

COURT OF JUSTICE OF THE EUROPEAN UNION RULES THAT LAWYERS DO NOT HAVE TO NOTIFY ANY LONGER OTHER INTERMEDIARIES OF THEIR DAC6 REPORTING OBLIGATIONS DUE TO LEGAL PROFESSIONAL PRIVILEGE

On 8 December 2022, the Court of Justice of the European Union took an important decision in the recognition of legal professional privilege of the lawyer with respect to the mandatory automatic exchange of information in relation to reportable cross-border arrangements ("**DAC6**") as it results from the Council Directive (EU) 2018/822 of 25 May 2018 amending Council Directive 2011/16/EU of 15 February 2011.

According to DAC6, intermediaries (or taxpayers if there are no intermediaries or if intermediaries are subject to professional secrecy) must in principle report certain cross-border transactions and arrangements to the national tax authorities. However, DAC6 allows EU Member States to waive, and thus exempt, EU intermediaries from their reporting obligations where such an obligation would breach the rules of legal professional privilege that apply under national law of that Member State. As a consequence, lawyers benefit from a waiver of their reporting obligations under DAC6. However, intermediaries (including thus lawyers) benefiting from a waiver of their reporting obligations still have an obligation to notify all other intermediaries (not exempt from reporting obligations) or the taxpayer directly (if there are no other non-exempt intermediaries) that the reporting obligation is shifted to them.

In its judgment of 8 December 2022 in Case C-694/20 *Orde van Vlaamse Balies and Others v Vlaamse Regering*, the Grand Chamber of the Court ruled that such a notification obligation of the lawyers with respect to DAC6 is incompatible with the Charter of Fundamental Rights of the European Union, in light of the professional secrecy obligation inherent to the profession of lawyer. According to that, lawyers would no longer have an obligation to notify all other (non-exempt) intermediaries of their reporting obligations, but still have an obligation to notify directly the taxpayers of their reporting obligations in case there are no intermediaries.

Key issues

- Legal professional privilege of lawyers
- DAC6
- Obligation of notification other intermediaries incompatible with the Charter of Fundamental Rights of the European Union

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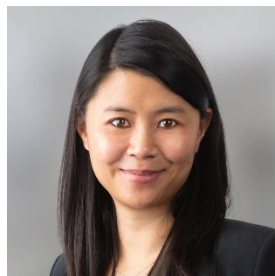
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