

Council of the EU adopts amendments for deferral of MDR filing deadlines

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Executive summary

On 24 June 2020, the Council of the European Union (EU) [announced](#) that it adopted amendments to the EU Directive 2011/16 allowing Member States an option to defer by up to six months the time limits for the filing and exchange of information on cross-border arrangements under Directive 2018/822 (DAC6 or Directive) due to the COVID-19 pandemic.

The amendments also provide the possibility of one further extension for a maximum additional three months by means of a unanimous decision of the Council depending on the evolution of the pandemic.

Detailed discussion

Background

DAC6 entered into force on 25 June 2018.¹ The Directive 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.² 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 deferral 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.³ 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 did not reach an agreement on this original proposal.

Council adopts amendments to DAC6 reporting deadlines

The Council has now agreed to an amendment that will give each Member State the option to defer the reporting dates to file:

- ▶ By 28 February 2021, 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 by 1 January 2021.

In the Member States where the option is exercised, the amendment changes the date for the first exchange of information on reportable cross-border arrangements to occur by 30 April 2021.

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

The amendments merely extend the deadline for complying with the obligation to report and exchange information under DAC6, while still ensuring that no information remains without eventually being exchanged. The deferral is of limited duration and proportionate to the practical difficulties caused by the temporary lockdown aimed at containing the COVID-19 pandemic.

Next steps

The amendments to DAC6 shall enter into force on the day following that of its publication in the *Official Journal of the European Union*, which is expected to happen soon.

Member States are expected to implement the deferred timeline into their domestic law as soon as possible if they intend to use the option provided by the Directive.

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.

Taxpayers and intermediaries 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. 004441-20Gbl

1508-1600216 NY
ED None

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