functioning of the DAC acquis are linked to several existing reporting and exchange obligations contained in the DAC, which can only be comprehensively and uniformly addressed by an EU legislative initiative.

(b) Is the form of Union action (choice of instrument) justified, as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-legislation, etc.)?

The proposal is for a Directive, which is the only instrument available under one of the two legal basis (Article 115 TFEU). Furthermore, this Directive represents the recast of the existing DAC, as subsequently amended.

(c) Does the Union action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit the European action to minimum standards or use a less stringent policy instrument or approach?)

Yes, Union action is limited to amendments to the existing EU DAC acquis. The action does not inhibit the application of national taxation rules and domestic competencies for example organisation of procedures and processes within the tax administration.

In terms of organisation, the proposal only stipulates the competent authorities, i.e. the part of each tax administration that is competent to engage in administrative cooperation. Internal organisation of competent authorities is left to Member States to organise as they see fit.

(d) Does the initiative create financial or administrative cost for the Union, national governments, regional or local authorities, economic operators or citizens? Are these costs commensurate with the objective to be achieved?
Limited adjustment costs are expected for businesses and administrations for most of the measures, mainly related to adapting reporting systems and procedures, over time, costs should decrease due to streamlined and reduced reporting leading to efficiency gains. Tax administrations may incur initial implementation costs but will benefit from reduced processing of low-value data and improved data matching, leading to efficiency gains. The centralised TIN verification system will entail adjustment costs at EU level (approximately EUR 1.0 to 1.8 million for on-off costs and EUR 1.8 to 2.4 million per year for recurrent costs) and national level (approximately EUR 15 to 25 million for on-off costs and EUR 4.5 to 12 million per year for recurrent costs). Given the voluntary nature of the measure for the reporting entities, while upfront costs are expected, the measure is expected to deliver net administrative savings over time through improved data quality, and use of information and reduced correction and validation efforts, although the precise magnitude of these effects cannot be quantified at this stage. While the introduction of a TIN validation tool entails upfront and operational costs for all stakeholders, it will also generate significant overall savings by reducing the need for resource-intensive ex post correction procedures, that can be quantified to up to approximately EUR 70 million per year.
(e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account?
N/A