

CJEU has ruled on the legality of DAC 6 provisions under EU law

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The last few days have seen two important judgements on the reporting of tax schemes.

First, the verdict of the Polish Constitutional Tribunal (CT) confirming the inviolability of professional secrecy (for the time being, only for tax advisors, as it was this professional body that filed the complaint with the CT), followed by Monday's **ruling of the CJUE on the compatibility of the DAC-6 Directive mandating the implementation of the MDR provisions with the Charter of Fundamental Rights and the EU Treaties**.

Belgian organisations of lawyers (tax advisers and advocates) approached the Belgian Constitutional Court requesting the annulment of the Belgian law transposing the DAC-6 directive into local law pointing to a number of violations of the Charter of Fundamental Rights. The Belgian Constitutional Court in turn referred questions to the CJEU for a preliminary ruling in this regard.

The CJEU, answering specific questions in its judgment C 623/22 of 29/07/2024, indicated:

- The scope of **the notification obligation**: the Court held that the Directive does not infringe the principles of equal treatment or non-discrimination, even if the notification obligation is not limited to corporate income tax only.
- As regards **the precision of the provisions**, the terminology of the Directive was found to be sufficiently precise without infringing the principles of legal certainty and legality in criminal law. In particular, the Court pointed to the sufficient precision of the Directive's definitions of concepts such as the concept of arrangement, the concept of intermediary, cross-border arrangement, or the sufficient degree of precision in defining the individual conditions for the recognition of an arrangement as a reportable tax arrangement (so-called hallmark) or the concept of main advantage.
- With regard to **the protection of private life**, the Court pointed out that the interference in the private life of intermediaries (referred to as promoters and supporters in the Polish regulations) and taxpayers (beneficiaries) resulting from the notification obligation is justified and proportionate, as the required information is precisely defined.
- As regards **the professional secrecy of lawyers**, the Court referred to its earlier judgment of 8 December 2022 and clarified that the obligation of lawyers (who are exempted from the notification obligation on the grounds of professional secrecy) to inform other intermediaries only violates professional secrecy with respect to persons who perform their professional activities in accordance with one of the professional titles listed in Article 1(2)(a) of Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the professional qualification was obtained, and not other professionals - in Poland these include advocates and legal advisers.

- The Court confirmed that **the notification obligation is a proportionate interference with the right to privacy and is compatible with the principles of the EU law**, pointing out that ‘combating aggressive tax planning and preventing the risks of tax avoidance and evasion constitute objectives of general interest recognised by the European Union for the purposes of Article 52(1) of the Charter, capable of enabling a limitation to be placed on the exercise of the rights guaranteed by Article 7 of the Charter’.

In the CJEU judgment, the CJEU repeatedly referred to the underlying motives for the introduction of the DAC-6 Directive, namely the obligation to report cross-border arrangements involving potentially aggressive tax planning.

If you have any questions in relation to the aforesaid judgment or require support in DAC-6 (MDR) matters, please do not hesitate to contact:

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