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## **DAC6 Not In Breach of EU Law, Advocate General Contends**

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In the Opinion in Case C-623/22 "Belgian Association of Tax Lawyers" delivered to the Court of Justice of the EU on 29 February 2024, Advocate General Emiliou takes the view that the EU Directive 2018/822 (DAC6) on reportable cross-border arrangements is not in breach of primary EU law, notably the principles of EU law and the Charter of Fundamental Rights of the EU.

The assertions of ambiguity in Directive 2018/822, as brought forth by applicants, are unfounded the AG concluded. Despite the broad scope of certain elements of the Directive, they are intentionally designed to cover a range of situations. The comprehension of when and how professionals are under the reporting obligation imposed by the Directive is not excessively complex, the AG argued. Further, additional key terms may be deciphered through traditional legal analytical methods, taking into account the contexts and objectives of the directives. Many of these terms are standard in the realm of taxation, nationally and globally. The AG noted that it is critical to note that aggressive tax planning arrangements tend to be complex, costly instruments, designed and overseen by professionals who are expected to comprehend and interpret the regulations, and keep abreast of developments in clarifications from EU and national case-law. As a result, the Directive 2018/822 does not infringe the principle of legality of penalties enshrined in Article 49(1) of the Charter. In addition, the AG notes that the reporting obligation does not go beyond what is necessary to attain the objectives pursued by the EU legislature, and is therefore not breaching the principle of proportionality.

In terms of the application of legal professional privilege *stricto sensu*, as argued by the applicants, the AG notes the Opinion of Advocate General Poiares Maduro who wrote, 'it is possible to find traces of it "in all democracies" and in all eras ... From that point of view, if *lawyers'* secrecy merits recognition in the Community legal order, that is quite simply because it has its roots in the very foundations of European society'. Such a restrictive reading of the term 'legal professional privilege' is also supported by the judgment of the Court in *Orde van Vlaamse Balies*. The AG takes the view that under Article 8ab(5) of Directive 2018/822, Member States may give intermediaries the right to a "waiver in relation to filing information on reportable cross-border arrangements only where the reporting obligation would be in breach of the legal professional privilege which, under the national law of that Member State, is recognised in relation to lawyers and other professionals which are, in exceptional circumstances, treated in the same way as lawyers."

However, the AG observed, given the complexity of tax legislation and the significant filing burdens placed by such legislation, the fact that a taxpayer has consulted an accountant, auditor or tax advisor is considered understandable in the course of doing business. Therefore, the fact that one intermediary has an obligation to disclose to another their involvement in tax planning activities does not give rise to unacceptable interference with the intermediaries' right from Article 7 of the Charter, including the right to confidentiality. Accordingly, the European Union legislative bodies have not made a manifest error when drafting legislation which aims to strike a balance between the right of tax intermediaries (other than lawyers) to confidentiality and the public interest, in this case, the interest of combating aggressive tax planning and preventing the risk of tax avoidance and evasion, the AG noted.

The Opinion is available [here](#) in multiple European languages.

## **G20: Discussion on Global Minimum Wealth Tax**

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Brazil, currently chairing the G20 summit of nations, proposed a global minimum tax on billionaires at the meeting of the finance ministers in Sao Paolo. [Speaking with reporters](#), Brazil's Finance Minister Fernando Haddad said "tax evasion can be resolved through international cooperation so that these few individuals make their contribution to our societies and to the planet's sustainable development." Mr Haddad said Brazil is seeking a new [joint statement](#) on international taxation by G20 members in July.

In apparent agreement with Brazil's position, Bruno Le Maire, France's Finance Minister said: "Europe should take it forward. Currently the richest people can avoid paying the same level of tax as other people who are less rich. We want to avoid such tax optimisation. We want Europe to take this idea of minimum taxation of individuals forward as quickly as possible, and France will be at the forefront.", Le Maire said before the meeting.

On invitation of the G20 Presidency, Gabriel Zucman, Director of the EU Tax Observatory, [spoke before](#) the G20 debate on the taxation of large fortunes, and advocated for a globally coordinated minimum wealth tax on substantial fortunes, set at a minimum of 2% annually.

## **EU FISC Chair: Enact Digital Services Tax In Absence of US Pillar 1 Implementation by 2025**

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The political polarisation in the United States ahead of the November elections threatens to derail the two-pillar solution that was designed to address the taxation challenges related to the digital economy and emerging business models, the [FT reported](#) following discussions on the matter at G20. As a result, the EU should give the US a deadline, after which digital services tax should be implemented, contends Paul Tang, Chairman of the FISC, European Parliament Subcommittee on Tax Matters: "The EU should give the US a deadline, saying in 2025 the US needs to deliver with whatever administration. And if it doesn't, the EU should pursue a digital services tax.", Mr Tang said.

Without US Congress ratification, the requisite threshold for effectiveness of the Pillar 1 rules, as currently designed, would not be met. In defence of OECD's track-record on international tax reform, OECD's Secretary-General submitted a [report to the G20](#) in Brazil, arguing that "the BEPS Project has successfully addressed various tax planning strategies used by multinational enterprises (MNEs) that exploit gaps and mismatches in tax rules to avoid paying tax. The OECD/G20 IF on BEPS continues to implement the 15 BEPS Actions to tackle tax avoidance, improve the coherence of international tax rules, ensure a more transparent tax environment and address the tax challenges arising from the digitalisation of the economy.", Mr Kormann argued.

## Registration / Confirmed Speakers: CFE Forum - 18 April 2024 Brussels

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CFE Tax Advisers Europe will hold its 2024 Forum on 18 April 2024 in Brussels on the topic of *"Sharing the Tax Pie: Revisiting the Role of the UN, EU & OECD in Tax Policy; and Taxable Presence Threshold (Fixed Establishment) in Indirect Taxation"*.

CFE's 2024 Forum will bring two excellent panels of speakers to discuss the allocation of tax base from a direct and indirect tax perspective. Confirmed speakers on the direct tax panel include **Mr. Benjamin Angel**, Director, European Commission DG TAXUD, **Professor Philip Baker KC**, Barrister and Professor of Law at Oxford University; **Ms. Olivia Long**, Head of Tax Policy at Matheson (Ireland); **Mr. Pascal Saint-Amans**, Partner at Brunswick and previous Director of the OECD Centre for Tax Policy and Administration (CTPA); and **Professor Irma Mosquera Valderrama**, Professor of Tax Governance at University of Leiden Law School. The panel discussion will be moderated by **Mr. Bruno Gouthière**, Partner with CMS Bureau Francis Lefebvre and Chair of CFE Tax Advisers Europe Fiscal Committee.

Further details and registration is available [here](#).

## Next Meeting of the EU Parliament FISC : The Future of European & International Tax Policy

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The next [meeting](#) of the FISC Subcommittee will take place on 19 March 2024, where an exchange of views will take place with the Commission, OECD and UN on the state of play and the future of European and international tax policy.

Last week, on 13 February 2024, from 15:00 to 17:15, a public hearing on the topic of "Tackling tax obstacles in the internal market and the role of tax policies in promoting economic growth" took place. A study commissioned by the FISC Subcommittee on "Good tax practices in the fight against tax avoidance - the signalling role of FDI data" was also presented after the hearing.

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