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European Commission

Responding to the invitation to add any comments or suggestions on possible solutions to simplify and/or improve the functioning of DAC, we would like to present the following remarks on the functioning of the DAC7 reporting scheme.

Marek Górski
President of the Polish Confederation Lewiatan

Attachments:

1. Remarks of the Polish Confederation Lewiatan to DAC7.

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General remarks

We appreciate the Commission's decision to open consultation on simplifying and structuring reporting under DAC7. Changes are needed to reduce the excessive reporting burden on online platforms, primarily by raising the reporting threshold and excluding occasional C2C sellers from the reporting scope. However, it must be underlined that the majority of costs related to DAC 7 reporting occurred during deployment. The need to build, adjust and automate systems required to report necessary information and monitor sellers thresholds was a major challenge, especially given the very late national implementations. Most of the work had to be done on the basis of the directive alone, as it would not have been possible to carry out such a complex undertaking in the time available after national law was adopted. What is more, national implementations of the DAC7 vary between Member States, which made business rollout additionally difficult. It still remains a challenge to adapt to sometimes substantially different interpretations and regulations concerning the reporting between each EU country. We hope this information serves as an argument against imposing such broad reporting burdens with minimal implementation time in the future.

1. **Reporting thresholds**

Current thresholds for selling goods which result in reporting obligations are too low. Most private individuals casually selling used goods can easily exceed 30 transactions in a year, even if the total value of their sales is well below €2,000 and without making a profit.
Therefore, the current thresholds do not allow for a distinction between casual sellers and professional traders. This results in disproportionate reporting requirements for users who are not running a business and are not selling for profit but to declutter items they no longer use.
As a result, the reporting in its current form creates excessive administrative burden for businesses, as well as tax administrations. To avoid breaching reporting thresholds, some smaller users might even choose to spread sales across platforms or switch to platforms outside the scope of reporting rules, which cuts against the intent behind DAC7 implementation.
Any simplification effort regarding taxation should include a raising of these thresholds, however, raising of both thresholds alone will not resolve all issues. Currently, selling 30 items, even low-priced ones, triggers a reporting obligation. Slight changes to sales value or sales volume will not solve the current over reporting problem. The threshold should be

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raised at least to €5,000, ideally to €10,000. We strongly advocate triggering reporting obligations only when both conditions (amount of items sold and sales value) are met, and raising the number of sales that trigger the obligation to 60.

2. Reporting deadlines

The DAC7 Directive suffers from several inconsistencies, including in terms of reporting deadlines. The current reporting deadline is not compatible with the ability to impose penalties on users exceeding the annual thresholds as of 1 November. The platform cannot legally enforce penalties on users who fail to provide required identification information (including the TIN) under the DAC 7 Directive until after two reminders and a minimum of 60 days. With a reporting deadline of January 31, this prevents speeding up procedures for users exceeding the thresholds as of November 1. Reporting deadlines should be extended to make it possible for platforms to collect the data and to reduce excessive burden related to the reporting timeline.

Moreover, due to goldplating and overinterpretation, there are issues with time constraints in which platforms are obliged to acquire data from sellers exceeding reporting thresholds. For example, sometimes platforms are obliged to acquire data from the seller at the latest on the date on which that seller fulfills the conditions for being considered an active seller. Therefore, platforms have to gather such information in advance to meet the deadline. This raises questions and doubts among occasional sellers, who do not understand why information is being gathered when they have not crossed the threshold. The platform is viewed as collecting excessive data, when it is only fulfilling its reporting obligations.

3. Excessive data collection

The DAC 7 Directive requires the collection of excessive data. Moreover, the scope of data is also not clear and often leads towards decisions that it is safer to collect more data, than to risk liability before the tax authorities. For example, up to three business identification documents or personal details such as place of birth. As a result, on the one hand it obliges platforms to expand their systems and infrastructure, requiring substantial investment in technical infrastructure and compliance resources. On the other hand, gathering the excessive scope of data raises many objections from the privacy perspective. Sellers often treat this as redundant and file complaints to the GDPR authorities, because they do not see the real connection between their occasional commercial activity and the scope of requested data. The Directive's objectives do not justify collection of such a wide scope of data, therefore we argue that data collection should be minimized taking into account the fact that much of the data is already available via TIN.

What is more, at least some Member States make the platform eligible for preventing sellers from re-registering on the platform with the aim of avoiding exceeding the threshold. This is

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possible for sellers registered as entrepreneurs who use the TIN available for verification. However, this is impossible for C2C sellers not using the TIN. To prevent opening new accounts the platform would have to preventively collect a personal identification number from each person - which we find incompatible with GDPR provisions.

4. **The need to clarify definitions**

National implementations of the DAC 7 directive are characterised by heavy goldplatting, vague definitions and no clear guidance from tax administrations. Amendments to the DAC 7 Directive should aim to harmonise regulations and bring much needed clarity for platform operators, especially those operating in more than one Member State.

Serious legal challenges are especially visible in the e-commerce field regarding the definition of "sale" for DAC 7 purposes and its practical implementation. .

The Directive allows for wide interpretations when defining what constitutes a sale for threshold purposes, which significantly impacts actual reporting. There are serious doubts on how to count transactions, which transactions can be excluded from collecting or reporting..

For instance, most e-commerce shops offer a "put into basket feature", where clients can put items and finalize total transactions. If a user buys 35 scented candles in a single order, does this represent one transaction or 35 separate reportable events? The distinction is critical for determining if reporting criteria are met. It remains unclear if the reporting obligations change when those 35 candles are sourced from a single seller versus when the buyer orders the same product from various independent sellers.

Reporting such situations for DAC7 purposes does not seem reasonable, however, from a purely formal perspective it should not be excluded. Any simplification amendments should clarify those uncertainties to prevent excessive reporting.

There are also doubts on how to treat transactions that are not completed, partially completed, involve withdrawal, or include an exchange of goods instead of cancellation. In other words, there are so many scenarios possible and it only depends on the point of view if DAC7 shall or shall not be applicable.

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