



**BRUSSELS | 3 JUNE 2024**

## **European Elections: #UseYourVote This Week From 6 - 9 June 2024**

---

This week, the European Union will witness the world's second-largest democratic exercise as citizens cast their votes in the 2024 European Elections. This moment is an opportunity for every citizen to shape the future of Europe, while also helping uphold democracy - because the more people vote the stronger democracy becomes.

CFE Tax Advisers Europe has concluded a [Partnership Agreement](#) with the European Parliament to promote the 2024 European elections scheduled for 6 - 9 June 2024, and EU citizens with a right to vote can directly elect Members of the European Parliament from their constituencies.

In recent weeks, the European Parliament launched a [campaign](#) to encourage voter turnout. The emotional campaign is centred around a four minute video featuring senior Europeans who have witnessed first-hand the transformative power of democracy in their lives. These exceptional individuals wanted to pass on their personal stories - whether they lived through times of oppression or experienced the fragility of democracy - to their grandchildren and the next generation more widely. Together, their testimonies paint a story of how voting is not something we should take for granted and urge the viewer to #UseYourVote. Or others will decide for you.

More information on the voting process is available on the [EU Elections webpage](#).

## OECD Update on Pillar 1 Progress

---

OECD Secretary-General, Mathias Cormann, has issued a [Statement](#) following on from the meeting of the Inclusive Framework which took place in Paris last week from 28 May to 30 May 2024. More than 400 delegates attended the meeting representing 127 jurisdictions and 13 observers. It is anticipated that the signature of the Multilateral Convention (MLC) implementing Amount A of Pillar One will take place by the end of June.

Mr Cormann stated that *"This week's [Inclusive Framework](#) plenary meeting has clarified the outstanding issues in its ongoing effort to reach agreement on a fairer allocation of taxing rights across the globe. It has also been an opportunity to reflect on the significant progress already realised over more than a decade of multilateral discussions on addressing the tax challenges arising from digitalisation and globalisation of the economy.*

*Advances in global tax co-operation have included the minimum standards agreed in the initial BEPS project: reforming harmful tax practices, reducing treaty abuse, improving dispute resolution, and increasing tax transparency through the exchange of country-by-country reporting on the largest multinationals, where we remain committed to ensuring that all countries can benefit.*

*Importantly, the Global Minimum Tax agreed under Pillar Two is in the process of coming into force in countries worldwide and will raise significant revenues of up to USD 192 billion per year for both developed and developing countries.*

*With the significance of these achievements in mind, the OECD will continue to support the Members of the Inclusive Framework toward a successful conclusion of their necessary work".*

The Inclusive Framework, in its own [Statement](#) set out that *"following productive discussions on remaining open issues related to Pillar One of the Two-Pillar*

*Solution to address the tax challenges arising from the digitalisation of the economy, we can report that the Inclusive Framework on BEPS is nearing completion of the negotiations on a final package on Pillar One (which includes a text of the Multilateral Convention (MLC) for Amount A and a framework for Amount B) with the goal of reaching a final agreement in time to open the MLC for signature by the end of June. In this regard, we welcome the expressions of interest by France and Brazil in hosting a signing ceremony as soon as practical after the MLC is opened for signature".*

## **Opinion of AG Kokott in Case C-432/23: *F, Ordre des Avocats du Barreau de Luxembourg* on Professional Secrecy of a Lawyer Under DAC**

---

On 30 May 2024, the Opinion of Advocate General Kokott was delivered in case [C-432/23](#) *F, Ordre des Avocats du Barreau de Luxembourg v Administration des contributions directes* on the professional secrecy of a lawyer in regards to Directive 2011/16/EU on administrative cooperation in the field of taxation.

The request for a preliminary ruling in the case raised the question as to whether and, if so, under what conditions a tax administration may seek disclosure from a lawyer in the context of an exchange of information on request. The case deals with the issue of whether advice or representation provided on tax matters can generally be excluded from the protection afforded to LPP under EU law, as it can in Luxembourg law.

AG Kokott in her Opinion sets out that *"Ensuring uniform and lawful tax enforcement in a globalised world requires cooperation between tax administrations...At the same time, however, such an exchange of information and the enquiries associated with it lead to interference with the fundamental rights of the affected taxpayers and persons obliged to provide information....In that regard, the Court has already emphasised the importance of protecting the confidentiality of communications between lawyers and their clients in connection*

*with the reporting obligation applicable to cross-border tax arrangements. The present case presents an opportunity to spell out further what protection legal professional privilege ('LPP') enjoys".*

AG Kokott proposes in her conclusions at paragraph 65 of the Opinion that the Court should answer the questions referred as follows:

1. Legal advice provided by a law firm, even on matters of company law – for example on setting up a corporate investment structure – falls within the scope of the protection afforded by legal professional privilege as guaranteed by Article 7 of the Charter of Fundamental Rights of the European Union ('the Charter').
2. A decision of the competent tax authority ordering a law firm to disclose information in the context of an exchange of information on request whereby that authority, broadly speaking, calls for the production of all documentation relating to certain transactions and its involvement in those transactions constitutes interference with the right to respect for communications between lawyers and their clients that is guaranteed by Article 7 of the Charter.
3. Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC is compatible with Article 7 and Article 52(1) of the Charter, in so far as it does not include, beyond Article 17(4), any provision which formally permits interference with the confidentiality of exchanges between lawyers and their clients in the context of the system of exchange of information on request and which itself defines the scope of the limitation on the exercise of the right in question. This is because Article 17(4) of Directive 2011/16 gives the Member States sufficient discretion to fulfil the requirements of Article 7 of the Charter.
4. The national legislation of each Member State can and must stipulate the conditions, the scope and the limits of the duty to cooperate incumbent on lawyers, as information holders, in the context of the exchange of information on request under Directive 2011/16. In so doing, national law must, in particular, enable the competent authority to strike a balance on

a case-by-case basis between the objectives in the general interest, on the one hand, and the protection afforded by legal professional privilege, on the other. Since Luxembourg law does not allow for such a balance to be struck in matters of tax law, Article 7 of the Charter precludes the application of the national law to that extent.

## European Commission May Infringement Package

---

As part of its [May 2024 infringement package](#), the Commission has taken the following infringement decisions:

**DAC 7** - The Commission opened an infringement procedure by way of letter of formal notice to Germany, Hungary, Poland and Romania for failing to exchange timely information on income earned by individuals and companies through the use of online platforms, as required by the directive on administrative cooperation in the field of taxation (DAC7) and the new tax transparency rules for transactions on digital platforms introduced as of 1 January 2023. The countries have two months to respond and address the issues identified.

**Transposition of the Pillar 2 Directive** - The Commission sent reasoned opinions to Spain, Cyprus, Latvia, Lithuania, Poland and Portugal for failing to notify of their implementing into national law the Pillar 2 Directive on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union by 31 December 2023 as required by the Directive. The Commission in its information about the decision sets out that it considers the two-pillar solution a top priority. All EU Member States were required to bring into force the laws necessary to comply with the Pillar 2 Directive by 31 December 2023. The countries have two months to respond and take necessary steps to notify of their implementing measures.

**Merger Directive** - The Commission has referred Spain to the Court of Justice of the European Union over conditions in its domestic legislation which in its view restricts EU harmonised rules on divisions of companies under the Merger Directive. The Directive is intended to operate such that business reorganisations

are not impeded by taxation upon restructuring, however, Spanish legislation sets out restrictive conditions such that a deferral is not granted if shareholders do not receive the same proportion of shares in all companies unless the assets are branches of activity. A reasoned opinion was first sent by the Commission in 2019 and the Commission is of the view that insufficient efforts have been taken to comply with the reasoned opinion and that implementation is still not in line with the Directive, and have as such referred Spain to the Court of Justice of the European Union.

**Freedom of Movement of Capital** - The Commission sent a reasoned opinion to Spain for failing to align its rules on the taxation of capital gains obtained in Spain by non-resident taxpayers with the free movement of capital per Article 63 TFEU. Non-residents were not being offered the option to defer payment of capital gains tax to be paid in proportion to cashflow. Spain has two months to respond to the reasoned opinion.

**Freedom to Provide Services** - The Commission sent a reasoned opinion to Sweden for infringing the freedom to provide services in line Article 56 TFEU and Article 36 of EEA Agreement, concerning legislation on income taxation. The legislation obliges Swedish clients who pay for work to be carried out by contractors established in other Member States of EEA countries to withhold preliminary income tax at a rate of 30% unless the contractor is in receipt of a F-tax approval from the Swedish tax authorities. The Commission has deemed this to infringe on the freedom to provide services and requested Spain bring its legislation on preliminary income taxation into line with EU law requirements. Spain has two months to respond and comply with the issues identified.

## **Industry & Tax Professionals Call for Clearer VAT Guidance on Charitable Donations**

---

CFE Tax Advisers Europe has issued a [Joint Statement](#) with Accountancy Europe, AmCham EU and E-Commerce Europe calling for clearer VAT guidance on charitable donations for social and sustainability goals.

Our organisations represent a variety of businesses and tax professionals who see an opportunity for the European Commission to strengthen the EU's values and sustainability goals through the ubiquitous application of VAT relief on charitable donations across the EU. Businesses across Europe can make a difference every day by donating goods, as the destruction of unsold goods comes at an extremely high cost for people and the environment.

The European Environmental Bureau estimates that the value of destroyed electronics and clothing in the EU will amount to €71.29 billion by 2030. Ranging from wholesome food to spare appliances and furniture, the goods in question would not find a place in the market, but could make material contributions to charitable causes while pursuing EU goals in the Waste Framework Directive and in sustainability reporting.

The importance of harmonising VAT donations across the EU27 has also been recognised in the recent Report on the Single Market spearheaded by Enrico Leta, President of the Jacques Delors Institute, which was published on 16 April 2024. This report asks the European Commission to consider greater harmonisation of VAT neutralisation options for donations across the Single Market.

With this statement, we call upon the European Commission to provide further guidance to Member States on applying the VAT Directive exemption on charitable donations, to alleviate concerns about VAT avoidance and to facilitate corporate donations across the EU.

---

The selection of the remitted material has been prepared by:  
Aleksandar Ivanovski & Brodie McIntosh