**Non-paper of the Government of the Republic of Poland concerning possible impact of the DAC7 on the Digital Single Market**

**General remarks**

We support the main purpose of the DAC7[[1]](#footnote-1) – ensuring tax compliance and a fair level of taxation, and we see possible advantages of introducing one, common, European reporting standard for digital platforms. In general, we enhance the introduction of the new reporting obligations on the digital platforms. However, undesirable side effects of conducting system-wide changes need to be taken under careful consideration. Having in mind rapidly ongoing digitalisation of the European Union’s (EU) economy and the growth of e-commerce we should analyse the possible effects of the directive on those sectors. By some estimates, in 2023, up to 22% of global trade will take place on the Internet[[2]](#footnote-2). Considering this, our main purpose is to achieve directive’s aims while minimalising additional obligations for European digital enterprises, Member States and ensuring the highest level of compliance with privacy regulations as regards European citizens. New regulations should not be disruptive for the European single market and the level playing field. Whatever is being introduced to the European law system, have to constitute a proportionate action taken to address the identified problem.

1. **Impact of the DAC7 on the European digital environment**

The scope of reporting platform operators in the proposed directive will be quite wide. It will cover not only digital platforms facilitating transactions between their customers and small and medium enterprises (SMEs) offering services but also e-commerce platforms and social media platforms, including social networking sites and streaming platforms. Having in mind the wide scope of the Proposal and its possible impact on the information society services, influencers, content creators and the way SMEs conduct their businesses, we believe that the proposed provisions should be widely consulted with SME’s, European platforms and European experts on the digital economy, so they would not jeopardise the European digital transformation. Extensive consultations would also ensure the coherency of the European law on digital platforms, which is of major importance in the light of the forthcoming regulation on the Digital Single Market (via Digital Services Act).

1. **European Union’s Competitiveness**

Nowadays, boosting competitiveness of European enterprises is one of the biggest challenges that the EU is facing. Transferring parts of the international supply chains to the EU is one of the possible ways to achieve it. Taking actions targeted at supporting SMEs development is also effective. Due to the way EU economy is structured (SMEs constitute the majority of European enterprises), ensuring the appropriate level of governmental support to those enterprises will enable them to successfully compete with the biggest players in the constantly changing business environment. Introducing new reporting obligations might have a negative impact both on the competitiveness and on unlocking the full potential of European enterprises.

Existing reporting obligations and tax provisions already have an impact on the EU competitiveness. In order to fight tax evasion in relation to transactions conducted via e-commerce platforms VAT e-commerce package will enter into force on 01.07.2021 and it will impose on the electronic interfaces, including platforms, the obligation to store and share detailed data about transactions they have facilitated. We believe, that further assessment on the possible interaction between reporting obligations imposed under the VAT e-commerce package and the DAC7 proposal could be conducted. The special emphasis in this assessment could be put on the possible costs for European platforms, to comply with both regulations.

Moreover, while considering introduction of new reporting obligations, strategic autonomy of the EU needs to be taken into account. Minimalizing potential risks while in this process (which might be caused by both: internal and external circumstances) is a top priority. European regulations should support economy boosting and growth of the European enterprises’ innovation level. The unduly burdensome regulations should be avoided.

In this vein, strengthening enforcement in the DAC7 should be re-evaluated. Lack of effective, proportionate and dissuasive sanctions, especially on platforms from third countries, might be disruptive for the level playing field. As a result, it may give an unfair market advantage to non-compliant platforms, and may lead to users migrating from EU-based platforms to those outside the single market (e.g. sellers will migrate to other platforms, in order to avoid taxation or due to reporting standards which will make registering an unduly burdensome process).

1. **Private data protection of European citizens**

We believe that, the scope of data collected by digital platforms under the DAC7 may require additional analysis from the perspective of compliance with the principle of data minimisation and the storage limitation of the purpose set out in Article 5(1)(b), (c) and (e) of the Regulation (EU) 2016/679 (GDPR). With regard to the principle of purpose limitation, personal data should be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes. Since, in accordance with the principle of data minimisation, personal data collected should be adequate, relevant and limited to what is in relation to the purposes for which they are processed. Then, with regard to the principle of storage limitation, personal data shall be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed. Given that the scope of data collected under the DAC7 is wider than under the VAT e-commerce package, it is important to consider, whether collection and processing of this data by platforms will not appear redundant (excessive). Therefore, the obligation for platforms to collect such a wide scope of personal data for reporting purposes, including date and place of birth, seems questionable.

Let us remind, that our intention is to adopt measures proportionate to the purposes pursued. In addition, in order to protect the data collected, European entrepreneurs will have to face the ever-increasing digital risks and the resulting obligations in the area of cybersecurity and data protection.

Therefore, we are in favour of platforms downloading only data necessary for the purposes of the Directive gathered during their ordinary business activities. The provisions should be limited to creating a minimum common framework which is necessary to identify the revenues generated by users through digital platforms but without compromising their privacy.

**Postulates:**

1. Having in mind privacy of European users, we find it important to provide an exemption for occasional sellers, i.e. those who do not run business professionally (threshold based on transactions frequency or accumulated value of transactions). It will address concerns expressed by European platforms regarding redundant data collection from non-professional sellers.
2. We support the idea of collecting minimum data sets which are crucial for tax purposes. In light of the above, e.g. collecting information about place of birth might be redundant and exceed this minimal level of data collected. We also suggest supplementing DAC7 with a clause regarding data storage period.
3. The efficiency of the DAC7 can only be achieved, if effective and fair penalty mechanisms and appropriate level of enforcement are applied to platforms. We notice the need for conducting further work on the possibility of introducing new tools enabling efficient enforcement.
4. We suggest conducting additional dialogue with European businesses and European experts on digital economy regarding the potential impact of the Proposal on the provision of information society services and potential risks of non-coherence between the DAC7 and the VAT e-commerce package.
1. Proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation - COM(2020) 314 final. [↑](#footnote-ref-1)
2. https://www.statista.com/statistics/534123/e-commerce-share-of-retail-sales-worldwide/#statisticContainer [↑](#footnote-ref-2)