



20 April 2020

EBF_040838

Mr Paolo GENTILONI

Commissioner for Economy

Email: cab-gentiloni-contact@ec.europa.eu

Subject: Request to European Commission to recommend/endorse the deferral of EU DAC6 reporting obligations

Dear Commissioner Gentiloni,

The undersigned associations¹ are writing to you to request that the European Commission considers providing an extension of time for reporting obligations under the Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU (DAC6), in response to a number of challenges including the COVID-19 virus pandemic.

Currently our members are working towards implementing reporting obligations in accordance with domestic legislation implementing DAC6 in each member state.

Given the late enactment of domestic legislation by many member states and the lack of detailed guidance and reporting schema details² and the difference of interpretation of key notions between member states, timely implementation of these obligations by our members was already challenging.

These concerns are materially exacerbated by the pandemic, which is affecting all aspects of our members' operations and also the ability of governments, tax authorities, other intermediaries and taxpayers to prepare for the start of the reporting obligation. The impact of the crisis on our members is severe due to a reduction in workforce available as a result of restrictions on movement and childcare requirements due to school closures. In addition, IT resources have been redeployed to support the unprecedented business

1 The associations are ACC, AFME, AIMA, EACB, EBF, EFAMA, EFSA, ESBG, Insurance Europe and Invest Europe. More information about each is in the Annex.

2 According to the information available on the EC's website, on 24 January 2020 some letters of formal notice (article 258 TFEU – for failing to fulfil their obligations relating to DAC6) were sent to the following countries: Belgium, Cyprus, Czech Republic, Estonia, Greece, Spain, France, Italy, Luxembourg, Latvia, Poland, Portugal, Romania, Sweden, UK. We assume most of these letters refer to their failure to transpose DAC6 into domestic law by 31 December 2019.

continuity programmes on a global scale. The primary focus of our members is to maintain their core client and regulatory responsibilities.

In particular, in order to put together operational and technology systems that allow a large organisation like a financial institution (with entities and branches in a variety of EU locations) to make filings, there are significant internal and external processes that need to be completed. During this crisis, members' internal resources are stretched and therefore they are unable to devote the necessary time to complete their internal preparations due to other priorities or because their employees are ill. For example, the development of any reporting software relies on a timely release of the reporting schema and validation rules as well as the ability to test how the technology interacts with a government reporting portal. In many countries the schema has not been published yet, and even in normal times even if this had been published by the governments, this would take time for a particular internal function or external vendor to undertake the appropriate vetting processes.

If COVID-19 further delays the release of the reporting schema and validation rules further, that will mean intermediaries and governments will have limited time to ensure appropriate reporting technology for the filing and receipt of data is in place and this would jeopardize a qualitative reporting. Furthermore, many financial institutions have imposed freezes and are operating with limited IT support, which means it is not possible to effectively undertake training and implementation programmes originally planned over the next three months. Recent developments in the pandemic around the world have changed the priorities of all businesses to ensure business continuity, with financial institutions focusing primarily on the most essential. These priorities are also of paramount interest to the state and regulator. Unfortunately, any other activities are side-lined, which is reinforced by the fact that financial sector suppliers face the same problems. The situation is constantly changing and no one can predict at this time how long we keep on operating in this crisis mode. Even if the current measures were to end within a month or two, returning to the normal regime and hence resuming ongoing projects is a matter of months to come.

Domestic DAC 6 implementation laws include in many cases severe penalties for failures to report cross-border arrangements. The lack of technical and legal guidance combined with the current COVID-19 crisis does not only complicate the implementation of domestic DAC 6 rules but also threatens financial institutions and their employees with serious penalties if they infringe these rules and are not able to report on cross-border arrangements within the prescribed deadline (30 days or 31 August 2020).

Given the reliance on reporting by one intermediary where there are multiple intermediaries and member states involved in the same arrangement, a consistent deferral of obligations across member states is needed. If some member states defer reporting deadlines and others do not, this would heighten complexity and potentially cause confusion. In this respect, we note that some member states have granted under their domestic legislation implementing DAC 6 some flexibilities to intermediaries and/or relevant taxpayers during a given limited period while other member states have not.

An EU-wide deferral to the start date of 1 July and retrospective reporting deadline of 31 August would give our members time to introduce new processes once workforce levels and IT capacity have recovered. A swift confirmation of any deferral would allow ensure our members to continue to redirect focus existing resources on to other emergency planning work issues. Deferral would also allow time for the member states' tax authorities to focus on other urgent matters, finalise the DAC6 schema and consider requests for guidance in the field of DAC6.

Taking into consideration the above and in response to the additional challenges raised by the COVID-19 pandemic, we would request that the Commission considers providing an extension of time for reporting obligations under DAC6. Such action would be in step with the first set out in the paper from the OECD forum on Tax Administration (Tax

administration responses to COVID-19: support for taxpayers”) and would ensure, at European level, a necessary level playing field among intermediaries across the EU.

The legislation already applies retroactively from 25 June 2018 and so a delay in reporting deadlines should only impact the timing of when information is provided to member states. This would allow prioritisation of resource at Tax Authorities as well as at financial institutions to address the challenges brought by COVID-19 and to ensure that more coherent reporting and actionable information is produced at a time when certainty of requirements has been achieved.

Our request:

To allow for the postponement of domestic reporting deadlines (i.e. deferral in the start date of 1 July 2020 and deferral in the retrospective reporting deadline of 31 August 2020) consistently across all member states and the UK, while considering that some member states may be more severely hit by the COVID19 pandemic than others and may have identified that they would need a longer delay, we would ask that the reporting deadlines be postponed until 2021, with a review at the end of September 2020 to see if a further extension is required.

Please do not hesitate to contact Roger Kaiser at the European Banking Federation (r.kaiser@ebf.eu) or António Frade Correia at EFAMA (Antonio.FradeCorreia@efama.org) if you would like further discussion or clarification of this request.

Please accept our best wishes for the good health and safety of you and your colleagues in this challenging period.

Yours sincerely,

Paul Hale Managing Director, Global Head of Tax Affairs, AIMA, on behalf of ACC	Adam Farkas Chief Executive, AFME	Paul Hale Managing Director, Global Head of Tax Affairs, AIMA	Hervé Guider Managing Director, EACB	Wim Mijs Chief Executive Officer, EBF
Tanguy van de Werve Secretary General, EFAMA	Bertrand de Saint Mars AMAFI Chief Executive, on behalf of EFSA	Chris De Noose Managing Director, ESBG	Michaela Koller Director general, Insurance Europe	Eric de Montgolfier Chief Executive Officer, Invest Europe

Copy to:

- Mr Pascal SAINT-AMANS, Director, Centre for Tax Policy and Administration, OECD
- Finance Ministers in the EU and the UK

Annex – Information about signatory organisations

ACC (the Alternative Credit Council) is an affiliate of AIMA which was established to assist firms focused in the private credit and direct lending space. The ACC currently represents over 170 members that manage over \$400bn of private credit assets.

AFME (the Association for Financial Markets in Europe) is the voice of all Europe's wholesale financial markets, providing expertise across a broad range of regulatory and capital markets issues. It represents the leading global and European banks and other significant capital market players. AFME advocates for deep and integrated European capital markets which serve the needs of companies and investors, supporting economic growth and benefiting society.

AIMA (the Alternative Investment Management Association) is the global representative of the alternative investment industry, with more than 1,900 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than \$2 trillion in assets.

EACB (The European Association of Co-operative Banks) represents, promotes and defends the common interests of its 27 member institutions and of cooperative banks, with regard to banking as well as to co-operative legislation.

EBF (the European Banking Federation) is the voice of the European banking sector, bringing together 32 national banking associations in Europe that together represent a significant majority of all banking assets in Europe, with 3,500 banks - large and small, wholesale and retail, local and international – while employing approximately two million people. EBF members represent banks that make available loans to the European economy in excess of €20 trillion and that reliably handle more than 400 million payment transactions per day. Launched in 1960, the EBF is committed to a single market for financial services in the European Union and to supporting policies that foster economic growth.

EFAMA is the voice of the European investment management industry, representing 28 member associations, 59 corporate members and 22 associate members. At end Q3 2019, total net assets of European investment funds reached EUR 17.2 trillion. These assets were managed by more than 62,500 investment funds, of which almost 34,000 were UCITS (Undertakings for Collective Investments in Transferable Securities) funds, with the remaining funds composed of AIFs (Alternative Investment Funds).

EFSA (the European Forum of Securities Associations) was created in 2007 and gathers AFME (The Association for financial markets in Europe), AMAFI (The French Financial Markets Association), AMF (Asociacion de Mercados financieros), ASSOSIM (The Italian financial markets association), BWF (Bundesverband der Wertpapierfirmen), DSDA (The Danish Securities Dealers Association), Febelfin (The Association representing Belgian financial institutions), IDM (The Polish Securities Dealers Association) and SSSA (The Swedish Securities Dealers Association).

ESBG (European Savings and Retail Banking Group) represents the locally focused European banking sector, helping savings and retail banks in 21 European countries strengthen their unique approach that focuses on providing service to local communities and boosting SMEs. An advocate for a proportionate approach to banking rules, ESBG unites at EU level some 900 banks, which together employ more than 650,000 people driven to innovate at roughly 50,000 outlets. ESBG members have total assets of €5.3 trillion, provide €1 trillion in corporate loans (including to SMEs), and serve 150 million Europeans seeking retail banking services.

Insurance Europe is the European insurance and reinsurance federation. Through its 37 member bodies — the national insurance associations — Insurance Europe represents all types of insurance and reinsurance undertakings, e.g. pan-European companies, monoliners, mutuals and SMEs. Insurance Europe, which is based in Brussels, represents undertakings that account for around 95% of total European premium income. Insurance makes a major contribution to Europe's economic growth and development. European insurers pay out almost €1 100bn annually — or €2.9bn a day — in claims, directly employ over 900 000 people and invest nearly €10 200bn in the economy.

Invest Europe is the world's largest association of private capital providers. We represent Europe's private equity, venture capital and infrastructure investment firms, as well as their investors, including some of Europe's largest pension funds and insurers. Invest Europe's members take a long-term approach to investing in privately-held companies, from start-ups to established firms. They inject not only capital but dynamism, innovation and expertise. This commitment helps create healthy and sustainable companies across Europe, securing millions of jobs and delivering strong returns for leading pension funds and insurers whose members depend on them for their retirements.