

# DAC6 Newsletter

DAC6 local country status  
and reporting trends

May 2020



## DAC6 local country implementation

Under the terms of the Directive 2018/822 (DAC6 or the Directive), EU Member States were required to adopt and publish national laws to comply with the Directive by 31 December 2019. When transposing the Directive into their domestic law, Member States could align their domestic rules with the scope of the Directive or they could adopt a broader scope. To date, only Poland and Portugal have extended the scope of the Directive in their domestic law by including domestic arrangements, additional taxes such as value-added tax (Poland, Portugal – only for domestic arrangements) and excise duty (Poland), additional hallmarks (Poland) and accelerated timing (Poland).

### Status of DAC6 domestic legislation

As of 30 April 2020, [Austria](#), [Belgium](#), [Bulgaria](#), [Croatia](#), [Denmark](#), [Estonia](#), [Finland](#), [France](#), [Germany](#), [Gibraltar](#), [Hungary](#), [Ireland](#), [Latvia](#), [Lithuania](#), [Luxembourg](#), [Malta](#), [the Netherlands](#), [Poland](#), [Romania](#), [Slovakia](#), [Slovenia](#) and the [United Kingdom](#) have adopted final legislation implementing DAC6. A further six Member States have published draft DAC6 legislation, namely [Cyprus](#), [Czech Republic](#), Italy, [Portugal](#), [Spain](#) and [Sweden](#). No information is currently available for Greece.

It is expected that Member States will publish guidance on the technical interpretation of the domestic law and the practical aspects of compliance and reporting over the next few months.

Member State	Status	Guidance	Departures			
			Domestic arrangements	Indirect taxes	Additional hallmarks	Accelerated timing
Austria	 Adopted	✗	✗	✗	✗	✗
Belgium	 Adopted	✗	✗	✗	✗	✗
Bulgaria	 Adopted	✗	✗	✗	✗	✗
Croatia	 Adopted	✗	✗	✗	✗	✗
Cyprus	 Draft	✗	✗	✗	✗	✗
Czech Rep.	 Draft	✓	✗	✗	✗	✗
Denmark	 Adopted	✓	✗	✗	✗	✗
Estonia	 Adopted	✓	✗	✗	✗	✗
Finland	 Adopted	✗	✗	✗	✗	✗
France	 Adopted	✓	✗	✗	✗	✗
Germany	 Adopted	✓	✗	✗	✗	✗
Gibraltar	 Adopted	✗	✗	✗	✗	✗
Greece	 No activity	✗	✗	✗	✗	✗
Hungary	 Adopted	✗	✗	✗	✗	✗
Ireland	 Adopted	✗	✗	✗	✗	✗
Italy	 Draft	✗	✗	✗	✗	✗
Latvia	 Adopted	✗	✗	✗	✗	✗
Lithuania	 Adopted	✗	✗	✗	✗	✗
Luxembourg	 Adopted	✗	✗	✗	✗	✗
Malta	 Adopted	✗	✗	✗	✗	✗
Netherlands	 Adopted	✓	✗	✗	✗	✗
Poland	 Adopted	✓	✓	✓	✓	✓
Portugal	 Draft	✗	✓	✓	✗	✗
Romania	 Adopted	✗	✗	✗	✗	✗
Slovakia	 Adopted	✗	✗	✗	✗	✗
Slovenia	 Adopted	✗	✗	✗	✗	✗
Spain	 Draft	✗	✗	✗	✗	✗
Sweden	 Draft	✗	✗	✗	✗	✗
United Kingdom	 Adopted	✗	✗	✗	✗	✗

## EU Commission notices

On 24 January 2020, the EU Commission announced that it had sent formal notices, under article 258 of the Treaty on the Functioning of the EU, to Belgium, Cyprus, Czech Republic, Estonia, France, Greece, Italy, Latvia, Luxembourg, Poland, Portugal, Romania, Spain, Sweden and the United Kingdom regarding the implementation of DAC6. If these Member States do not address the formal notices within the next two months, the Commission may issue a reasoned opinion. There is currently no further information available as to the concerns of the EU Commission regarding the DAC6 implementation in these countries.

## Legal professional privilege

The Directive gives Member States the option to exempt intermediaries from the obligation to report when the reporting obligation would breach legal professional privilege (LPP). If there are no intermediaries that can report, the obligation to report will shift to the taxpayer.

Differing views are already emerging among the Member States on whether LPP can be claimed for DAC6 purposes. Italy and Lithuania do not provide any exemption from the reporting obligation due to LPP. In the UK, lawyers are not exempted from making disclosures under the rules; however, the UK regulations do not require a UK intermediary to disclose any privileged information.

In Cyprus, Finland, Ireland, Gibraltar, Latvia, the Netherlands, Slovenia and Sweden, only law firms can be exempt from the reporting obligation due to LPP.

In Croatia, Czech Republic, Germany, Luxembourg, Romania, Slovakia and Spain (and also likely in Belgium, where the matter is still being investigated), LPP can also apply to tax advisors and auditors, and in some cases, notaries. In Austria, Bulgaria, Estonia, France, Poland and Portugal, LLP applies even more broadly to all the professionals subject to professional secrecy as per national legislation.

In any case, Finland, Germany, Poland (for marketable tax arrangements) and Sweden will still require the filing by intermediaries of anonymous or simplified information when LPP is claimed.

In the majority of Member States, an intermediary that claims LPP must notify any other intermediaries of this position, or the relevant taxpayer if no other intermediaries are involved. In some cases, the intermediary must also provide a reporting package to the client with respect to the arrangement.

## Reporting mechanism

Croatia, Cyprus, Czech Republic, Germany, Latvia, Lithuania, the Netherlands, Poland, Slovakia and Sweden will require reporting to be made by intermediaries and taxpayers using an electronic/XML file. This file will need to be lodged via the web portal of the relevant tax administration. Certain tax authorities may require intermediaries and taxpayers to register in advance in order to access the web portal (for example, Germany and the Netherlands).

Austria, France and Spain have requested that reporting be made by completing a web-based form. In Germany, Lithuania, the Netherlands, Poland and Sweden, it will also be possible to fill out a web-based form (in addition to being able to use an electronic/XML file). Austria will also allow for paper-based reports in case of missing credentials for the web portal or missing technical requirements. In Estonia, reporting will be required by way of a digitally signed report submitted by email.

It is expected that the remaining Member States (like Belgium) will specify the format of the reporting and details in relation to the lodgment process upon release of further guidance.

## Reporting language

Estonia, Germany, Italy, Latvia, Poland, Romania, Slovakia, Slovenia and Spain will require reporting be made in an official language of the jurisdiction in which the report is made. In Cyprus, Gibraltar, Ireland and the United Kingdom, reporting will be required exclusively in English. There are a number of countries that will allow for a choice between local language and English, and other countries that will require reporting in both local language and English. To the extent that reporting is required in both local language and English, it is likely that the translation will have to be made at the cost of the taxpayer or intermediary.



## Reliance on proof of filing by other intermediaries

The Directive states that an intermediary shall be exempt from filing the requisite information only to the extent that it has proof, in accordance with the relevant domestic law, that the same information has already been filed by another intermediary. The Member States with final legislation have adopted this in their local domestic law.

The form of proof differs slightly across the Member States, but the majority require the intermediary to obtain proof of filing from the other intermediary. In Austria, Croatia, Finland, Germany, Latvia, the Netherlands, Poland and the United Kingdom, the tax reference number (also referred to as the registration number or arrangement reference) issued by the relevant tax authority to the other intermediary is also required as proof of filing.

## Secondary annual reporting obligation

The Directive states that each Member State may take the necessary measures to require that each relevant taxpayer file information about their use of a previously reported arrangement in each of the years for which they use it. Although it is optional, the local country legislation for the majority of Member States and the UK includes an obligation for the taxpayer to disclose this information by way of a secondary reporting process.

To date, the Member States that have implemented or intend to implement this secondary reporting obligation are Bulgaria, Croatia, France, Germany, Ireland, Lithuania, Luxembourg, Poland, Portugal, Romania, Slovenia, Spain and the United Kingdom. In Germany, Ireland, Luxembourg and the United Kingdom, the annual reporting will be included in the annual tax return. In Poland and Spain, there will be a separate form for reporting with specific deadlines. The remaining Member States that have implemented or intend to implement the annual reporting obligation will provide information on the form of reporting in future guidance.

A small minority of Member States – including Austria, Belgium, Cyprus, Denmark, Estonia, Finland, Gibraltar, Italy, Latvia, the Netherlands, Slovakia and Sweden – have not yet implemented or announced they intend to implement an annual reporting obligation for the taxpayer. As per draft Cypriot MDR legislation, Cyprus is not expected to implement the secondary annual reporting obligation.

## What happens to the reported information?

The tax authority of the Member State where the information was filed shall, by means of an automatic exchange, communicate the relevant information to the tax authorities of all other Member States by electronic means using the existing Common Communication Network (CCN). The exchange shall take place within one month beginning at the end of the quarter during which the information has been reported, meaning the first information will be communicated by 31 October 2020.

The Portuguese draft law provides that the tax authority may publish the arrangements on its website, for the purpose of preventing tax evasion, in abstract and synthetic terms (without identifying the participants), unless the complexity and innovation of the scheme is inappropriate to prevent tax evasion or to defend the public interest.

The Spanish draft law provides that the tax administration will publish on its website, for information purposes, the most relevant cross-border arrangements as well as information on the applicable regime and the qualification of these arrangements.

## Penalties

The Directive allows for Member States to transpose into their domestic law penalties for noncompliance that are effective, proportionate and dissuasive. Maximum penalties vary from €5,100 in Bulgaria to up to €870,000 in the Netherlands and €4,700,000 in Poland. Some Member States have not specified maximum penalties.

Up to €15,000	€20,000-€30,000	€30,000-€60,000	Above €60,000
Bulgaria Estonia Finland France Hungary Lithuania Latvia	Croatia Cyprus Czech Republic Germany Malta Slovakia Sweden Romania	Austria Belgium Denmark	Ireland Luxembourg Netherlands Poland Portugal Slovenia Spain United Kingdom

**Additional considerations:** other sanctions, personal liabilities, waiver or mitigation

### Impact of COVID-19 on MDR application date and reporting deadlines

A number of EU public interest groups and large taxpayers are leading the efforts to lobby the EU Commission and EU Member States to extend the reporting deadlines for DAC6 in response to the COVID-19 virus pandemic. Whilst the EU Commission has previously advised that it is not in a position to postpone the DAC6 reporting deadlines (given that the legislative process is now the responsibility of the Member States), we understand it may be willing to work with the EU Member States to explore this further in the coming weeks. In Poland, the reporting deadlines that have not already begun are suspended from 31 March 2020 until the cancellation of the epidemic status, but no longer than until 30 June 2020.

**MDR Web** is a web-based logging and reporting tool that provides a standardized and consistent approach to evaluate arrangements and to manage communication between taxpayers and intermediaries and submission of reportable arrangements.

Click [here](#) to register for an MDR Web demonstration.

### Key contacts

#### US-based DAC6 resources

Jose A. (Jano) Bustos  
[joseantonio.bustos@ey.com](mailto:joseantonio.bustos@ey.com)

Gerrit Groen  
[gerrit.groen@ey.com](mailto:gerrit.groen@ey.com)

Serge Huysmans  
[serge.huysmans@ey.com](mailto:serge.huysmans@ey.com)

Nadine Redford  
[nadine.k.redford@ey.com](mailto:nadine.k.redford@ey.com)

Max Van den Bergh  
[max.vandenbergh@ey.com](mailto:max.vandenbergh@ey.com)

Deirdre Fenton  
[deirdre.fenton1@ey.com](mailto:deirdre.fenton1@ey.com)

#### Global DAC6 team

Cornelia Wolff  
[cornelia.wolff@de.ey.com](mailto:cornelia.wolff@de.ey.com)

Rienk Kamphuis  
[rienk.kamphuis@nl.ey.com](mailto:rienk.kamphuis@nl.ey.com)

Claire Acard  
[claire.acard@ey-avocats.com](mailto:claire.acard@ey-avocats.com)

James Guthrie (FSO)  
[jguthrie@uk.ey.com](mailto:jguthrie@uk.ey.com)

The global DAC6 webpage can be accessed [here](#).

Global tax alerts – current and future – can be accessed at [www.ey.com/taxalerts](http://www.ey.com/taxalerts).

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