

Legal Certainty Issues Linked to Increased Reporting

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1 Introduction

The emergence and evolution of new technologies have significantly impacted and transformed tax processes and reporting over the past decade. Digitization and the rise of new technology have made data sharing and analysis easier, contributing to a rapid increase in information gathering. While there has long been a substantial flow of information in the tax field, it was only after the global financial crisis of 2008/2009 that technology allowed for more powerful analysis of large datasets (commonly referred to as ‘Big Data’).¹ The financial sector embraced the concept of Big Data, leading to a significant wave of data collection and information exchange between states—a trend that has persisted since then. Legislators and authorities² have primarily focused on acquiring new information rather than streamlining and refining processes related to existing tax data.

The purpose of information gathering through various tax regulations is often well-intentioned—to combat tax evasion and various forms of tax avoidance. Since 2011, several reporting requirements related to taxation and accounting have been implemented at the EU level. Many of these initiatives are rooted in the OECD’s BEPS (Base Erosion and Profit Shifting) work, which began around 2011/2012.³ In addition to the implemented rules, proposals for even more reporting requirements have been put forward, and additional ones may be proposed in the future. The question arises whether this extensive data collection can truly be justified considering fundamental legal certainty principles.

In the following discussion, we address several legal certainty issues that arise from an increased number of reporting requirements in the tax field.⁴ Beyond predictability and proportionality, we also consider other relevant legal certainty principles. Particularly crucial in this context is the significance of the principle of objectivity in automated data analysis. This article does not aim to present solutions or direct answers to the

¹ Report 2023:19 Big Data Analytics and Firm Productivity - A Literature Review, Tillväxtanalys, November 2023.

² As described below, reporting requirements have indeed been largely initiated at the EU level.

³ The first BEPS-report was presented 2013: OECD, Addressing Base Erosion and Profit Shifting, Paris, July 2013.

⁴ The mapping described in the following also includes reporting requirements in the accounting field, but the focus of the article is on reporting rules in the tax area.

questions raised but rather highlight important aspects that both legislators and tax authorities should pay special attention to regarding existing or planned reporting requirements in the tax area.

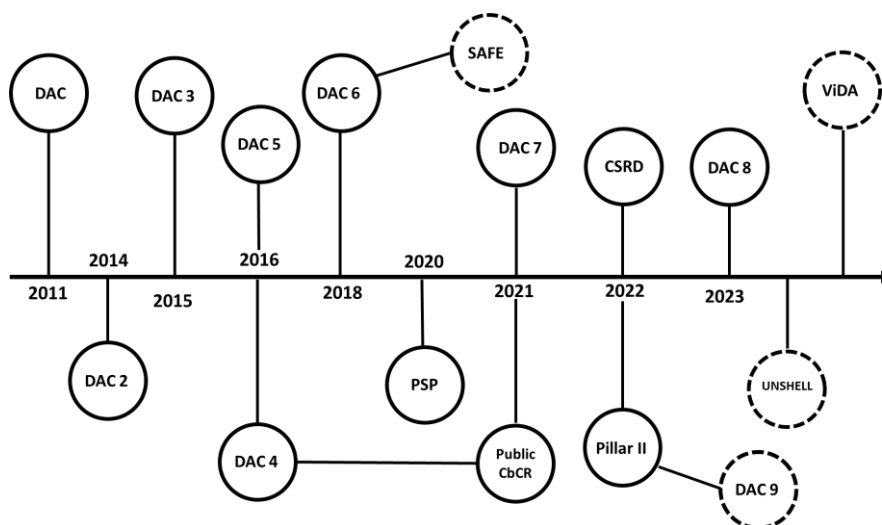
This analysis is a result of a mapping that we conducted with the aim of getting an overview of the reporting landscape in the EU. In the next section this work is described together with an overview of trends that we have observed among the reporting requirements implemented and presented over the past decade.

2 Mass Gathering of Information

2.1 Mapping of the reporting requirements

To gain a comprehensive perspective on the reporting requirements that have been implemented in recent years in the tax field, we mapped all relevant initiatives presented on the EU level spanning from 2011 to 2024. The initial aim with the mapping was to get a better understanding of how new initiatives was going to impact already implemented regulations since our holistic view had gradually slipped out of sight. Our analysis took the simple form of answering the questions: Who? What? When? and How? for each and every reporting requirement. This gave us a template of the magnitude of information, if new technology should be used when submitting the information, different time frames, and the impact on taxpayers. One of the main aims was also to get a better understanding of whether there is an overlap of information submitted to the tax authorities. During the mapping process, however, several questions began to arise, particularly related to legal certainty. These aspects are further discussed in the following.

The mapping is illustrated by a timeline which shows adopted, proposed and potential reporting directives in the tax and accounting field at the EU level from 2011 to 2024. The focus in this article is however mainly on the tax field. There may be several other regulations that one could argue should be included in the timeline and that the mapping is not complete if initiatives on national and global level is not included. Such a project would however be very extensive and is not the purpose of this mapping. More information about each directive is found in the presentation ([link](#)).



The image shows the timeline. Complete circles represent adopted directives and indicate the year of adoption. Dashed circles represent proposed and potential EU directives.

2.2 Trends in reporting requirements

The first directive on automatic exchange of information between tax authorities within the EU, DAC1,⁵ was presented by the Commission in 2011 and implemented by Member States in 2013. At the EU level, it can be argued that this marked the beginning of today's reporting landscape. Between 2011 and 2023,⁶ a total of 14 reporting requirements in the tax and accounting areas have been implemented or presented at the EU level⁷ (SAFE and DAC9 have not been presented). A majority of these initiatives aim to combat tax evasion and tax avoidance. Eight of the 14 initiatives were incorporated into Member States' legislation after 2020, indicating a clear trend towards more and more reporting requirements and an increased volume of information within each regulatory framework – a mass gathering of information at the EU-level.

The regulations from 2020 onwards encompass more taxpayers, with an expectation of collecting more detailed information. During this period, other initiatives related to information flows involving automatic processes and real-time aspects⁸ have been presented both nationally and internationally. The Swedish Companies Registration Office (Bolagsverket), the Swedish Tax Agency (Skatteverket), and the Agency for Digital Government (DIGG), along with their Nordic counterparts, launched the "Nordic Smart Government" project. The vision is to create value for SMEs (small and medium-sized enterprises) by providing real-time company data for innovation and growth in an automated, consent-based, and secure manner.⁹ Similarly, the OECD published the report "Tax Administration 3.0," envisioning digital transformation for tax authorities, leading to seamless taxation processes over time.¹⁰

The reporting requirements in recent years tend to shift focus to gather more information at a micro-level, demanding a more sophisticated and nuanced data management strategy compared to traditional tax reporting. Traditional tax reporting typically involves compilations based on financial transactions and outcomes. The need to capture additional information not previously prescribed in tax reporting is increasingly emphasized. This expansion of information gathering underscores broader regulatory goals aimed at promoting increased transparency, data-driven control, and risk management across various sectors.

Furthermore, discussions around reporting are marked by a greater reliance on automatic processes, aligning with technological advancements. The requested information often needs to be provided in machine-readable formats. The collection of information now claim a higher degree of automation in the data compilation, affecting both companies and authorities. Traditional reporting processes face challenges, especially when combined with the complexity and occasional ambiguity of regulations, necessitating significant changes for all

⁵ Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC.

⁶ ViDA may be adopted by the EU's finance ministers during the Economic and Financial Affairs Council (ECOFIN) meeting on June 21 this year.

⁷ It can be argued that several other initiatives presented during the mentioned period can be considered as reporting requirements.

⁸ By real-time aspects, we mean that information is retrieved either in real-time or nearly real-time.

⁹ Our vision, Nordic Smart Government and Business, nordicsmartgovernment.org.

¹⁰ OECD, Forum on Tax Administration, Tax Administration 3.0: The Digital Transformation of Tax Administration, December 2020.

parties involved. It is crucial for organizations to proactively assess their reporting capabilities and leverage advanced technologies to effectively meet evolving compliance and reporting demands.

The developments since 2020 have paralleled improvements in approaches to harnessing information. However, the overall perspective on reporting burdens seems to have vanished. There appears to be an established idea among legislators that more information is necessary to combat fraud and tax evasion. Additionally, an increasing number of proposals focus on centralizing data in EU-databases, which may relate to the desire to analyze large volumes of corporate data. These developments raise significant questions about data security.

3 Some Tax Certainty Issues

3.1 Introduction

The concept of legal certainty has long been debated, and there is no universally accepted definition of its true meaning. However, most seem to agree that, in addition to the principle of legality, the core of legal certainty lies in predictability—specifically, the ability to anticipate the legal consequences of a decision in advance.¹¹

Without claiming to conduct an exhaustive analysis of the legal certainty issues related to an increasing number of reporting requirements and a growing flow of information, we attempt to address several key legal certainty concerns that we believe are insufficiently considered during the introduction of new reporting requirements. It can be said that legal certainty problems arise at various stages during the implementation and application of new reporting requirements, with the initial challenges emerging during the design of the rules.

3.2 The Design of the Rules

The traditional approach in Sweden regarding information provided to the Swedish Tax Agency has been that the agency should only have access to data necessary for ensuring tax decisions. However, recent initiatives, particularly from 2020 onward, seem to move in the opposite direction. A natural question arises: What perspective should legislators adopt when assessing reporting requirements?

From a legal certainty standpoint, tax rules are typically expected to be as clear as possible. To predict legal outcomes, relatively precise legislation is needed. This becomes especially relevant when considering measures that can significantly impact individuals. Here, the principle of proportionality is of particular importance. This principle ensures that only necessary and proportionate measures are used, considering both the design of legislation and its application.¹² Unfortunately, it appears that this perspective has been lost in the implementation of new reporting requirements.

¹¹ A more in-depth analysis of the concept of legal certainty lies beyond the scope of the discussion in this article.

¹² Swedish government report, SOU 1993:62, p. 81 onwards.

The true value of information emerges when tools and capabilities allow for the efficient and accurate assembly of relevant data points. However, with the rapid introduction and implementation of new regulations, both businesses and tax authorities struggle to adapt. This time crunch leads to insufficient evaluations of the rules, leaving affected companies and authorities unable to thoroughly analyze proposed changes or provide valuable input to legislators. Consequently, we often end up with regulations that lack purpose and precision, increasing the risk associated with new reporting requirements.

At the EU level, the majority of recently implemented directives aim to combat tax fraud and evasion.¹³ While this is positive, it is essential that these rules effectively achieve their goals while still meeting basic requirements of legal certainty. Trust in the tax system hinges on striking this balance. Despite the apparent importance, examples that follow demonstrate that achieving this balance is not always straightforward.

3.3 The Gathering of Information

In recent years, initiatives have shown that the information reported to tax authorities is difficult to justify with respect to the purpose and objectives of the regulations. Data collection often occurs not out of necessity but because it is possible. This distinction is often described as “nice to have” versus “need to have” information. The question arises: Can all data collection be justified based on proportionality arguments and the fundamental requirement of predictability in tax legislation? In the following, this is discussed based on some of the reporting requirements implemented in recent years.

A clear example of the above is the reporting under DAC7¹⁴—the seventh edition of the EU’s directive on administrative cooperation in direct taxation (DAC1). DAC7 specifically addresses income from digital platforms and imposes reporting obligations on platform operators. These operators must provide information about compensation paid to or credited to sellers and renters on digital platforms. The first reporting to the Swedish Tax Agency occurred on January 1 of this year. The overarching purpose of information gathering through DAC7 is to identify individuals who, by providing sales through digital channels, evade taxable income. However, the extent of data collection under DAC7 is unprecedented in the tax field, with most of the administrative costs falling on platform operators. Additionally, the meaning of some central terms in the directive remains unclear—for instance, ‘platform’ and ‘platform operator.’ Furthermore, it is uncertain who bears the reporting obligation under DAC7, and whether the reporting effectively achieves its intended goal. One can question whether this information is truly relevant for tax decisions. Overall, the directive seems to lack both predictability and proportionality. Moreover, there is a concern about whether tax authorities in different Member States can efficiently handle this volume of information.

¹³ Se t.ex. DAC1 Preamble (1) och (29), PSP-directive Preamble (2), ViDA Preamble (3) och (16) and DAC7 Preamble (6).

¹⁴ Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation.

Another example relates to the directive on new requirements for payment service providers (PSP directive)¹⁵ to document and report information about certain cross-border payments. These rules require payment service providers, e.g. banks, to report payments in countries where customers' IBANs¹⁶ are linked or where payment/credit cards have been issued. Often, a payment service provider located in Sweden has reporting obligations in multiple countries due to the absence of simplification allowing reporting to the Swedish Tax Agency for payments that must be reported in other EU countries. Reporting must therefore be made directly to each relevant authority in the respective country. The purpose of the directive is to combat VAT fraud specifically in international e-commerce. However, the reporting obligation extends beyond e-commerce related transactions to other cross-border payments. This may be one of the clearest examples of information gathering that is difficult to justify based on the true purpose of its implementation. The proportionality of this data collection can certainly be questioned.

The new reporting requirements regarding sustainability data (CSRD)¹⁷ is also an example of an obligation lacking predictability aspects. CSRD is a directive aiming at collecting information regarding a business social and environmental activities. The purpose is to achieve higher comparability and quality compared to its predecessor NFRD¹⁸ which have been considered nebulous and insufficient. The new framework is built upon several standards which contain different data points. Every company in scope must perform a double materiality research to determine if a data point is reportable or not. From a predictability perspective, it often proves challenging to make determinations, as it entails subjective assessments wherein interpretations play a vital role in a company's decision-making. Consequently, disparate conclusions may emerge, even among entities operating within similar contexts.

When the DAC6 directive,¹⁹ which concerns to the obligation to provide information about reportable cross-border arrangements, was implemented, businesses criticized the rules for encompassing many situations that were irrelevant to the directive's intended purpose. Specifically, the critique focused on the vagueness and lack of clarity in the regulatory framework, which ultimately undermined legal certainty and made compliance more challenging. As described above, similar criticism can be put forward against initiatives implemented and introduced after DAC6. Moreover, in light of the implementation of the directive on a global minimum tax (Pillar 2),²⁰ DAC6 may be considered redundant. Additionally, the effectiveness of the regulation has been questioned given the limited number of reports submitted to the Swedish Tax Agency, while the administrative burden and compliance still consume significant resources for companies in scope.

¹⁵ Council Directive (EU) 2020/284 of 18 February 2020 amending Directive 2006/112/EC as regards introducing certain requirements for payment service providers.

¹⁶ IBAN stands for International Bank Account Number, and it is an international format for identifying bank account numbers during money transfers between different countries.

¹⁷ Council Directive (EU) 2022/2464 of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting.

¹⁸ Council Directive (EU) 2014/95 of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups

¹⁹ Council Directive (EU) 2018/822 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements.

²⁰ Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union.

3.4 The Analysis of Data

In our previous discussions, we primarily focused on predictability and proportionality aspects. However, the principle of objectivity holds particular significance when analyzing data.

Not only do we witness an increased flow of information, but there is also a concerning trend toward centralizing data in databases on the EU-level. For instance, information about cross-border payments reported to tax authorities in EU countries through the PSP directive is subsequently transmitted to the new database CESOP (Central Electronic on Payment Information).²¹ CESOP collects data per payer, generates reports, and conducts analyses. Designated officials within the EU Commission then have access to this information. When the PSP directive was adopted, the protection of information against unauthorized use remained unclear. Unauthorized access to such a database could have severe consequences if sensitive data falls into the wrong hands. Additionally, problems arise if stored information is not reviewed or is incorrect. This does not only affect data security but also legal certainty during data analysis.

Another example is the EU Commission's proposal in ViDA.²² The central Vies²³—a search tool owned by the EU Commission—is intended to facilitate searches of substantial transaction-based consumption data and taxpayer information. Unlike CESOP, Vies is not a database; it allows retrieval of data from Member States' national VAT databases. While the risks of data breaches may be greater with centralized data storage, both examples involve significant amounts of information, which need a high level of data protection and security measures. Unfortunately, these aspects have not been adequately addressed in discussions related to CESOP or the proposed ViDA system.

The principle of objectivity in data analysis is critical for ensuring reliability. It requires unbiased analysis, accurate data, and relevance to the intended purpose. However, when dealing with AI-based systems—often characterized as “black boxes”—ensuring objectivity becomes challenging.²⁴ The “black box problem” refers to the lack of transparency in how AI-based systems operate. Users do not always know what happens with the input data, leading to incomplete transparency regarding the results. If input data is flawed or biased, it can distort outcomes, undermining objectivity and legal certainty. How can we validate the analysis performed? Is it even achievable when input information is flawed?

3.5 System Aspects

In the design and implementation of reporting requirements introduced since 2020, additional challenges arise from system-related aspects. While these aspects do not typically fall within the scope of legal certainty, they

²¹ Read more about CESOP [here](#).

²² Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age COM(2022) 701 final.

²³ “Vies” stands for “VAT Information Exchange System” and is a system for exchanging information about value-added tax (VAT) within the EU.

²⁴ For example, Aleksandra Bal, Ruled by Algorithms: The Use of ‘Black Box’ Models in Tax Law, Tax Notes International, September 2019.

deserve equal attention during the design of the rules. Ambiguities in legislation can create uncertainties that significantly impact reporting effectiveness.

Given the digital structure of reporting requirements, businesses and governments' systems face increased demands. To efficiently handle tax reporting and other internal processes, many companies must rely on ERP systems²⁵ or data support. However, legal interpretations and assessments remain crucial, just as before, but the development now also requires an understanding of how these aspects must integrate into business systems. Notably, this holds particular significance in the area of VAT, as exemplified by ViDA. Real-time reporting in ViDA requires internal assessments without excessive subjectivity, due to decreased time to perform manual verifications. Today, expertise in both legal and technical qualifications, along with organizational knowledge, is central to effective tax reporting. Reporting extends deeper into organizations, involving procurement, logistics, treasury, tax, accounting, HR, and IT—all collaborating to ensure regulatory compliance.

As the focus shifts toward greater automation and larger data volumes from various sources, two critical system aspects emerge: interoperability and master data. Interoperability refers to systems' ability to communicate effectively, both externally (e.g., between companies and tax authorities) and internally across functions providing different data points. Data is not always stored in the same system or location, emphasizing the need for efficient interoperability. High-quality master data is another essential aspect in the new reporting landscape. While maintaining coordinated master data always has been desirable, its importance now grows. Reporting increasingly involves more precise analysis and compilations on data that must be initially accurate. Consequently, systems must be well-structured, customized, and compatible to provide necessary, accurate information at the right time. This places significant pressure on companies and authorities to explore system functionality, ensuring that reported information serves its intended purposes.

4 Concluding Remarks

The European Court of Auditors evaluated the effectiveness of reporting requirements from DAC1 to DAC5 in 2021.²⁶ The overall conclusion is that the system is well-established, but there are areas for improvement concerning monitoring, data quality, and utilization. Some criticism stems from the EU Commission's lack of proactive continuous guidance and failure to measure the outcomes and effects of exchanged information. Member states' data lacks sufficient quality, and the potential of information remains underutilized in automatic exchanges.²⁷ The recommendations to enhance the system's effectiveness—specifically, automatic information exchange—express that both the EU Commission and member states should take measures to improve data quality. The EU Commission is also recommended to legislate to ensure information exchange and expand its monitoring activities, along with providing guidance to member states.

²⁵ "ERP" stands for "Enterprise Resource Planning" and refers to a software system that assists with the automation and management of various business processes.

²⁶ European Court of Auditors, Special Report: Exchanging tax information in the EU: solid foundation, cracks in the implementation, 2021.

²⁷ European Court of Auditors, Special Report: Exchanging tax information in the EU: solid foundation, cracks in the implementation, 2021, p. 5.

It is easy to agree that further analysis of the system's effectiveness must be evaluated and to question whether the collected data is genuinely utilized. This is especially relevant given the implementation of several new reporting requirements not covered in the Court of Auditors' analysis. Additionally, there are strong reasons to question whether the EU Commission should legislate to ensure data supply.

In the OECD's assessment of the current state of corporate taxation,²⁸ it is noted that the number of regulations and standards introduced in recent years may overlap and addresses similar risks. The recommendations emphasize removing or modifying requirements with such characteristics. In the EU Commission President's 2023 State of the Union address,²⁹ a similar focus on reducing general reporting burdens for companies (not only in the tax area) was expressed. To maintain the competitiveness of European businesses, Ursula von der Leyen stated that administrative burdens related to reporting requirements within the EU should be reduced by 25%. This shift in direction is welcomed and was subsequently reflected in the EU Commission's 2024 work programme.³⁰ However, upon closer examination of the proposed measures to streamline reporting requirements, tax reporting seems unfortunately absent.³¹

A recently coined term in this context is "decluttering." Decluttering refers to removing unnecessary elements. The practical implications of this concept in the EU Commission's efforts to reduce reporting burdens for companies remain somewhat unclear. We believe that the forthcoming work should adopt a decluttering perspective with the aim that directives that no longer serve their purpose or have been replaced by similar requirements, should be entirely removed. For instance, this applies to the implementation of Pillar 2 concerning country-by-country reporting³² and DAC6. Furthermore, the analysis should consider how existing rules interact in general—not solely whether they overlap. An approach where decluttering is used to adjust already implemented directives is unlikely to simplify matters and risks compromising rule predictability. Moreover, such adjustments could lead to significant system costs for companies and tax authorities.

For both tax efficiency and trust in the tax system, it is of utmost importance to consider fundamental legal certainty principles such as predictability, proportionality, and objectivity when establishing and implementing new rules. This becomes especially crucial as digitization and the emergence of new technology have made it easier to share and analyze data in ways not previously possible, contributing to the rapid influx of information. If reporting requirements lack a well-defined purpose that is consistently upheld, legitimacy is constrained, and the information may become more of a burden than a necessity. Additionally, we are critical of the trend toward more centralized data storage, particularly when data security aspects are not thoroughly discussed. Furthermore, the administrative burden of inefficient regulations negatively impacts productivity, resulting in unnecessary administrative costs for businesses. To ensure that legal certainty aspects, such as predictability and proportionality, are considered, reporting requirements should, where necessary, be limited to concise and relevant information designed for integration into various actors' ERP systems. Efforts should focus on

²⁸ OECD, Tax Co-operation for the 21st century – OECD report for the G7 finance ministers and central banks governors, May 2022.

²⁹ European Commission, State of the Union Address by President von der Leyen, Strasbourg, 13 September, 2023.

³⁰ Commission work programme 2024, COM(2023) 638 final, 17 October, 2023.

³¹ Commission work programme 2024, COM(2023) 638 final Annexes 1-4, 17 October, 2023.

³² Directive (EU) 2021/2101 of the European Parliament and of the Council of 24 November 2021 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches.

developing new ways to analyze existing data using new digital tools, rather than requesting additional information without a clear understanding of its purpose. It takes a thorough analysis to turn data into useful information. It is not the mere possession of data that matters but the ability to connect the data dots since that is the critical step for understanding the implications.