Council of Bars and Law Societies of Europe
The voice of European lawyers

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CCBE position paper regarding the Directive on administrative cooperation (DAC) recast proposal

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1. Introduction

The Council of Bars and Law Societies of Europe (CCBE) represents the Bars and Law Societies of 45 countries and, through them, more than one million European lawyers.

The CCBE welcomes the European Commission's proposal for a recast of the Directive on administrative cooperation in the field of taxation and, in particular, its objective of simplifying, clarifying and consolidating the existing DAC framework while reducing unnecessary administrative burdens. The proposal seeks to eliminate overlaps and low-value reporting and to promote greater legal certainty and more consistent application across Member States, while maintaining the effectiveness of administrative cooperation in the field of taxation. The CCBE notes positively that these objectives correspond to concerns which it has raised in relation to DAC6.[1]

In its response to the public consultation on the DAC recast of 12 February 2026,[2] the CCBE called in particular for greater clarity and objectivity in the application of DAC6, a reduction of unnecessary and defensive reporting, and full respect for proportionality, legal professional privilege and professional secrecy. The CCBE therefore welcomes the fact that the proposal addresses a number of these concerns, including through the extension of reporting deadlines, a more objective reporting trigger and the deletion of certain reporting obligations of limited added value.

Overall, the CCBE considers the proposal to represent a significant and welcome step towards a more proportionate and workable DAC6 framework. Nevertheless, certain provisions continue to raise concerns regarding legal certainty, unnecessary or duplicative reporting and the protection of legal professional privilege and professional secrecy.

[1] See: CCBE response to the public consultation regarding DAC recast (12 February 2026); CCBE response to the public consultation regarding directive on administrative cooperation (DAC) evaluation (29 July 2024); and CCBE response to European Commission proposal to amend Directive 2011/16/EU as regards automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (15 September 2017)

[2] CCBE response to the public consultation regarding DAC recast (12 February 2026)

2. Legal professional privilege and professional secrecy

The protection of legal professional privilege/professional secrecy is of particular importance to the CCBE. As the CCBE has consistently emphasised, confidentiality between lawyers and their clients is not a privilege granted for the benefit of lawyers, but a fundamental right of clients and a corner stone of the rule of law and administration of justice as confirmed in ECJ and ECtHR jurisprudence. Already in its 2017 response to the original proposal on mandatory disclosure of cross-border arrangements, the CCBE stressed that lawyers should be regarded as being precluded from disclosing information protected by legal professional privilege or professional secrecy in accordance with the applicable fundamental rights of clients, rather than being "entitled" to invoke such protection.[3]

The CCBE therefore welcomes the fact that the recast seeks expressly to align the DAC6 framework with the case-law of the Court of Justice of the European Union, in particular Cases C-694/20 and C-623/22. The relevant recital recognises that lawyers subject to legal professional privilege should not be required to notify another intermediary who is not their client, while the proposed Article 8 makes the waiver from reporting mandatory where the reporting obligation would breach legal professional privilege. These changes constitute an important improvement in the protection of the confidentiality of the lawyer-client relationship.

At the same time, the CCBE considers that the recast should ensure to fully preserve the protection afforded by the different national rules governing legal professional privilege and professional secrecy. Particular attention should therefore be paid to the proposed personal scope of the waiver, which refers to lawyers and other professionals legally authorised to ensure legal representation, and to the distinction made between lawyers practising under the professional titles covered by Directive 98/5/EC and other professionals. The recast should not have the effect of reducing the scope of professional secrecy/legal professional privilege under national law or create indirect disclosure obligations which could potentially undermine the fundamental right of confidentiality of legal advice. The ECJ decided expressly in C-423/23 regarding DAC 1: "Article 7 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that legal advice given by a lawyer (...) falls within the scope of the strengthened protection of communications between lawyers and their clients guaranteed by that article."

In particular, where a lawyer is prevented from reporting because of professional secrecy/legal professional privilege, the transfer of the reporting obligation to another intermediary or to the relevant taxpayer should not result in obtaining information which is protected by professional secrecy/legal professional privilege. The fundamental rights in question have to be protected from intentional or unintentional circumvention. The CCBE also proposed in this regard, that a client should not be required to provide information covered by professional secrecy or legal privilege.

[3] CCBE response to European Commission proposal to amend Directive 2011/16/EU as regards automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (15 September 2017)

3. Considerations regarding the amendments to Article 3 of the Proposal

The CCBE welcomes the amendments proposed to Article 3, which should contribute to a more targeted and legally certain application of DAC6. In particular, the introduction of a new point (f) in the definition of a "cross-border arrangement" provides for a carve-out for certain arrangements where all participants fall within the Pillar Two framework, subject to a number of conditions and exceptions, including specific rules concerning qualified side-by-side regimes. The CCBE supports the underlying objective of ensuring that DAC6 reporting obligations remain focused on arrangements presenting genuine tax risks. At the same time, the carve-out is technically complex and should be sufficiently clear and workable in practice, so that determining whether the exclusion applies does not itself create a disproportionate compliance exercise for taxpayers and intermediaries. Recitals 27 to 30 support this approach by linking the proposed carve-out to the reduced tax-planning incentives resulting from the Pillar Two minimum taxation framework and by presenting the exclusion as part of the broader objective of reducing disproportionate DAC6 reporting burdens.

The CCBE notes that the definition of "intermediary" remains broad, covering persons who design, market, organise, make available for implementation or manage the implementation of a reportable cross-border arrangement, as well as persons who, on the basis of the facts and circumstances, available information and their relevant expertise, know or could reasonably be expected to know that they have undertaken to provide aid, assistance or advice in relation to such an arrangement. The recast also expressly extends the definition to legal arrangements such as partnerships, trusts or foundations. While this provision must be read together with the safeguards and simplifications introduced in Article 8, the CCBE considers that the broader structural question concerning the role of lawyers and other intermediaries as reporting subjects remains. In its 2026 response, the CCBE expressed a preference, in relation to lawyers, for the relevant taxpayer to be the sole reporting subject, with the lawyer acting on behalf of the client only where national rules on legal professional privilege or professional secrecy permit this. The implications of the continued broad definition of intermediary should therefore be assessed in conjunction with the reporting obligations laid down in Article 8.

Finally, the CCBE welcomes the deletion of the definitions of "marketable arrangement" and "bespoke arrangement", which is consistent with the wider removal of periodic reporting for marketable arrangements and represents a simplification of the existing regime.

4. Considerations regarding Article 8 on reporting obligations

The CCBE welcomes the simplifications introduced in Article 8, several of which directly address concerns raised in its previous submissions. In particular, the reporting trigger for intermediaries is no longer linked to an arrangement being "made available for implementation" or "ready for implementation", but to the first step in its implementation, and the reporting period is extended from 30 to 90 days. The separate 30-day trigger applicable to intermediaries providing aid, assistance or advice is also removed, as is the periodic reporting obligation for marketable arrangements. These amendments should improve legal certainty, avoid premature reporting based on arrangements that remain preparatory, and reduce unnecessary or duplicative

compliance burdens. The CCBE therefore welcomes these changes, and in particular the 90-day reporting period, which it had expressly advocated in its 2026 response as necessary to allow intermediaries and taxpayers to assess complex arrangements properly and to improve the quality and accuracy of reporting.

The CCBE also welcomes the amendment to Article 8(4) under which Member States shall, rather than merely may, provide a waiver from reporting where the obligation would breach professional secrecy/legal professional privilege. This responds to a central CCBE request. The proposal further provides that lawyers practising under one of the professional titles referred to in Directive 98/5/EC and benefiting from the waiver are required to notify their client, rather than another intermediary who is not their client, of the applicable reporting obligation. This constitutes an important improvement and is consistent with the protection of lawyer-client confidentiality and the relevant case-law of the Court of Justice and the ECtHR.

The CCBE notes, however, that the requirement for lawyers who are subject to professional secrecy/legal professional privilege to notify their clients "without delay" raises questions concerning how compliance with this obligation could be verified without interfering with the confidentiality of legal consultations, as protected by the European Court of Justice in Case C-694/20. It should also be clarified that lawyers *may* notify their clients as soon as they intervene in relation to an arrangement, while the client's own reporting obligation arises only upon the first step of implementation.

Nevertheless, the personal scope of the waiver requires careful consideration. The proposal refers to lawyers and to "other professionals legally authorised to ensure legal representation". It should be ensured that the new wording does not narrow or undermine protections existing under the different national legal systems. The distinction drawn in Article 8(4) between lawyers covered by Directive 98/5/EC and other professionals legally authorised to ensure legal representation merits a reflection, in particular if the latter may still be required to notify another intermediary. Moreover, while the waiver appropriately shifts the reporting obligation away from a lawyer who is prevented from reporting by professional secrecy/legal professional privilege, the overall structure of Article 8 remains based on intermediaries as primary reporting subjects. Where there is more than one intermediary, Article 8(9) continues to require all intermediaries involved to report unless they can prove that the same information has already been filed. The CCBE does not support this set-up in relation to lawyers. In these cases, the taxpayer should be the sole reporting subject as this would reduce complexity and the unnecessary involvement of lawyers in reporting processes.

In conclusion, the CCBE considers the amendments to Article 8 to be a major improvement overall, while the continued intermediary-first architecture, the scope of the PS/LPP waiver and the treatment of multiple intermediaries remain important issues requiring further consideration.

5. Main Benefit Test

The CCBE notes that the substantive wording of the Main Benefit Test remains unchanged. In particular, the test continues to be satisfied where "the main benefit or one of the main benefits" which a person may reasonably expect to derive from an arrangement is the obtaining of a tax

advantage. This leaves unresolved one of the principal concerns previously raised by the CCBE. The CCBE has underlined that expressions such as "one of the main benefits" and "may reasonably expect" introduce a significant degree of subjectivity into the assessment, resulting in divergent application across Member States, legal uncertainty and defensive or "just in case" reporting. The Commission's intention to provide more harmonised EU-level guidance on the MBT cannot be considered as remedy for uncertainty in the legislative wording itself. Furthermore, the recast does not introduce an explicit commercial-purpose safeguard. The CCBE continues to consider that the reporting framework should operate on the basis of objective hallmarks, while permitting genuinely commercial transactions to fall outside the reporting obligation where any tax advantage is merely additional to their economic purpose. Any such assessment should be based only on information reasonably available to the intermediary and should not require extensive additional investigations, in particular into other jurisdictions.

6. Hallmarks A – Generic hallmarks

The CCBE strongly welcomes the deletion of Category A in its entirety. The generic hallmarks concerning confidentiality, fees linked to the tax advantage and standardised arrangements are all removed from Annex IV. This directly addresses concerns previously expressed by the CCBE regarding the broad and vague formulation of these hallmarks, their limited informational value for tax administrations and their contribution to unnecessary and defensive reporting.

7. Hallmarks B on specific hallmarks linked to the Main Benefit Test

The CCBE notes that Category B remains substantively unchanged. Hallmark B.1 continues to concern arrangements involving contrived steps to acquire a loss-making company, discontinue its main activity and use its losses to reduce tax liability; B.2 continues to concern the conversion of income into capital, gifts or other categories of income taxed at a lower level or exempt from tax; and B.3 continues to address circular transactions or round-tripping arrangements. The CCBE has previously called for Category B hallmarks to be formulated in a more objective and targeted manner. It has also observed that certain situations covered by these hallmarks may already fall within national or international anti-abuse rules, while DAC6 requires an additional subjective assessment under the MBT. The removal of Category A therefore does not resolve the broader uncertainty arising from the combination of Category B hallmarks and the subjective Main Benefit Test. The CCBE considers that Category B should remain focused on clear and verifiable indicators of tax risk and should not generate separate reporting obligations for ordinary commercial transactions already addressed under applicable anti-abuse legislation.

8. Hallmarks C on specific hallmarks related to cross-border transactions

The amendments to Category C are limited. The CCBE notes that the contemplated introduction of a minimum-substance test in Hallmark C.1(b)(i) has not been retained in the final proposal.

Hallmark C.1(b)(i) therefore continues to apply where the recipient jurisdiction does not impose corporate tax or imposes corporate tax at a rate of zero or almost zero. This avoids the concerns previously raised by the CCBE that a uniform minimum-substance requirement would be difficult to apply across different legitimate business models and group structures. The CCBE also welcomes the amendment to Hallmark C.1(b)(ii), under which the assessment of non-cooperative jurisdictions is more linked to the EU list and relevant Council conclusions. However, an important concern remains in relation to Hallmark C.1(c), which continues to capture payments benefiting from a full exemption from tax in the recipient jurisdiction. The CCBE had specifically requested that transactions with tax-exempt entities whose exemption serve an established policy purpose should not automatically become reportable. That concern has not been addressed in Annex IV. The CCBE therefore considers that Hallmark C.1(c) should be more targeted so as not to capture ordinary transactions involving legitimate policy-based exemptions. Because Hallmarks C.1(b)(i), C.1(c) and C.1(d) remain linked to the MBT, intermediaries should not be expected to undertake extensive tax or transfer-pricing analysis beyond information reasonably within their knowledge, possession or control.

9. Hallmarks D on specific hallmarks concerning automatic exchange of information and beneficial ownership

The CCBE regrets that Category D remains substantially unchanged. Hallmark D.1 continues to address arrangements which may have the effect of undermining reporting obligations concerning Financial Accounts, including through reclassification, structures intended to eliminate reporting, and weaknesses in due diligence or anti-money laundering procedures. The CCBE has previously taken the view that Category D should be reconsidered in light of the significant development of EU and national anti-money laundering and beneficial ownership legislation. In its 2026 response, the CCBE observed that retaining parallel DAC6 rules in an area already extensively regulated under the AML framework risks duplication, inconsistent terminology and unnecessary administrative burdens, without necessarily producing additional information of value to tax administrations.

Hallmark D.2 also remains unchanged and continues to rely on cumulative criteria concerning substantive economic activity, establishment across jurisdictions and the identification of beneficial owners. The CCBE has previously highlighted the practical difficulty for intermediaries of assessing these criteria where they may have knowledge of only part of an arrangement. In particular, the requirement to assess whether an entity carries on a substantive economic activity supported by adequate staff, equipment, assets and premises may require information which is not available to an intermediary and may not reflect the diversity of legitimate business models.

The proposal attempts to respond to the legal-certainty concerns associated with D.2 through new Article 52, under which the Council, on a proposal from the Commission, must adopt within five years an implementing act establishing the applicable criteria for the requirements laid down in D.2(a) and (b). We do consider that it is reasonable to bind Member States today to agree something in five years' time the contours of which are currently unknown. Such an approach undermines core principles of legal certainty. Article 52 should be amended so that it is permissive rather than mandatory in nature. Further the approach in article 52does not resolve

the separate structural concern concerning overlap and duplication between Category D and the existing AML and beneficial ownership framework. If Hallmark D.2 is retained, the CCBE considers that any criteria adopted under Article 52 should be objective, proportionate, capable of being adapted to different legitimate business models and capable of being assessed on the basis of information reasonably available to intermediaries.

The CCBE notes that the rapporteur of the European Parliament's Committee on Economic and Monetary Affairs (ECON) refers in his report to the withdrawn Unshell Directive and is recommending that selected criteria should be incorporated directly into DAC6 rather than leaving their development entirely to future Council implementing acts. If Hallmark D.2 is retained, the CCBE considers that any criteria adopted should not be taken from the withdrawn Unshell Directive since those criteria have created considerable difficulties for a large number of Member States, and they should not be re-introduced through the "back door" by using DAC6. The CCBE believes that the development of any such criteria should remain within the exclusive competence of Council to discuss and agree upon, especially in the light of the multiple concerns raised in respect of the withdrawn Unshell Directive.

10. Hallmarks E on specific hallmarks concerning transfer pricing

The CCBE notes that Category E remains essentially unchanged. Hallmark E.2 concerning hard-to-value intangibles may continue to raise practical difficulties for intermediaries, as determining whether the relevant conditions are met can involve sophisticated transfer-pricing assessments and information which the intermediary may not possess. The CCBE therefore reiterates the general principle that reporting obligations should not require intermediaries to undertake extensive transfer-pricing investigations beyond the information that is reasonably within their knowledge, possession or control.

The CCBE has more significant concerns regarding Hallmark E.3, which remains unchanged and applies to certain cross-border intragroup transfers where the projected annual earnings before interest and taxes of the transferor during the three-year period following the transfer are less than 50% of the projected annual EBIT that would have been expected had the transfer not been made. The CCBE had expressly called for the deletion of Hallmark E.3. Experience reported by practitioners indicates that, in some Member States, E.3 gives rise to a substantial proportion of DAC6 disclosures while providing little or no meaningful benefit to tax administrations. It can capture ordinary, benign and tax-neutral restructurings, including cross-border reorganisations and intragroup transfers which are readily traceable and not motivated by tax avoidance. The CCBE therefore maintains that Hallmark E.3 should be deleted. Its continued inclusion appears difficult to reconcile with the recast's stated objective of eliminating low-value reporting and concentrating DAC6 obligations on arrangements presenting genuine tax risks.

11. Conclusion

Overall, the CCBE welcomes the Commission's proposal as a significant step towards a clearer, more proportionate and more workable DAC6 framework.

Nevertheless, a number of issues remain. In particular, the substantive wording of the Main Benefit Test continues to rise concerns regarding legal certainty and subjective application. Hallmark C.1(c) may still capture transactions involving legitimate policy-based tax exemptions. Hallmark D continues to raise questions of duplication with the EU anti-money laundering and beneficial ownership framework. Finally, Hallmark E.3 remains capable of generating substantial reporting of ordinary or tax-neutral reorganisations with limited informational value for tax administrations. The CCBE also considers that the continued reliance on (other) intermediaries as primary reporting subjects, together with the scope and operation of the professional secrecy/legal professional privilege safeguards requires further consideration in order to avoid unnecessary reporting and any interference with the fundamental right of confidentiality of the lawyer-client relationship.