

To: Taxation Working Group  
From: Alexandru Ciungu  
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Reference: ECO-TAX-18-021

Subject: ECOFIN Council reaches agreement on DAC6

## Summary

Today, EU Finance Ministers agreed at the meeting of the ECOFIN Council on a proposal for greater transparency in tax planning schemes via an extension of the Administrative Cooperation Directive (DAC6).

The proposal for mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements is targeted at intermediaries, such as tax advisors, lawyers or accountants who design and promote aggressive tax planning schemes and is part of ongoing efforts at EU level to fight tax avoidance. The agreement was reached today on a [presidency compromise text](#) dated 9 March.

Insurance Europe commented on the Commission's initial proposal (See [ECO-TAX-17-066](#)), particularly in relation with the text in Article 8aaa(2). In the adopted presidency compromise text, this article reads:

*(2) Each Member State may take the necessary measures to give intermediaries the right to a waiver from filing information on a reportable cross-border arrangement where the reporting obligation would breach the legal professional privilege under the national law of that Member State. In such circumstances, each Member State shall take the necessary measures to require intermediaries to notify, without delay, any other intermediary or, if there is no such intermediary, the relevant taxpayer of their disclosure obligations under paragraph 2a.*

*(2a) Each Member State shall take the necessary measures to require that, where there is no intermediary or the intermediary notifies the relevant taxpayer or another intermediary of the application of a waiver under paragraph 2, the obligation to file information on a reportable cross-border arrangement shall lie with the other notified intermediary, or, if there is no such intermediary, with the relevant taxpayer.*

*(2b) The relevant taxpayer with whom lies the reporting obligation, shall file the information within thirty days, beginning on the day after the reportable cross-border arrangement is made available for implementation to that relevant taxpayer, or is ready for implementation by the relevant taxpayer, or when the first step in its implementation has been made in relation to the relevant taxpayer, whichever occurs first. [...]*

Therefore, while the reporting period was extended from 5 to 30 working days in the Council's text, the waiver for intermediaries who benefit from legal professional privilege is maintained and in this case the reporting obligation falls on the taxpayer if no other intermediary is involved. To be reportable, a cross-border arrangement must contain at least one of the "hallmarks" set out in Annex IV (which were further developed compared to the Commission's text).



After receiving this information from intermediaries or taxpayers, tax authorities of EU member states will be required to automatically exchange it through a centralised database. This is meant to provide an early warning on new risks of tax avoidance and enable measures to be taken to block harmful arrangements. Member States will also be obliged to impose penalties on intermediaries that do not comply with the transparency measures.

The new reporting requirements will apply from 1 July 2020 and the information exchange among Member States will occur every three months, within one month from the end of the quarter in which the information was filed.