



IOTA Webinar

Council Directive (EU) 2021/514 “DAC7”

Implementation and effective use of information

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Presentation points

- 1. Scope of the reporting obligations under the DAC7 Directive**
2. Overview of the main themes from the first year of reporting
3. Approaches to dealing with possible non-compliance by non-Union Platforms
4. Application of determinations of equivalence
5. Looking forward to the reporting period 2024

DAC7: Scope of the reporting obligations

- The provisions of the Directive applying to the reporting and exchange of information with respect to income earned by sellers through the use of digital platforms apply from 1 January 2023.
- Information for the 2023 Reporting Period was required to be reported to the relevant Member State no later than the 31st January 2024, with the resultant exchange of information required to take place no later than the 29th February 2024.
- The Directive requires reporting by Union and non-Union Platform operators to the extent that they facilitate relevant activities on behalf of sellers that are resident in the Union or that rent out immovable property that is located in the Union.
- The relevant activities that are within the scope of the reporting obligation are activities involving, the rental of immovable property, the rental of any mode of transport, sale of Goods and a Personal Service.
- The Directive requires that new sellers shall be reported in the reporting period 2023 with the due diligence and reporting procedures to be carried out for pre-existing sellers in the reporting period 2024.

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Overview of the main themes from Year 1

- Some Member States were unable to meet the exchange date of the end of February 2024, this was a result of late transposition of the provisions of the Directive and/or delays in the IT technical implementation of the reporting and exchange of information framework.
- While the majority of Member States did exchange information before the legal deadline of 29th February 2024, delays in the sending of information contributed to issues in the usability of the information, particularly as regards pre-population of tax returns.
- Many additional interpretative challenges have arisen including but not limited to 'intermediation', 'communication on the purposes of the Directive', 'validation of TIN, BRO and VAT numbers' 'the concept of reasonably knowable', 'determination of a Personal Service' 'interpreting the term *contracts with sellers for the purposes of the definition of Platform Operator*'
- Important to ensure that there is a consistent EU/OECD approach to issuing guidance on these matters; therefore participation in the OECD informal group on the MRDP, Working Party IV meetings with the Member States, supporting Fiscalis Project Group on DAC7 implementation.

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Non-compliance by non-Union Platforms

- The Directive requires that non-Union Platform Operators shall be obliged to register and report in a single Member State of the Union. The reporting obligation can be relieved either partially or in full where the non-Union Platform is located in a jurisdiction that has equivalent reporting rules in effect as confirmed by a Commission implementing act.
- Where a Non-Union Platform Operator registers in a Member State of the Union, they shall be provided with an individual identification number, which shall be used for the purposes of reporting.
- Simultaneously, the Member State where reporting shall take place is obliged to register certain information in the Central Register, which is made available to the competent authorities of all Member States of the Union. This is a key tool for monitoring compliance by non-Union Platform Operators and contains the following information, name, postal address, electronic addresses, including websites, any TIN issued to the Reporting Platform Operator, a statement about the identification of the Reporting Platform Operator for VAT purposes within the Union and Member States in which Reportable Sellers are resident.

Non-compliance by non-Union Platforms

- **Legal basis in the Directive is Annex V, Section IV, paragraph F(6) which states that:**

Each Member State shall forthwith notify the Commission of any Platform Operator within the meaning of point (b) of subparagraph A(4) of Section I that commences its activity as a Platform Operator while failing to register itself pursuant to this paragraph.

Where a Reporting Platform Operator does not comply with the obligation to register or where its registration has been revoked in accordance with subparagraph F(7) of this Section, Member States shall, without prejudice to Article 25a, take effective, proportionate and dissuasive measures to enforce compliance within their jurisdiction. The choice of such measures shall remain within the discretion of Member States. Member States shall also endeavour to coordinate their actions aimed at enforcing compliance, including the prevention of the Reporting Platform Operator from being able to operate within the Union as a last resort.

- **Recital 21 of the Directive provides further guidance on this issue:**

Given that digital platforms often have a wide geographical reach, it is appropriate that Member States endeavour to act in a coordinated manner when aiming at enforcement of compliance with the registration and reporting requirements applicable to digital platforms operating from non-Union jurisdictions, including the prevention of digital platforms from being able to operate within the Union as a last resort. Within the limits of its competence, the Commission should facilitate the coordination of such Member States' actions, thereby taking into account any future common measures towards digital platforms as well as differences in the potential measures available to Member States.

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Application of equivalence determinations

- Article 8ac(7) provides the Directive's legal basis for assessing and making determinations of equivalence. These provisions are elaborated upon by Commission Implementing Regulation (EU) 2023/823 of 13 April 2023.
- Commission Implementing Regulation (EU) 2023/823 provides that determinations of equivalence can be either partial (with respect to certain activities/Member States) or full (with respect to all activities and Member States)
- The Commission have to date assessed and determined equivalence with respect to the following jurisdictions:

United Kingdom	<u>Commission Implementing Regulation (EU) 2023/2389</u>
New Zealand	<u>Commission Implementing Regulation (EU) 2023/2693</u>
Canada	<u>Commission Implementing Regulation (EU) 2024/432</u>

Application of equivalence determinations

- Determinations of equivalence are subject to two caveats, these are:
 - (i) the entry into force of the assessed legislation and
 - (ii) the activation of the assessed competent authority agreement with the Member States.
- The assessed legislation of the United Kingdom, New Zealand (partially) and Canada shall enter into force on 1 January 2024 with first exchange to Member States under the OECD DPI MCAA scheduled to take place in 2025.
- Therefore the equivalence determinations shall start to take effect from 1 January 2024, whereupon non-Union Platform Operators located in these jurisdictions may no longer have an obligation to register and report in a single Member State of the Union.

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Looking forward: Reporting Period 2024

- We expect to see a significant increase of the volume of sellers reported for the reporting period 2024, as this will for the first time include pre-existing and new sellers.
- We expect that all technical implementation issues have been successfully resolved at the Member State level and that consequentially all Member States shall be in a position to exchange on time, which will support better use of the information through pre-population of tax returns.
- 2025 will see the first application of equivalence determinations, which will in turn support compliance by non-Union Platform Operators located in these jurisdictions.
- Work will continue to support the effective implementation and functioning of the Directive through various forums including OECD informal group on the MRDP, Working Party 10 of the OECD, Working Party IV meetings of the Member States, Fiscalis Project Groups and dedicated meetings of the SG AEOI.

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