

## EU Council ambassadors reach agreement on amended proposal for deferral of MDR filing deadlines

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### Executive summary

Several European Union (EU) Member States have announced that they will provide in their domestic legislation a deferral of the filing deadlines of the EU Directive 2011/16 (DAC6) due to the COVID-19 pandemic. These announcements follow a political agreement reached by the ambassadors of the Member States at the COREPER II meeting on 3 June 2020.

Under the amended proposal, Member States would be allowed to grant a six-month extension to the existing deadlines for filing and exchanging information on cross-border arrangements. The amended proposal also provides for the possibility of one further extension for a maximum additional three months but proposes to do so by means of a unanimous decision of the Council.

### Detailed discussion

#### Background

The EU Directive 2018/822 of 25 May 2018 amending Directive 2011/16/EU regarding the mandatory automatic exchange of information in the field of taxation (DAC6), entered into force on 25 June 2018.<sup>1</sup>

DAC6 requires intermediaries (including EU-based tax consultants, banks and lawyers) and in some situations, taxpayers, to report certain cross-border arrangements (reportable arrangements) to the relevant EU member state tax authority. This disclosure regime applies to all taxes except value-added tax (VAT), customs duties, excise duties and compulsory social security contributions.<sup>2</sup> Cross-border arrangements will be reportable if they contain certain features (known as hallmarks). For more background, see EY Global Tax Alert, [Council of the EU reaches an agreement on new mandatory transparency rules for intermediaries and taxpayers](#), dated 14 March 2018.

### The original proposal

On 8 May 2020, the European Commission proposed a three-month extension to the deadlines for filing and exchanging information on cross-border arrangements under the EU Directive 2011/16 due to the COVID-19 pandemic.<sup>3</sup> The proposal also provided for the possibility of one further extension for filing and exchanging information for a maximum additional three months. The Member States were unable to reach an agreement on this original proposal.

### Political agreement reached on the amended proposal

A number of statements released by Member States in recent days have referred to a political agreement reached in the COREPER II meeting held on 3 June 2020. These statements set out that the COREPER II agreed to an optional extension of relevant time limits for filing and exchanging information under Directive 2011/16 concerning reportable cross-border arrangements in response to an amended proposal from the European Commission.

The amended proposal gives each Member State the option to defer the reporting dates as follows:

- ▶ Change the date from 31 August 2020 to 28 February 2021 for the reporting of the "historical" cross-border arrangements (i.e., arrangements that became reportable from 25 June 2018 to 30 June 2020).

- ▶ With respect to arrangements targeted by DAC6 starting 1 July 2020, where a reportable cross-border arrangement is made available for implementation, or is ready for implementation, or where the first step in its implementation has been made between 1 July 2020 and 31 December 2020, the period of 30 days for filing information shall begin on 1 January 2021.
- ▶ Change the date for the first exchange of information on reportable cross-border arrangements from 31 October 2020 to 30 April 2021.

The amended proposal also provides for the possibility of one further extension for a maximum additional three months, but only if there is a unanimous decision of the Council.

The amended proposal, if enacted in its current form, will merely extend the deadline for complying with the obligation to report and exchange information under Directive 2011/16, while still ensuring that no information remains without eventually being exchanged.

### Next steps for final approval

The amended proposal agreed by the COREPER II will be formally adopted following a written procedure in the EU Council. COREPER II has also agreed for an exception from the eight-week consultation period of national parliaments to speed up the process and have the amended proposal adopted before the end of June 2020. The European Parliament, which is due to give its opinion by 30 June, will discuss the text and the procedure to be followed on 9 June 2020.

### Implications

Given the optional character of the amended proposal, each Member State will have to make a formal decision on whether to apply the deferral. If the Member State fails to respond, the original timelines will apply. In this regard, several countries have already indicated they will apply the deferral.

Taxpayers are advised to monitor the country developments related to this topic.

## Endnotes

1. See EY Global Tax Alert, [EU publishes Directive on new mandatory transparency rules for intermediaries and taxpayers](#), dated 5 June 2018.
2. DAC6 sets out a minimum standard. Member States can take further measures; for example, (i) introduce reporting obligations for purely domestic arrangements; (ii) extend the scope of taxes covered; (iii) bring forward the start date for reporting.
3. See EY Global Tax Alert, [European Commission proposes deferral for certain filing deadlines under the Mandatory Disclosure Rules](#), dated 8 May 2020.

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EYG no. 003866-20Gbl

1508-1600216 NY  
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