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Invest Europe's Response to the Public Consultation on the EU Rules on Administrative Cooperation in the Field of Taxation- Recast

On behalf of Invest Europe, the voice of Europe's private equity and venture capital industry and their investors, we welcome the opportunity to provide additional input on the evaluation of the DAC framework.

Over the years, the DAC has evolved through several iterations, each expanding its scope with the aim of enhancing transparency and combating aggressive tax planning by multinational enterprises. In our response, we focus on the evaluation of DAC6 and provide our reflections on *Lessons learned* and *Way forward* sections of the European Commission Report published in November 2025, as well as the potential inclusion of the Unshell Directive as an integral part of a simplified DAC framework.

Lessons Learned

The DAC legal framework is robust, but fragmentation of application across the EU increases the administrative burden on business.

Invest Europe acknowledges that the DAC legal framework is fundamentally robust and serves an important role in promoting tax transparency and combating aggressive cross-border tax planning. However, practical experience has demonstrated that the inconsistent application of DAC6 rules across Member States significantly increases the administrative burden on intermediaries and taxpayers. This fragmentation arises primarily from divergent interpretations of key concepts, differences in the implementation of hallmarks, and variations in procedural obligations and penalty regimes.

A core challenge relates to the interpretation of the Main Benefit Test and the definition of a *tax advantage*. While the MBT is central to DAC6's identification of potentially reportable arrangements, Member States apply it differently. Some jurisdictions limit the scope to tax benefits within the EU, while others extend it to third countries. Certain Member States explicitly exclude tax outcomes that comply with the legislative intent of the relevant rules, whereas others provide no such clarification. These inconsistencies create uncertainty for intermediaries and investors, who must assess the same cross-border arrangement under multiple national frameworks to determine whether reporting obligations arise. This not only increases legal risk but also leads to disproportionate compliance costs.

The hallmarks themselves also contribute to fragmentation. Certain hallmarks are complex and open to divergent interpretations:

- Hallmarks E2 and E3, which relate to cross-border transfers of hard-to-value intangibles and intragroup transfers of functions, assets or risks, lack clear EU-wide definitions of critical terms such as "cross-border," "intragroup," and "EBIT."

- Hallmark A3, which captures "substantially standardised" documentation or structures, is applied inconsistently across jurisdictions, with some Member States maintaining whitelists of approved arrangements and others imposing more restrictive interpretations.
- Other hallmarks, such as B2 and B3, overlap with existing EU anti-abuse legislation, creating duplicative reporting obligations. Many hallmarks are not subject to the MBT, meaning that even tax-neutral or commercially motivated transactions can trigger reporting requirements, further inflating the administrative burden.

Procedural fragmentation also intensifies the problem. Under Article 8ab, paragraph 9, multiple intermediaries involved in the same arrangement are jointly liable to report, and exemptions based on legal professional privilege shift reporting obligations to other intermediaries or taxpayers. This creates duplication and requires intermediaries and taxpayers to dedicate significant resources, including internal teams, training, control processes, and IT systems, simply to comply with DAC6 reporting obligations.

The penalties framework for non-compliance with reporting obligations under the DAC varies considerably between Member States

DAC6 requires Member States to implement penalties that are effective, proportionate, and dissuasive. In practice, however, there is significant divergence in the levels and types of sanctions applied across the EU, creating inconsistencies and potential inequities for taxpayers and intermediaries. For example, Luxembourg imposes some of the highest penalties, with fines of up to €250,000 per transaction. In France, non-compliance, such as failing to report or, in the case of intermediaries with client privilege, failing to notify, is punishable by a fine of €10,000, or €5,000 for a first infringement, subject to a maximum of €100,000 per calendar year. The Netherlands applies substantially higher penalties, with fines of up to €1,030,000 in 2024, and criminal prosecution is possible in serious cases. In Italy, omitted reporting can result in fines between €3,000 and €31,500, while incorrect or incomplete reporting carries penalties ranging from €1,000 to €10,500.

This lack of harmonisation means that the same behaviour can trigger vastly different sanctions depending on the Member State, potentially creating competitive distortions and inequities. Moreover, there is little evidence that DAC6 penalties are applied in a way that systematically supports the objectives of the Directive. While DAC6 filings can alert tax authorities to cross-border arrangements, their use in substantive audits or enforcement actions is limited. Some authorities, such as in the Netherlands, review DAC6 filings in the context of tax returns, but guidance and clarifications on hallmarks and reporting obligations remain insufficient to fully mitigate uncertainty for intermediaries and taxpayers.

There is little evidence on the effective use of DAC6 data by EU Member States to achieve the objective set by the directive, namely, to improve the functioning of the internal market by discouraging the use of aggressive cross-border tax-planning arrangement. DAC6 indeed serves

to alert tax authorities to cross-border tax arrangements and allow them to react to certain tax practices by changing tax legislation and/or allow Member States to raise concerns with each other (including through the European Semester) and has arguably impacted taxpayer and certain tax intermediaries' behaviour. This impact should be effectively assessed through an appropriate analysis, fact finding and data gathering to ensure that DAC6 is proportionate to the objective pursued. However, experience learns that the Dutch tax authorities have raised questions based on DAC 6 filings and review DAC 6 filings when assessing relevant tax returns. Some tax authorities have published guidelines and FAQs on DAC6, where interpretations of certain notions and hallmarks have been made, these clarifications appear insufficient to dissipate all questionings that intermediaries and taxpayers may have about the application of the rules. To the best of our knowledge, there has been little use of reported transactions by tax authorities as part of their duties. However, increased administrative and judicial practices could provide further clarification on the functioning and interpretation of the DAC6 rules, which would be beneficial to the protection of taxpayers' rights.

The quality of data has improved, but identifying taxpayers is still an issue for some exchanges

The absence of a standardised approach to identifying taxpayers also undermines the efficiency of risk analysis. Without unique identifiers or consistent data structures, authorities face difficulties in matching information across multiple Member States and in integrating DAC6 data with domestic tax records. For investment funds and other intermediaries, this uncertainty requires additional internal procedures, monitoring systems, and resources to ensure compliance and reduce the risk of misreporting.

A key procedural issue relates to exemptions from reporting obligations. Under current rules, an intermediary is exempt only if another intermediary has already submitted the relevant information, but no exemption applies when the taxpayer has filed the disclosure. This can lead to duplicative filings and unnecessary compliance costs for intermediaries, even when full disclosure has already been made.

To address these challenges, DAC6 reporting should be standardised and coordinated. Exemptions should extend to intermediaries who can provide reliable proof that the taxpayer has already filed the relevant information. Reporting obligations should be applied consistently across all types of intermediaries while respecting legal privilege where appropriate. Implementing these measures would reduce duplicative filings, lower administrative burdens, and improve the quality and usability of the data collected.

Way forward

Simplifying the DAC and ensuring its consistent application to reduce administrative burden

Invest Europe considers that targeted amendments and simplifications to DAC6 are essential to reduce the disproportionate administrative burden on investors and intermediaries while

preserving the Directive's objectives of tax transparency and combatting aggressive cross-border arrangements. Possible measures include:

- the harmonisation of key concepts, such as the definition of 'tax advantage', in order to avoid the exchange of unsolicited information and reduce the risk of inconsistent assessments between Member States;
- clarifying hallmarks and providing EU-level guidance to enhance legal certainty, reduce compliance risk, and ensure that reporting focuses on genuinely aggressive or potentially harmful arrangements;
- simplification of reporting activities: introducing simplified procedures or exemptions for typical investment fund transactions, such as investments in target companies through already regulated vehicles;
- the protection of professional secrecy: providing for specific exemptions or protection mechanisms for communications covered by legal privilege between lawyers and clients, ensuring compliance with Article 7 of the Charter of Fundamental Rights of the EU, which establishes the right to respect for the private and family life, home and communications of every individual;
- the provision of an obligation for tax authorities to provide periodic evidence of communications received.

Integration of Unshell Directive (ATAD3) into the Simplified DAC Framework

Invest Europe supports the Commission's intention to explore the feasibility of integrating into a simplified DAC framework the principles and concepts extensively examined under the former Unshell proposal. We have followed developments in the Council closely and have consistently highlighted the need to ensure that any such integration fully accounts for the typical structures and investment vehicles used by private equity funds.

While we support the overarching objectives of the ATAD3 initiative in addressing shell entities and enhancing substance requirements, it is important that the integrated version of the documentation also accurately reflects the low-risk scenarios commonly found in standard private equity fund structures. In particular, the European Commission ATAD3 proposal does not extend exemptions to Special Purpose Vehicles (SPVs), fund-of-funds, and subsidiaries of regulated investment funds, which serve legitimate commercial and financial purposes, which has been granted under the Minimum Corporate Taxation Directive. SPVs play a vital role in the private equity industry: they ensure tax neutrality for institutional investors, facilitate capital flows, balance commercial incentives between owners, managers, and investors, and structure legal entities to efficiently service investment activities.

The OECD Pillar II framework already provides a carefully defined exemption for investment funds, covering both the funds themselves and SPVs or subsidiaries directly or indirectly owned by regulated entities. For consistency and to avoid creating an uneven playing field, the same definition should be applied within any Unshell-related DAC framework. This definition includes

entities designed to pool assets from multiple investors, invest according to a defined policy, allow risk diversification, generate investment income or gains, and operate under appropriate regulatory supervision. Applying this definition would ensure that EU investment funds are not subject to stricter rules than comparable third-country structures.

Improve the penalties framework for the DAC

Improving the penalties framework and making it more coherent may help address the growing unpredictability in the application and interpretation of DAC rules across the EU. Practices that are considered compliant or well applied in one Member State may be viewed as non-compliant or even as breaches of the rules in another, creating significant legal uncertainty. This divergence not only undermines consistent compliance efforts but also results in penalties that are themselves unpredictable and difficult to anticipate. As a result, it creates disproportionate and uneven risks depending on the jurisdiction, thereby distorting the level playing field within the EU.

Increasing the systematic use of data and developing better traceability

Invest Europe values measures taken to optimise the management and use of DAC6 data to ensure it is meaningful, actionable, and traceable. Currently, the volume and format of information exchanged can be excessive, inconsistent, or unclear, which limits its practical utility for tax authorities and increases the administrative burden for reporting entities.

We recommend defining more selective criteria for the information to be transmitted, focusing on transactions that present genuine tax risks, while avoiding the submission of irrelevant or misleading data. Clearer guidance on reporting requirements, combined with structured, standardised data formats, would improve the usability of information, reduce duplication, and allow authorities to conduct more effective risk assessments. Furthermore, regular feedback from tax authorities on the use of reported information would enhance traceability, strengthen compliance, and promote greater confidence in the DAC system.

Conclusion

The DAC legal framework plays an important role in promoting tax transparency and curbing aggressive cross-border tax planning within the EU. However, inconsistent interpretation and application of DAC6 rules across Member States significantly increase administrative burdens and compliance costs for intermediaries and investors.

Divergences in the application of the MBT, hallmarks, procedural obligations, and penalties create uncertainty, inefficiencies, and potential inequities across the EU. To reduce legal and administrative complexity, key DAC concepts, such as tax advantage, hallmarks, and reporting obligations, should be harmonised across the EU.

Clarifications and EU-level guidance would improve legal certainty, reduce duplication, and ensure reporting focuses on genuinely aggressive arrangements rather than routine commercial transactions. Simplified procedures and targeted exemptions, especially for

investment fund transactions and low-risk structures, would lower compliance costs while maintaining transparency. Exemptions should apply when taxpayers have already filed relevant information, respecting legal privilege where appropriate.

The integration of Unshell Directive into a simplified DAC framework should reflect the structures and investment vehicles commonly used by private equity funds. SPVs, fund-of-funds, and subsidiaries of regulated investment funds, which serve legitimate commercial purposes and benefit from Pillar II exemptions, should not face stricter rules than comparable third-country structures. This approach will ensure EU private equity structures remain competitive and tax-neutral for investors.

Overall, a more coherent, simplified, and standardised DAC framework, integrating lessons from DAC6, the Unshell proposal, and existing EU tax directives, would preserve the objectives of transparency and anti-abuse while significantly reducing compliance costs. Harmonisation, clarity, simplification, and proportionate enforcement are essential to create an effective, fair, and predictable system for both taxpayers and intermediaries.

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