

Invest Europe Position on the DAC Recast

Executive Summary

Invest Europe congratulates the European Commission on its ambitious proposal to modernise and simplify DAC6. Given the significant increase in tax transparency since DAC6 was introduced, including the implementation of ATAD, strengthened AML and beneficial ownership rules, and the OECD Pillar Two framework, reporting obligations should remain targeted, proportionate and focused on genuine tax risk. A simplified, harmonised and proportionate DAC6 regime would facilitate cross-border investment across Europe, reduce unnecessary administrative burdens and contribute to a more competitive investment environment. This is particularly important for private equity, venture capital and infrastructure investment, which play a key role in financing European businesses, innovation, infrastructure and the green transition. This recast can support the efficient mobilisation of private capital and reinforce Europe's attractiveness as a destination for long-term investment.

Areas where we agree with the proposal:

- Removal of **Category A hallmarks**, which have led to extensive defensive reporting with limited value for tax authorities.
- Extension of reporting deadlines from **30 to 90 days**.
- Greater clarity on **reportable cross-border arrangements** and **relevant taxpayers**.
- Introduction of an **implementation-based reporting trigger**.
- A **Pillar Two carve-out** for multinational groups already subject to comprehensive reporting obligations.

Areas where the proposal should be strengthened:

- Further promote **EU-wide harmonisation** through common definitions, legislative clarification and comprehensive guidance on key concepts, including hallmarks, the Main Benefit Test, beneficial ownership and economic substance.
- Ensure Member States do not introduce additional national requirements that undermine consistency across the EU.
- Clarify the application of **Hallmark D2** in a way that avoids duplication with existing anti-abuse, AML and transparency rules and recognises the legitimate role of investment structures.
- Consider extending protections comparable to **legal professional privilege** to other regulated professionals subject to confidentiality obligations.
- Introduce clear transitional rules and review hallmarks that continue to capture routine commercial transactions or overlap with other reporting frameworks, particularly **Hallmarks B2, B3, C2-C4 and E3**.

Introduction

[Invest Europe](#) is the association representing Europe's private equity, venture capital and infrastructure sectors, as well as their investors. As long-term providers of capital to businesses throughout Europe, our members support effective and proportionate tax transparency measures that contribute to the integrity of tax systems while maintaining an attractive environment for investment and economic growth.

We have actively contributed to the review of DAC6 and to broader tax policy discussions, including through the publication of the [Taxation in Europe: Investors' Perspective on Getting it Right White Paper](#). Across these initiatives, we have consistently advocated for greater legal certainty, improved harmonisation across Member States, reduced duplication between reporting frameworks and a more proportionate approach to compliance obligations.

The DAC recast represents an important opportunity to modernise the EU's administrative cooperation framework by focusing reporting obligations on genuinely high-risk arrangements, improving legal certainty and reducing unnecessary administrative burdens while preserving transparency objectives and ensure that reporting obligations remain fit for purpose in a tax environment that has evolved significantly since the introduction of DAC6 in 2018. The implementation of the anti-tax avoidance directives, the expansion of beneficial ownership and anti-money laundering frameworks, and the introduction of the OECD Pillar Two rules have substantially strengthened tax transparency and anti-abuse safeguards across the European Union.

In this context, it is appropriate to reassess whether certain DAC6 obligations continue to provide meaningful value and whether they remain proportionate to their objectives.

We welcome the Commission's focus on simplification and support many of the proposed changes to DAC6. At the same time, further improvements should be considered to ensure that the framework focuses on genuinely high-risk arrangements, avoids duplicative reporting obligations and provides greater certainty for taxpayers, intermediaries and tax authorities alike.

In addition to simplifying individual reporting requirements, the DAC recast should promote a genuinely harmonised interpretation and implementation of DAC6 across the European Union. The same cross-border arrangement should not produce different reporting outcomes solely because Member States interpret a hallmark, the Main Benefit Test or another underlying concept differently. Wherever possible, key concepts should therefore be defined at Directive level and supported by common EU guidance. Member States should also avoid introducing additional national requirements or interpretations that undermine the objective of a coherent EU reporting framework.

1. Support for DAC6 simplification

a) Deletion of the generic hallmarks under Category A

We strongly support the removal of the generic hallmarks under Category A, namely arrangements involving confidentiality conditions, success-based fees and standardised documentation. These hallmarks have historically generated a significant volume of reports relating to ordinary commercial transactions rather than arrangements presenting a genuine risk of aggressive tax planning. As a result, Category A hallmarks have often encouraged defensive reporting, leading taxpayers and intermediaries to report transactions primarily to mitigate compliance risks rather than because they raise substantive tax concerns.

Invest Europe also welcomes the proposed deletion of the concepts of “marketable arrangement” and “bespoke arrangement” used in the Category A hallmarks. These distinctions have added complexity to an already highly technical reporting framework, while providing limited practical value.

The removal of the Category A hallmarks represents an important step towards a more targeted and risk-based reporting framework. By focusing resources on arrangements that present a stronger indication of aggressive tax planning, tax authorities will receive more meaningful information while reducing unnecessary compliance burdens for businesses.

b) Extension of DAC6 reporting deadlines from 30 to 90 days

We welcome the proposed extension of the DAC6 reporting deadline from 30 to 90 days, a change that directly addresses concerns repeatedly raised during both the 2024 DAC evaluation public consultation and the discussions leading to the DAC recast proposal at the beginning of this year. Throughout these consultations, we consistently highlighted that the current deadline is often impractical for complex cross-border transactions involving multiple jurisdictions, intermediaries and taxpayers.

As noted in our previous submissions, assessing whether a transaction is reportable under DAC6 frequently requires detailed legal and tax analysis, coordination between different intermediaries, the collection of supporting documentation and, in some cases, discussions with taxpayers regarding the interpretation of specific hallmarks. The current 30-day period created significant operational pressure and increases the risk of incomplete or inconsistent reporting. Extending the deadline to 90 days should improve both the quality and accuracy of disclosures.

c) Streamlining the definition of reportable cross-border arrangements

We welcome the proposed streamlining of the definition of a reportable cross-border arrangement. Throughout the DAC6 evaluation process, we consistently argued that the current framework can require the assessment and reporting of arrangements at a very early stage, creating uncertainty and generating unnecessary compliance costs for taxpayers and intermediaries. The complexity of the existing rules has often required businesses to invest significant time and resources in reporting transactions that may ultimately never be implemented.

By limiting the scope of reportable arrangements to those that are implementable and the first step of which has been implemented, the proposal should reduce the reporting of theoretical, preliminary or abandoned structures that never materialise in practice. This would provide greater legal certainty while ensuring that tax authorities continue to receive information relating to arrangements that have a genuine practical relevance.

d) Streamlining the definition of relevant taxpayer

Invest Europe supports the proposed clarification of the definition of “relevant taxpayer”. One of the issues repeatedly highlighted during the DAC6 evaluation was the complexity created by multiple reporting obligations and uncertainty regarding the allocation of responsibilities between taxpayers and intermediaries. In practice, the current reporting and notification mechanism can shift obligations between various parties involved in a transaction, creating duplication, additional compliance costs and legal uncertainty.

Restricting the definition to the taxpayer that implements the first step of the arrangement should provide greater clarity regarding reporting responsibilities and reduce the risk of duplicative or inconsistent disclosures. It should also contribute to a more proportionate framework by ensuring that reporting obligations are focused on the parties directly involved in implementing the arrangement rather than a wider group of participants with only a limited connection to the transaction.

e) Reporting trigger only when implementation starts

We welcome the proposal to link the reporting obligation to the first implementation step of an arrangement. During the DAC6 evaluation, we repeatedly highlighted the difficulties created by broad and sometimes ambiguous reporting obligations, which often require taxpayers and intermediaries to report transactions before it is clear whether they will appear.

Starting the reporting period only when concrete implementation measures have been taken provides a more objective and practical trigger for reporting. It reduces uncertainty, limits the reporting of hypothetical or abandoned transactions and ensures that the information exchanged between tax authorities relates to arrangements that have genuine commercial relevance.

Invest Europe welcomes that the proposal is clear that the time frame for reporting will be 90 days after the first step of implementation of the arrangement has been taken. It is important that the final version of the directive remains clear the 90 day reporting deadline will start as from the moment the transaction is implemented.

f) Pillar Two carve-out for in-scope multinational groups

We support the proposed carve-out from DAC6 reporting requirements for multinational groups already subject to the Pillar Two framework, as it reduces duplicative reporting obligations and helps focus compliance and enforcement efforts on arrangements presenting a genuine risk of aggressive tax planning. We have repeatedly argued that DAC6 should be assessed not only in terms of its transparency objectives but also in terms of proportionality and cost-effectiveness, therefore where tax authorities already receive extensive information through other reporting frameworks, additional DAC6 reporting may not provide significant incremental value. The proposed carve-out therefore represents a pragmatic simplification measure that recognises the extensive transparency and disclosure obligations already applicable to groups within the scope of Pillar Two.

The DAC recast should, however, clarify how eligibility for the carve-out will be demonstrated in practice. Groups should not be required to submit a separate DAC6 notification or obtain prior confirmation from each Member State. Eligibility should instead be established through existing Pillar Two filings and documentation, based on a simple and harmonised evidentiary approach across the European Union.

The Commission should also assess whether comparable relief could be extended to arrangements already comprehensively reported under Country-by-Country Reporting. At a minimum, where the relevant information is already available to tax authorities through Country-by-Country Reporting or another harmonised reporting framework, taxpayers and intermediaries should not be required to report substantially equivalent information again under DAC6.

g) Main Benefit Test

Invest Europe welcomes the proposal for the Commission to issue clearer guidance on the application of the Main Benefit Test to the remaining hallmarks subject to this test.

The Commission should also further consider including in the Directive a clear and harmonised definition of the Main Benefit Test, including the concept and territorial scope of “tax advantage”, whether arising within or outside the European Union. A common legislative definition would ensure consistent application across Member States, improve legal certainty and reduce unnecessary defensive reporting.

2. Harmonised approach to beneficial ownership and economic substance (Hallmark D2)

Invest Europe supports the objective of creating a more consistent and harmonised approach to beneficial ownership and economic substance across the European Union. Divergent interpretations by Member States create legal uncertainty, increase compliance costs and may result in different reporting outcomes for the same arrangement across jurisdictions.

a) Integration of economic substance and beneficial ownership criteria under Hallmark D2

We support efforts to develop common EU criteria regarding economic substance and beneficial ownership under Hallmark D2, provided that such criteria enhance legal certainty and reduce divergent interpretations across Member States.

At the same time, any future framework should avoid creating an additional reporting regime that duplicates existing anti-abuse measures, beneficial ownership rules, anti-money laundering requirements or anti-tax avoidance directive provisions.

Future criteria should also recognise the legitimate commercial role played by holding companies, special purpose vehicles and other investment structures throughout the private equity and venture capital investment lifecycle. As Invest Europe has previously highlighted in the context of the Unshell proposal, such entities are established for a variety of genuine commercial reasons, including facilitating investment flows, ensuring tax neutrality for pension funds and other institutional investors, separating and ringfencing investments, accommodating different financing arrangements, and supporting governance and co-investment structures. Any future economic substance framework should therefore distinguish clearly between structures established for legitimate commercial purposes and arrangements designed primarily to obtain unintended tax advantages.

b) Limitation of future implementing acts to economic substance and jurisdictional mismatch criteria

We welcome the Commission's decision to limit the scope of future implementing acts to economic substance and jurisdictional mismatch considerations, while excluding the hidden beneficial ownership element previously covered under Hallmark D2c. This approach should help ensure that the future framework remains focused and proportionate, while reducing the risk of overlap with existing beneficial ownership transparency and anti-money laundering regimes, as well as help avoiding the creation of parallel reporting.

3. Clarification on legal professional privilege

We welcome the Commission's efforts to provide greater legal certainty regarding the application of professional privilege following the judgments of the Court of Justice of the European Union in Case C-694/20 and Case C-623/22. These judgments raised broader questions regarding the treatment of professionals subject to legally protected confidentiality obligations and whether similar considerations should apply beyond the legal profession.

While the DAC recast seeks to clarify the position of lawyers benefiting from legal professional privilege, we believe that the future framework should ensure a coherent and proportionate treatment of all professionals subject to comparable statutory confidentiality obligations.

Limiting the exemption solely to members of the legal profession may not fully reflect the reality of tax advisory and reporting work, which is frequently carried out by multidisciplinary teams comprising lawyers, tax advisers, accountants and other specialists. Many of these professionals are subject to equivalent confidentiality obligations and play a similar role in advising clients on complex cross-border transactions.

4. Reporting involving third countries

Invest Europe supports efforts to improve consistency and legal certainty in the treatment of arrangements involving third-country jurisdictions.

a) Reporting of extra-EU jurisdictions

We understand the Commission's objective of ensuring that tax authorities have a comprehensive view of cross-border arrangements involving third-country jurisdictions. To support this objective while maintaining proportionality, reporting obligations should focus on arrangements that present a genuine tax risk. This could be achieved by providing clearer guidance on the circumstances in which third-country involvement is considered material, helping to ensure that reporting delivers meaningful and actionable information for tax authorities while avoiding unnecessary compliance burdens.

b) Reference to the EU list of non-cooperative jurisdictions

We welcome the move towards a single EU reference framework for non-cooperative jurisdictions. Replacing references to various international sources with the EU list of non-cooperative jurisdictions should help reduce interpretative uncertainty.

At the same time, it is important to recognise that several Member States currently maintain their own national lists of non-cooperative jurisdictions, which may differ from the list adopted at EU level. For example, the Netherlands applies a domestic list that combines the EU list with additional jurisdictions considered low-tax or no-tax jurisdictions, while Spain operates separate national blacklists that extend beyond the jurisdictions included on the EU list. These diverging approaches can result in the same cross-border arrangement being subject to different reporting obligations, defensive tax measures or compliance requirements depending on the Member State involved.

We encourage the Commission to introduce a single, harmonised EU list of relevant non-cooperative jurisdictions. While Member States should retain limited flexibility to address specific and significant national tax risk concerns, any national additions should be exceptional and narrowly targeted. While the proposal is a welcome step towards greater harmonisation, replacing OECD references with the EU list alone may not fully eliminate inconsistencies if Member States continue to apply broader or different domestic lists.

5. Additional DAC6 simplification measures

While we welcome the simplification measures included in the DAC recast proposal, further improvements could be made to ensure that DAC6 remains focused on arrangements presenting a genuine risk of aggressive tax planning. In particular, we see a need for clear rules governing the

transition from the current DAC6 directives, and there are several hallmarks that continue to capture significant numbers of arrangements that are clearly commercial in nature and are already addressed through other tax transparency and anti-abuse frameworks. We also refer to our response to the DAC6 evaluation, in which we set out additional helpful DAC6 reforms that should be considered.

a) Clear transitional rules

The recast should include clear transitional rules for arrangements that are made available or ready for implementation before the new provisions become applicable, but whose first implementation step occurs after that date. In particular, arrangements already reported under the existing DAC6 rules should not be reassessed or reported again solely because their implementation or effects continue after the new rules become applicable.

a) Hallmark B2 – Conversion of income

In our view, Hallmark B2 should be reviewed and substantially narrowed. While the policy objective of identifying arrangements that convert income into more favourably taxed categories is understandable, the concept of “converting income” lacks sufficiently clear legal boundaries and is often interpreted very broadly in practice.

As acknowledged in our response to the DAC6 evaluation, several hallmarks are drafted in a manner that allows legitimate commercial transactions to be captured through a purely mechanical application of the rules, even where there is no indication of tax avoidance or abuse. Similar concerns arise in relation to Hallmark B2, as ordinary investment and financing structures may technically fall within its scope despite having genuine commercial and regulatory justifications.

b) Hallmark B3 – Circular transactions and round-tripping

The scope of Hallmark B3 relating to circular transactions and round-tripping arrangements should be reviewed as well.

The hallmark is intended to target artificial arrangements involving the movement of funds through multiple entities or jurisdictions before ultimately returning to the original taxpayer. However, the current drafting does not sufficiently distinguish between genuinely artificial transactions and legitimate commercial structures.

In private equity and venture capital transactions, capital may often move through multiple entities, holding structures, financing vehicles or jurisdictions for valid commercial, legal, regulatory or governance reasons. Without clearer criteria, legitimate cross-border investment structures may be reported even where no aggressive tax planning is involved. Greater precision would improve legal certainty and allow tax authorities to focus on genuinely abusive arrangements.

c) Hallmarks C2, C3 and C4 – Deductible cross-border payments

We also believe that certain hallmarks under Category C, particularly Hallmarks C2, C3 and C4, should be reassessed in light of the significant developments in the international and EU tax framework since DAC6 was introduced.

As highlighted in our previous submission, some DAC6 hallmarks now overlap with measures already addressed through other legislative frameworks, including anti-tax avoidance directives, anti-hybrid rules, beneficial ownership requirements, anti-money laundering legislation and, more recently, Pillar

Two. Transactions that are already subject to extensive anti-abuse provisions may nevertheless continue to generate DAC6 reporting obligations.

Where a hallmark primarily duplicates information already available through other reporting, disclosure or anti-abuse mechanisms, its continued application should be carefully reassessed to ensure that the benefits outweigh the associated compliance costs.

d) Further clarification on Hallmark E3

We encourage policymakers to clarify the scope of Hallmark E3, and in particular to address two outstanding issues that continue to generate disproportionate compliance obligations for ordinary post-acquisition reorganisations.

First, the Directive contains no definition of annual earnings before interest and taxes (“EBIT”), and the resulting gap is addressed through divergent national guidance. Where dividend income or profit/gains from participations are treated as EBIT for holding companies, the hallmark captures transactions well beyond its transfer pricing objective. A harmonised legislative definition is needed to ensure consistent application across Member States.

Second, the hallmark's counterfactual EBIT assessment creates particular difficulties in the context of intragroup reorganisations and liquidations. As the foreseen wind-up of a holding entity is generally not accepted as evidence of the absence of future EBIT, the 50% threshold may be triggered even where the transferor has ceased substantive activity and no tax advantage is sought. Since Hallmark E3 is not subject to the Main Benefit Test, this results in mandatory reporting for ordinary commercial reorganisations.

The proposed Pillar Two carve-out provides welcome relief for groups within the scope of Directive (EU) 2022/2523 but does not address transactions involving portfolio companies or holding structures below the €750 million revenue threshold. We therefore recommend that the recast (i) introduce a harmonised definition of EBIT at Directive level; and (ii) confirm that intragroup reorganisations and liquidations undertaken for genuine commercial, regulatory or governance reasons, where the economic substance of the investment is preserved within the group, fall outside the hallmark's scope.

Conclusion

We welcome the DAC recast as a positive step towards a simpler, more coherent and more proportionate framework for administrative cooperation in the field of taxation. The proposed reforms address several longstanding concerns raised by taxpayers, intermediaries and business organisations, including overly broad hallmarks, legal uncertainty, reporting duplication and unnecessarily burdensome compliance requirements.

We particularly support measures aimed at reducing defensive reporting, improving legal certainty and focusing reporting obligations on arrangements that present a genuine indication of aggressive tax planning. The removal of Category A hallmarks, the extension of reporting deadlines, the clarification of key definitions and the Pillar Two carve-out all represent practical improvements that should enhance the effectiveness of DAC6 while reducing unnecessary administrative costs.

We also welcome efforts to improve harmonisation across Member States, including through the development of common approaches to beneficial ownership and economic substance and the use of a more coherent EU framework for identifying non-cooperative jurisdictions. More broadly, the recast should ensure that DAC6 is interpreted and implemented consistently throughout the European

Union, supported by common definitions and guidance so that equivalent arrangements do not produce divergent reporting outcomes across Member States. These initiatives should be carefully designed to avoid duplication with existing anti-abuse, anti-money laundering and beneficial ownership frameworks, and should recognise the legitimate commercial role played by investment structures, holding companies and SPVs in facilitating cross-border investment.

Finally, we encourage policymakers to use the DAC recast as an opportunity not only to simplify existing rules but also to reconsider hallmarks that have proven to generate disproportionate reporting obligations or overlap with other tax transparency and anti-avoidance measures. A DAC6 framework that is targeted, proportionate and consistently applied across the European Union will better serve both tax administrations and taxpayers, strengthen legal certainty and support the broader objective of promoting investment, competitiveness and growth across Europe.

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