

France

Supreme Administrative Court Partially Invalidates DAC6 Obligations for Intermediaries Subject to Professional Secrecy

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Report from our correspondent Pierre Burg

The French Supreme Administrative Court (*Conseil d'Etat*) has issued a decision stating that intermediaries subject to the legal professional privilege (lawyers in particular) may be exempt from the obligation to notify other intermediaries of reportable cross-border arrangements provided by the [Amending Directive to the 2011 Directive on Administrative Cooperation \[on reportable cross-border arrangements\] \(2018/822\) \(DAC6\)](#) (Decision No. [448486](#) of 14 April 2023, *Conseil national des barreaux et a.*).

The decision follows the withdrawal of the preliminary ruling request sent to the Court of Justice of the European Union (ECJ) in Case C-398/21 (see [ECJ Preliminary Ruling Request: Conseil National des Barreaux and Others \(Case C-398/21\) – Conseil d'État Withdraws Referral on Reportable Cross-Border Arrangements \(DAC6\) \(31 March 2023\)](#)), in the aftermath of the ECJ judgement of 8 December 2022 in Case [C-694/20](#) involving similar issues (see [ECJ Decides That Transfer of DAC6 Reporting Obligations Due to Professional Secrecy Is Not Compatible with Charter of Fundamental Rights of European Union: Orde van Vlaamse Balies and Others \(Case C-694/20\) \(Direct\) \(8 December 2022\)](#)).

Under French domestic law, intermediaries subject to the legal professional privilege are also subject to DAC6 reporting obligations if they obtain clients' consent. Otherwise, they must notify any other intermediaries (or, in the absence of any other intermediary, the relevant taxpayer) of their reporting obligations.

In line with the ECJ's position, the Court ruled that the domestic provisions are invalid in so far as they require intermediaries subject to the legal professional privilege to notify other intermediaries who are not their clients. According to the Court, such a requirement infringes the taxpayers' right to confidentiality concerning the correspondence with their lawyers, guaranteed by article 7 of the [Charter of Fundamental Rights of the European Union](#) and article 8 of the [European Convention on Human Rights](#).

However, the Court did not invalidate the rules requiring the intermediaries to report cross-border arrangements where they obtain the client's consent. According to the Court, the fact that taxpayers may release their lawyers from the legal professional privilege does not violate the right to confidentiality, in so far as it is justified by the fight against aggressive tax planning and the prevention of the risk of tax avoidance and evasion, which constitute objectives of general interest recognised by the European Union.

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