



Euro Tax Flash from KPMG's EU Tax Centre



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Member State representatives reach compromise on deferral of DAC6 deadlines

European Union – Directive on Administrative Cooperation – Mandatory Disclosure Requirements – Implementation – Reporting deadlines

On June 3, 2020, Member State representatives on Coreper (the Permanent Representatives Committee) reached political agreement on an optional six-month deferral of reporting deadlines under the EU Mandatory Disclosure Rules (MDR). In order for the deferral to become applicable, formal unanimous agreement in the Council of the European Union is required. In addition, an opinion is required from the European Parliament, which is expected by the end of the month. It will then be up to each Member State to opt for and communicate the deferral.

Background

Mandatory disclosure requirements for intermediaries and relevant taxpayers under the Directive on Administrative Cooperation (DAC6) entered into force in the European Union (EU) on June 25, 2018 and will apply as of July 1, 2020. Under the text of DAC6, the deadline for intermediaries to disclose reportable transactions the first step of which was implemented after June 25, 2018 was initially August 31, 2020.

As of July 1, 2020 the deadline was set at 30 days beginning on:

- (a) the day after the reportable cross-border arrangement is made available for implementation, or
- (b) the day after the reportable cross-border arrangement is ready for implementation, or
- (c) the date on which the first step in the implementation of the reportable cross-border arrangements was taken, whichever occurs first.

On May 8, 2020, the European Commission (EC) published a draft Directive amending the DAC, proposing the following amendments to the reporting deadlines:

- Change the date for the beginning of the 30-day period for reporting cross-border arrangements from July 1, 2020 to October 1, 2020;
- Change the date for the reporting of cross-border arrangements that became reportable from June 25, 2018 to June 30, 2020 (the so-called “historical” arrangements) from August 31, 2020 to November 30, 2020;
- Change the date for the first exchange of information on reportable cross-border arrangements, from October 31, 2020 to January 31, 2021

The EC also proposed an adjusted reporting timeline with respect to the EU common reporting standard (CRS) for reporting financial institutions, transposed into EU law via Council Directive 2014/107 (DAC2). With respect to DAC2, the EC proposes to defer the deadline for exchanges of information on “reportable financial accounts” by three months, i.e. until December 31, 2020.

The EC also proposed a possibility to further extend the deferral period once, for a maximum of three additional months. It was proposed that this option would only be invoked if during the initial period of deferral, the exceptional circumstances of severe risks for public health caused by the COVID-19 pandemic persist and the EU Member States are forced to implement lockdown measures.

Click [here](#) for further details on the EC’s initial proposal.

Political agreement on revised proposal

On June 4, 2020, the Ministry of Finance in Luxembourg announced that negotiations in the Council on the European Commission’s proposal have progressed rapidly in recent weeks and a compromise was reached following the Coreper meeting on June 3, 2020.

The announcement is available [here](#) and notes that Member States will be given the option to postpone for six months the deadlines for communication and exchange of information under DAC6, as well as for three months for the communication of information under DAC2. The Luxembourgish Ministry of Finance also communicated that penalties for late submission of the requested information will not apply in Luxembourg until the amendments come into force.

This announcement follows a communication from the Belgian Federal Tax Authorities (June 3, 2020) announcing that Member State representatives had reached political agreement and that administrative deferral of six months is granted for the reporting obligations under Belgian legislation transposing DAC6. The following deadlines therefore apply in Belgium:

- February 28, 2021, with respect to reporting of historical arrangements, i.e. where the first step of implementation is made between June 25, 2018 and June 30, 2020;
- April 30, 2021, for the first periodic report for marketable arrangements;
- January 1, 2021 for all other reportable cross-border arrangements, including those for which the reporting trigger occurs in the period between July 1, 2020 and December 31, 2020.

For further details, please refer to a tax alert published by KPMG Belgium, available [here](#).

Under the consultation procedure (the special EU legislative procedures that applies to this proposal), unanimous agreement is required in the Council, after the Parliament has submitted its opinion on it. The amended Directive will enter into force once published in the Official Journal of the EU.

EU Tax Centre comment

Assuming that the proposed deferral is formally adopted by the Council of the EU, other Member States (in addition to Belgium and Luxembourg) are expected to formalize their choice to exercise this option. The text of the compromise proposal has not yet been made public, meaning that details of the revised text are not yet available. However, under the European Commission's initial proposal, Member States were given the choice to apply the original DAC6 reporting deadlines, the extended deadlines or anything in between. This could lead to significant mismatches between reporting deadlines across the EU.

While the deferral of the DAC6 reporting deadline is a welcome development, in particular for intermediaries and taxpayers that may have a reporting obligation in EU Member States that have not issued implementation guidance or that have not finalized the DAC6 reporting schema, KPMG nevertheless advises impacted parties to continue their efforts in preparing for DAC6 compliance.

Please refer to the [KPMG Summary and Observations memorandum](#) for further details and to the KPMG's [MDR Updates page](#) for previous updates on the implementation of DAC6 into domestic legislation.

For further information on KPMG services and technology designed to assist you in meeting the demands of the new EU MDR regime, please refer to [KPMG's EU Mandatory Disclosure Rules page](#).

Should you have any queries, please do not hesitate to contact [KPMG's EU Tax Centre](#), or, as appropriate, your local KPMG tax advisor.



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