

## Transposition Note

With effect from 25 June 2018, Article 1 of Council Directive (EU) 2018/822 amends Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements.

The first sub-paragraph of Article 2(1) of Council Directive (EU) 2018/822 obligates member States to pass legislation necessary to implement the requirements imposed by the amendments to Directive 2011/16/EU.

The table below shows how the International Tax Enforcement (Disclosable Arrangements) Regulations 2020 will implement those requirements.

References to Article numbers are references to the Articles as they are inserted into Directive 2011/16/EU.

Provision in Directive 2011/16/EU	Objective	Implementation in the International Tax Enforcement (Disclosable Arrangements) Regulations 2020
Points (a) and (c) in the first sub-paragraph of Article 3(9), and the second sub-paragraph of Article 3(9)	Definitions	Does not require implementation
Article 3(18)	Definition of “cross-border arrangement”	Regulation 2(1)
Article 3(19)	Definition of “reportable cross-border arrangement”	Regulation 2(1)
Article 3(20)	Definition of “hallmark”	Included by implication in the definition of “reportable cross-border arrangement” in Regulation 2(1)
Article 3(21)	Definition of “intermediary”	Regulation 2(1)
Article 3(22)	Definition of “relevant taxpayer”	Regulation 2(1)
Article 3(23)	Definition of “associated enterprise”	Regulation 2(1)
Article 3(24)	Definition of “marketable arrangement”	Regulation 2(1)
Article 3(25)	Definition of “bespoke arrangement”	Does not require implementation
Article 8ab(1)	Obligation on intermediaries to file reportable information in relation to reportable cross-border arrangements within the specified period	Regulations 3(1) and (3)
Article 8ab(2)	Obligation on intermediaries to file a periodic report in respect of marketable arrangements	Regulation 3(4)
Articles 8ab(3) and (4)	Provision for cases where an intermediary is required to report in more than one member State  Exemption for an intermediary from reporting where the intermediary has filed the reportable information in another member State	Regulation 3(2)

	Requirement for proof that the reportable information has been filed in order to benefit from exemption	
Article 8ab(5)	Exception for information which is subject to legal professional privilege in the case of intermediaries and obligation on intermediaries claiming such privilege to notify other intermediaries or relevant taxpayers	Regulation 7
Article 8ab(6) and the first sub-paragraph of Article 8ab(7)	Obligation on relevant taxpayers to file information within the specified period where an intermediary is not required to do so	Regulations 4(1), (2) and (4)
The second sub-paragraph of Article 8ab(7), Article 8ab(8) and Article 8ab(10)	<p>Provision for cases where a relevant taxpayer is required to report in more than one member State, and cases where there is more than one relevant taxpayer</p> <p>Exemption for a relevant taxpayer from reporting where the reportable information has been filed in another member State, or by another relevant taxpayer</p> <p>Requirement for proof that the reportable information has been filed in order to benefit from exemption</p>	Regulation 4(3)
Article 8ab(9)	<p>Provision for cases where there is more than one intermediary</p> <p>Exemption for an intermediary from reporting where the reportable information has been filed by another intermediary</p> <p>Requirement for proof that the reportable information has been filed by another intermediary in order to benefit from exemption</p>	Regulation 3(2)
Article 8ab(11)	Provision for relevant taxpayers to file annual report	Regulation 5
Article 8ab(12)	<p>Obligation on intermediaries and relevant taxpayers to file information on reportable cross-border arrangements the first step of which was entered into between the date of entry into force and the date of application of the amendments to Directive 2011/16/EU.</p> <p>Article 2 of the amending Council Directive (EU) 2018/822 provides that the amendments entered into force on the twentieth day following publication in the Official Journal of the EU (i.e. on 25 June</p>	Regulations 1(2)(c) and 3(3)(a)

	2018) and that the date of application of the amendments is 1 July 2020.	
Article 8ab(13)	Obligation on member States to exchange information	Does not require implementation
Article 8ab(14)	Specification of the information to be reported to facilitate exchange by member States	Regulation 6
Articles 8ab(15), (16), (17) and (18)	Provision for exchange of information between member States and other miscellaneous provisions	Does not require implementation
Article 20(5)	Obligation on the European Commission to adopt standard forms for the exchange of information	Does not require implementation
Article 21(5)	Obligation on the European Commission to develop central directories to which member States are to have access for the purpose of exchanging information	Does not require implementation
Article 23(3)	Obligation on member States to communicate to the European Commission a yearly assessment of the effectiveness of the exchange of information and the practical results achieved	Does not require implementation
Article 25a	Obligation on member States to provide an effective, proportionate and dissuasive penalty regime underpinning the scheme	Part 3
Article 27(1)	Obligation on the European Commission to submit a report on the application of Directive 2011/16/EU every five years after 1 January 2013 to the European Parliament and the Council of the European Union	Does not require implementation
Article 27(2)	Obligation on member States and the European Commission to present a report to the Council of the European Union on the relevance of the hallmarks at Annex IV	Does not require implementation
Annex IV	Specification of the hallmarks of reportable cross-border arrangements	Included by implication in the definition of “reportable cross-border arrangement” in Regulation 2(1)

The second sub-paragraph of Article 2(1) of Council Directive (EU) 2018/822 provides for the date of application of the legislation passed by member States.

The table below shows how the International Tax Enforcement (Disclosable Arrangements) Regulations 2020 will implement that date of application.

Provision in Council Directive (EU) 2018/822	Objective	Implementation in the International Tax Enforcement (Disclosable Arrangements) Regulations 2020
The second sub-paragraph of Article 2(1)	Commencement	Regulations 1(1), (2)(a) and 2(b)