

# CJEU ruling of 8 December 2022: the obligation of lawyers to notify other intermediaries pursuant to DAC6 rules infringes EU Primary Law

As a reminder, DAC6 provides that all intermediaries (including lawyers) involved in potentially tax aggressive cross-border arrangements are required to report such arrangements to the competent tax authorities. Under DAC6, each Member State may grant a waiver from that reporting obligation to intermediaries that are subject to legal professional secrecy obligations protected under their national law. In such circumstances, intermediaries are, however, required to notify other intermediaries involved in the same reportable arrangement or relevant taxpayers (if no other intermediaries having a reporting obligation are involved) of their reporting obligations.

According to the CJEU, the obligation imposed on a lawyer acting as an intermediary to notify another intermediary who/which is not his client is an infringement of Article 7 of the Charter as it is not strictly necessary to meet the objectives of DAC6, i.e. the fight against aggressive tax planning and the prevention of the risk of tax avoidance and evasion.

In this respect, the CJEU recalls that Article 7 of the Charter protects the confidentiality of all correspondence between individuals and affords strengthened protection to exchanges between lawyers and their clients in view of the lawyer's fundamental role in a democratic society of defending litigants, a task which encompasses the giving of independent legal advice and the correlative duty of the lawyer to act in good faith towards his or her client. The CJEU underlines that the information obtained by a lawyer in providing legal advice, both with regard to its content and to its existence, even outside any litigation, remains covered by professional secrecy. As pointed out by the CJEU, *"individuals who consult a lawyer can reasonably expect that their communication is private and confidential. Therefore, other than in exceptional situations, those persons must have a legitimate expectation that their lawyer will not disclose to anyone, without their consent, that they are consulting him or her"*.

Under the Luxembourg DAC6 law currently in effect, lawyers benefit from a waiver of their reporting obligations due to their professional secrecy but still have an obligation to notify other intermediaries of their reporting obligation under DAC6. As a consequence of the

judgment of the CJEU, Luxembourg lawyers no longer have an obligation to notify other intermediaries who are not their clients”.

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