Joint Statement on the Recast of the Directive on Administrative Cooperation:

Professional Privilege and Anti-Gold-plating Rules

Brussels, 2 November 2026

Accountancy Europe, CFE Tax Advisers Europe (CFE) and the European Tax Adviser Federation (ETAF) strongly support the initiative of the European Commission to simplify and recast the Directive on Administrative Cooperation (DAC). We call on the Member states to adopt it on the condition that taxpayers' rights are not restricted through the Council negotiations. The following recommendations are intended to support the Council working groups deliberations.

We fully support the consolidation of DAC1 to DAC9 into a single legal instrument, also to remove redundant reporting hallmarks, as well as to consolidate notification requirements for Country-by-Country and Pillar Two top-up tax reporting.

Against that background, we draw attention to the issue of the consequences of only certain intermediaries being exempt through the Recast from mandatory disclosure on grounds of legal professional privilege (LPP) as well as the deletion of anti-gold-plating provisions.

I. The scope of legal professional privilege for DAC6

In the judgment of the Court of the Justice of the European Union in *Orde van Vlaamse Balies* (C-694/20), CJEU held that Article 7 of the Charter of Fundamental Rights, as primary EU law, protects the correspondence between a lawyer and client and that a lawyer benefiting from LPP cannot be required to notify another intermediary. This is based on the rights of the taxpayer, not the intermediary.

In *Belgian Association of Tax Lawyers* (C-623/22), the Court subsequently clarified that this specific protection applies to persons pursuing their professional activities under one of the titles listed in Article 1(2)(a) of Directive 98/5/EC, i.e. lawyers recognised under Union law. We fully recognise both judgments and draw attention to the question of distinction within the tax profession i.e. lawyers and "lawyer-adjacent" professionals, on the one hand, and the rest of tax advisers on the other, as this distinction creates an unlevel playing field within the reporting community of professionals. However, the Court of Justice of the European Union does not prevent Member states extending legal professional privilege to other professionals, which is the right of Member States.

The Council Presidency maintains, under Article 8(4), the complex three-tier structure of intermediaries for the purposes of LPP and the associated reporting and notification obligations:

1. Intermediary practising under a title covered by Directive 98/5/EC is exempt from reporting and must inform the client of their reporting obligation;
2. Intermediary authorised under national law to ensure legal representation, but not practising under a title of a "lawyer" ("lawyer-adjacent"), is likewise exempt from reporting on grounds of LPP. They must nevertheless notify any other intermediary of the reporting obligation or, where there is no other intermediary, the relevant taxpayer;
3. Tax adviser intermediary who is not a legal professional and is fully liable to report.

The first two categories of intermediaries are therefore treated alike for the purpose of the exemption from reporting, but only one category is required to disclose to another intermediary that they have been involved in the same reportable arrangement. This obligation makes the reporting chain dependent on the professional title of the adviser and creates unlevel playing field within the community of tax intermediaries.

II. Taxpayer-centred reporting model

Given the above-mentioned situation, and with the aim of simplifying matters as the directive stands, we propose putting the onus of reporting on the taxpayers only. This will avoid the significant reporting anomalies described above. CFE Tax Advisers Europe, ETAF and Accountancy Europe have previously supported a taxpayer-centred approach to DAC6 reporting, with the taxpayer as the primary reporting subject and intermediary reporting retained only where appropriate as a fallback. We consider this approach particularly appropriate in the context of complexities of the LPP across the Union.

Placing the reporting responsibility primarily on the taxpayer avoids making the reporting chain dependent on the professional title of the adviser. It also avoids the need to determine, for DAC6 reporting purposes, whether a particular intermediary falls within the scope of the LPP protection recognised by the Court.

The taxpayer is also generally best placed to have an overview of the arrangement and its commercial and tax implications. Intermediaries may have visibility over only the part of an arrangement on which they have been engaged but will support the taxpayer in any event with their reporting obligations. In addition, taxpayer reporting would mean that the scope of LPP does not determine whether one intermediary must notify another intermediary of a reporting obligation.

This would contribute to a more level playing field among professional advisers and reduce the administrative complexity associated with determining who is required to report, who is

exempt and who must notify whom. On the contrary, we would like to raise awareness that maintaining the obligations as discussed in the section *supra*, creates distortion of competition within the reporting community of intermediaries, which entails significant issues for the future of the profession in certain Member States.

It would also support the broader objective of the Recast of simplifying the DAC framework and to ensure tax transparency and information exchange, whilst keeping in line with the judgments of the Court of Justice of the EU which protect fundamental rights. We encourage Member States to preserve this overall balance in the reporting regime as the proposal progresses through the Council. In order to help the taxpayer, the adviser is still likely to have to analyse if a proposal is reportable based upon the information in his or her possession. The adviser could then inform the taxpayer of this obligation based on the available information. The taxpayer can then fulfil the disclosure obligation with all the information provided by the adviser in question.

III. Maintain the Anti-gold-plating provisions

We are also concerned that the Council Presidency removes safeguards against disproportionate or duplicative national reporting requirements. In particular, it deletes recitals which called on Member States not to introduce or maintain disproportionate additional reporting obligations in the area covered by the Directive, and strikes out provisions which would have prevented domestic reporting obligations substantially duplicating information already required under the Directive.

This is difficult to reconcile with EU's wider Simplification Agenda and with President von der Leyen's call, in her State of the Union address to the European Parliament on 16 September 2026. We agree with the Commission President in calling on Member States to step up efforts against gold-plating. We therefore also call on Member States to preserve an explicit safeguard against disproportionate and duplicative national reporting obligations, ensuring that simplification at EU level is not undermined by similar measures at national level.

IV. Our Call to EU Policymakers

We call on Member States in the Council to deliver genuine simplification. This would be achieved by:

- Reconsidering a taxpayer-centred reporting model to ensure a level playing field among professional intermediaries and reduce the administrative burden in deciding who must report, who is exempt and who must notify whom;
- Modifying the Council Presidency compromise text to ensure legal certainty and consistency with the case-law of the CJEU;
- Reintroducing a safeguard against gold-plating by the Member States to avoid disproportionate or duplicative national reporting obligations.