



# Introduction

A new wave of reporting rules will be effective in the European Union on 1 July 2020, with retroactive effect to 25 June 2018.

These new requirements were introduced by the last amendments to the EU Directive on Administrative Cooperation in the field of taxation, commonly known as DAC 6.

It will soon be required to disclose all cross-border arrangements/ structures meeting the criteria and hallmarks of DAC 6.

Although the implementing deadline of 31 December 2019 has already passed, only 21 countries have implemented these rules into their domestic legislation, while 6 countries are still at the implementation drafting stage. Greece has not yet unveiled its proposal to introduce the DAC 6 package into its legislative landscape.

On 24 January 2020, the European Commission sent formal notices to Belgium, Cyprus, Czech Republic, Estonia, France, Greece, Italy, Latvia, Luxembourg, Poland, Portugal, Romania, Spain, Sweden and the United Kingdom regarding the implementation of DAC 6. If these countries do not follow up on these formal notices in the next two months, the Commission should issue a reasoned opinion. However, there is no information published that reveals which aspects of the DAC 6 implementation the Commission is not satisfied with specifically.

## Recent developments

### European Union

On 8 May 2020, the European Commission published a proposal to extend the reporting deadlines of the exchange of information directives. In practice, the DAC 6 deadlines should be affected as follows:

- 1) The first exchange of information on reportable cross-border arrangements included in Annex IV of DAC 6 has been extended to 31 January 2021, instead of 31 October 2020.
- 2) The date of the beginning of the 30-day period for reporting cross-border arrangements that fall within the hallmarks of Annex IV is from 1 October 2020, instead of 1 July 2020.
- 3) The date for the reporting of "historical" cross-border arrangements (25 June 2018–30 June 2020) is from 30 November 2020, instead of 31 August 2020. This deferral period could also be extended for up to three more months, depending on how the COVID-19 pandemic evolves. The Commission will be empowered to provide such an

extension by way of delegated acts.

For further details, please see our article on this topic.

### Denmark

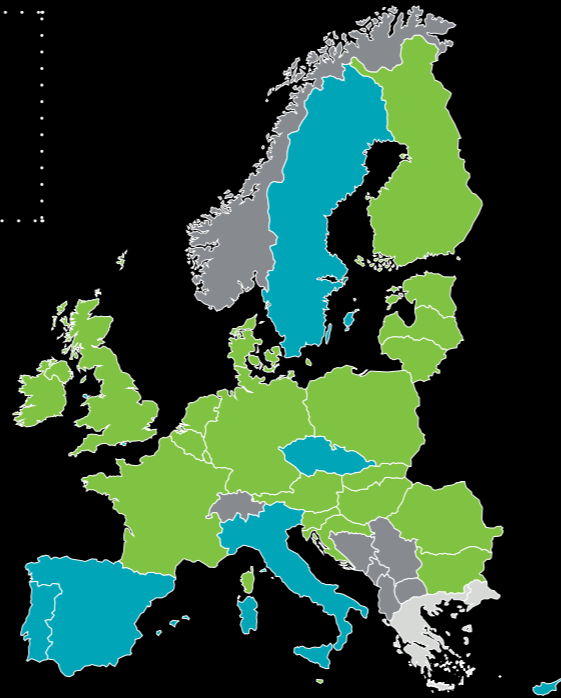
On 20 April 2020, the Customs and Tax Administration issued an order regarding the rules implementing DAC 6 into Danish legislation. This order includes legal guidance on the reporting cross-border arrangements related to:

- 1) The purpose of the cross-border reporting system rules;
- 2) The reportable information types and which entity types are required to report;
- 3) The procedural reporting requirements, including deadlines and reporting-entity registration instructions; and
- 4) The penalties for non-compliance.

The tax authority also announced that more guidelines should be published in June and that a reporting solution is currently under development.

### Finland

On 30 April 2020, the tax



authorities published guidelines on reportable cross-border arrangements under DAC 6. Some English-language guidance has also been released.

### France

A decree that specifies the information to be included in a DAC 6 return was published on 19 March 2020 in the *Journal Officiel de la République Française*. You can also find more information regarding the consultation mentioned in our previous issue in this publication. Please note that this consultation was just extended to 31 May 2020 and also includes more detail on the general and specific hallmarks that will be used to determine if an arrangement is reportable.

### Germany

On 2 March 2020, the German Ministry of Finance published a draft decree on the application of the DAC 6 requirements into domestic legislation. The decree is divided into three parts:

- 1) Additional guidance regarding the scope of the reporting requirements;

- 2) Details on the hallmarks for reportable transactions; and
- 3) Further details about the tax authorities' reporting process. For further details, please see our article on this topic.

### Guernsey

On 13 March 2020, *The Guernsey Official Gazette* published a regulation implementing mandatory disclosure rules for common reporting standard avoidance arrangements and opaque offshore structures. A reporting arrangement implemented on or after 29 October 2014 and before the date the regulation commences must be disclosed within 180 days of the rules' commencement date. Other reporting must be done within 30 days following the first step of the reportable scheme's implementation.

### Luxembourg

On 26 March 2020, the law implementing the EU Directive on cross-border arrangements was published in the Official Gazette. For more details on this topic, please see our alert.

A Grand-Ducal Decree related to the reporting procedure was also published on 12 May 2020. On 14 May 2020, the Direct Tax Authorities published a first set of guidelines related to the implementation of DAC 6. They also announced that the XML file and a user guide should be soon released.

### Poland

On 2 April 2020, the Polish Ministry of Finance extended the deadline to file mandatory disclosure reports that notably relate to domestic and cross-border tax planning arrangements further to the coronavirus pandemic. All deadlines are suspended starting from 31 March 2020 until the immediate threat of the pandemic has passed, but no longer than until 30 June 2020.

### Slovenia

On 2 April 2020, the Ministry of Finance issued guidance on reportable cross-border arrangements under DAC 6. It includes:

- 1) The disclosure of specified categories of cross-border arrangements;
- 2) A 31 August 2020 deadline for intermediaries and relevant taxpayers to report cross-border arrangements implemented between 25 June 2018 and 1 July 2020;
- 3) A 30-day deadline to report arrangements made on or after the 1 July 2020;
- 4) Reporting procedures;
- 5) Clarification of the criteria to identify cross-border.
- 6) Rules for reporting beneficial ownership;
- 7) Guidance on reporting arrangements between related parties;
- 8) Due diligence obligations for intermediaries; and

- 9) Penalties for non-compliance and for reporting incomplete or false information.

### Spain

The Ministry of Finance announced on 12 May that the Council of Ministers approved the draft law to implement the Directive on the mandatory automatic exchange of information in relation to reportable cross-border arrangements. The draft legislation grants the legal professional privilege (LLP) reporting waiver only if the professional who can benefit from the LLP and has the function of an intermediary provides neutral advice with the sole objective of evaluating the adequacy of the mechanism to the applicable regulations, and without seeking or facilitating the implementation of aggressive tax planning. The penalties for infringements are a fine of EUR 2,000 for omitted

or inaccurate data and a fine of at least EUR 4,000 for omitted or inaccurate data sets.

### United Kingdom

On 26 March 2020, the HM Revenue & Customs (HMRC) shared for consultation purposes with various stakeholders an updated version of draft guidance regarding how it intends to apply the rules implementing DAC 6 into domestic legislation. The HMRC has also updated its *International Exchange of Information Manual* on 14 May 2020. This update recognizes the impact of COVID-19 as a reasonable excuse for delayed reporting regarding DAC 6 and other obligations, notably CRS and FATCA. The update notes that the European Commission has also proposed delaying the initial DAC 6 reporting dates. When this amendment is finalized, HMRC will confirm how this will apply to the UK's rules.

## Local specificities

### Estonia

Includes additional hallmarks regarding arrangements affecting the exchange of information on financial accounts included in the implementing law.

### France

The French legislation exempts permanent establishments of French intermediaries located outside France from the reporting requirement when the arrangement is related to their activity.

### Germany

Whereas the Directive distinguishes between promoters and service providers giving aid, assistance or advice, currently the German bill does not specifically reference the service provider. If an intermediary has a German nexus, it will trigger a reporting obligation in Germany, regardless of the relevant taxpayer's residence and where the tax advantage arises.

### Italy

Italian financial institutions will

be considered as intermediaries for Common Reporting Standard purposes.

### Poland

Includes broadened disclosure requirements including domestic arrangements and all taxes. Hallmarks are more broadly defined than DAC 6 standards require. Guidance published on 31 January 2019 provides some clarity on the interpretation of the Polish legislation and also sets out how the tax authorities anticipate the reporting

process to operate.

### Portugal

The proposal includes domestic arrangements and VAT in its scope, as well as additional hallmarks.

### Spain

Individuals can also be considered as intermediaries according to the current proposal.

### Sweden

The proposal includes domestic arrangements inside its scope.

## Useful links

- [Global Tax alert on tax intermediaries directive](#)
- [Luxembourg Tax Alert on the DAC 6 implementation](#)
- [Text of the Council Directive \(EU\) 2018/822 of 25 May 2018 relating to reportable cross-border arrangements \(DAC6\)](#)
- [Understanding DAC 6 - EU tax directive 2018/822 and its effects on cross-border tax arrangements](#)
- [DAC 6 law voted by the Luxembourg parliament](#)

## Previous editions

Issue 1 (6 December 2019)

Issue 2 (17 January 2020)

Issue 3 (10 March 2020)

# Contacts



**Eric Centi**  
Partner  
Financial Services Tax



**Julien Lamotte**  
Partner  
Financial Services Tax



**Pierre-Jean Estagerie**  
Partner  
Global Employer Services

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