

ETAF Position Paper

The essential role of professional secrecy for tax advisers in Europe – and how to protect it

The European Tax Adviser Federation (ETAF) is the European umbrella organisation for 220 000 regulated tax professionals from France, Germany, Belgium, Romania, Hungary, Austria and Croatia. ETAF pursues and promotes binding professional law codes in the EU Member States. A strong professional law framework for the tax advisory industry is an additional security obliging and controlling that tax advisers act in full accordance with all applicable laws and regulations and that they use only legal means available for their clients.

One of the fundamental principles of a binding professional law is a sustainable professional secrecy. This fundamental principle is indispensable for the integrity of tax systems and the trust between clients and their advisers across the European Union.

ETAF therefore strongly reaffirms its commitment to the safeguarding of a strong professional secrecy for tax advisers.

In this paper, ETAF outlines the importance of professional secrecy in the context of tax advice and the challenges posed by recent legislative and regulatory developments.

The essential role of professional secrecy

Tax advisers must be in a position to carry out their mission with full knowledge of the facts. To do so, they must be able to inspire complete trust in their clients, so that the latter do not hesitate to entrust them with sensitive information and are assured that confidentiality will be preserved. Citizens and companies must be able to expect that their rights and legitimate interests are defended independently, freely and impartially by tax professionals.

Professional secrecy can protect businesses from potential competitive disadvantages. Without such a privilege, confidential business information disclosed during consultations could be exposed, putting companies at risk of revealing internal strategies, trade secrets, or vulnerabilities to competitors or the public. Professional privilege ensures a secure environment in which businesses can seek advice without compromising their market position.

For businesses and tax advisers alike, professional secrecy guarantees:

- Trust in the client-adviser relationship;
- Effective and lawful tax compliance, particularly in complex cross-border matters;
- Protection of fundamental rights, including the right to privacy, the right to a fair trial, and the protection against self-incrimination;
- Legal certainty and procedural fairness in dealings with tax administrations and enforcement authorities.

Therefore, professional secrecy is neither a privilege nor a favour, but an obligation. It is an essential element of any rule-of-law system and represents one of the core values of the exercise of the profession.

At the same time, it must be clear that it is under no circumstances tolerable that professional secrecy is used to cover or justify any criminal activity. This shall not mean, however, that the principle as such is brought into question. To bridge the gap, many existing national regulations impose specific limitations on the scope of professional secrecy for tax advisers. In addition, professional bodies enforce strict ethical standards and have established safeguards to detect and sanction any misuse or unethical behaviour.

Safeguarding professional secrecy: Legislative challenges and judicial developments

The protection of professional secrecy, especially for tax advisers, faces major and recurrent challenges that affect the profession throughout the European Union. These concerns are particularly relevant in the context of recent and ongoing legislative developments at EU level.

The main issues are:

- **Current EU legislation poses challenges:** The sixth amendment to the Directive on Administrative Cooperation in tax matters (DAC6) obliges intermediaries to disclose specific cross-border tax arrangements, potentially overriding professional secrecy to promote tax transparency. The Whistleblower Protection Directive protects the reporting of breaches of EU law which can further challenge the confidentiality typically accorded to tax advisers. These legislative measures reflect a delicate balance between upholding professional secrecy and ensuring compliance with broader legal and ethical obligations.
- **Divergent national interpretations and implementations:** Despite harmonised EU directives, national authorities often interpret and apply rules differently. This leads to legal uncertainty and unequal treatment of taxpayers and professionals across the Single Market. Such fragmentation weakens the coherence of the EU legal framework.
- **Insufficient recognition of professional secrecy:** Several administrative cooperation mechanisms such as DAC6, the OECD's Common Reporting Standard (CRS) and the automatic exchange of information (AEOI) fail to adequately safeguard the principle of professional secrecy, which is a cornerstone of the tax advisory profession. This undermines the trust-based relationship between tax advisers and their clients and raises concerns about data protection and confidentiality.
- **Systematic neglect of this protection in EU legislation and confusion in translations:** Due to the unclear term "legal professional privilege", the protection of the professional secrecy of tax professionals is repeatedly neglected or underrepresented in EU legal acts. This is attributed to the inconsistent use of the term "legal professional privilege", the varying interpretations concerning its scope of application and – above all – very inconsistent translations in the different language versions in EU legal texts. Across several DGs in the European Commission, and already for some time now, we have observed a wide range of divergent translations, ranging from "statutory professional secrecy" and "privileges of members of the legal professions" to "professional secrecy of legal advisory professions", and — most problematically — "lawyer's professional secrecy".

These developments weaken the constitutional function of tax advisers, who act not only in the interests of their clients but also as intermediaries ensuring compliance with national and EU tax law.

Judicial strengthening of professional secrecy in the EU

Most EU Member States have codified professional secrecy obligations for legal and tax professionals in their national laws (e.g., criminal codes, tax codes, or bar association rules). These frameworks recognise the right to confidentiality and a fair trial, and many national laws impose criminal penalties for breaches of confidentiality.

The European Court of Justice (ECJ) has played an active role in strengthening professional secrecy, reaffirming its fundamental importance in protecting client rights and maintaining the integrity of legal and tax advisory services. On 26 September 2024, the ECJ issued a landmark ruling in [case C-432/23](#) (Bar Association of Luxembourg v. State of Luxembourg), holding that a request to disclose information about the attorney-client relationship constitutes a violation of professional secrecy.

During the procedure, Advocate General Juliane Kokott provided, in her [conclusions](#), a comprehensive assessment of the scope and significance of legal professional privilege. She argued that the principles underpinning professional secrecy must be fully protected regardless of the legal field involved. Furthermore, she emphasised that these principles apply not only to lawyers but also extend to tax advisers and other professional groups who, under their respective national laws, are recognised as independent organs of the administration of justice, equivalent to lawyers, and thereby authorised to provide legal advice and represent clients in court. This ruling is part of a broader trend in which European courts have recently strengthened the protection of professional secrecy, consistently reaffirming its essential role across the EU.

Same functions, different rights? Rethinking professional privilege for tax advisers

Building on this jurisprudence, the ECJ has clarified that legal professional privilege is not necessarily limited to lawyers in the traditional sense. It may also apply to “other professions who are treated in the same way as lawyers under the relevant national law and are therefore authorised to give legal advice to clients and represent them in court.”

However, while the ability to appear before a court is an important element, it should not be viewed as the sole determining factor. Rather, the underlying question is whether the **professional in question fulfils a comparable role in the legal system** – particularly in terms of independence, legal expertise, and duty of confidentiality.

In practice, tax advisers perform a range of functions that are substantively equivalent to those carried out by lawyers, particularly in the area of tax law.

The following examples illustrate this functional similarity:

- **Advisory role:** Both lawyers and tax advisers provide legal guidance to clients on tax matters, from routine compliance to complex structuring and strategic tax planning.
- **Expertise in tax law:** Both professions require a high level of legal expertise, including the ability to interpret and apply intricate tax laws, regulations and jurisprudence to individual client situations.
- **Client representation before authorities:** Although tax advisers may not always have the right of audience in court, they routinely represent clients before tax administrations, including in audits, appeals and administrative proceedings.

- **Compliance and legal certainty:** Both professions play a crucial role in ensuring that clients comply with their legal obligations and navigate complex tax frameworks in a lawful manner.
- **Confidentiality obligations:** Both are entrusted with sensitive client information and are bound — often by law — to maintain strict professional secrecy.
- **Ethical and professional standards:** Both operate under rigorous codes of professional ethics and conduct, which govern their responsibilities to clients and the legal/tax system.

Given these parallels, it is legitimate to question whether the criterion of court representation should serve as the decisive factor in determining access to legal professional privilege. Instead, the assessment should focus on the nature of the professional activity and the level of trust, confidentiality and legal responsibility involved.

Accordingly, it should be recognised that the clients' fundamental right to legal professional privacy is recognised independently of the choice of the intermediaries – also when a tax adviser performs a legal advisory function to the client comparable to those of lawyers. Any other decision would create disadvantages between intermediaries who perform the same services within an equivalent framework in terms of independence, legal expertise and duty of confidentiality. **Such a distortion of competition entails a real danger for the future of the profession in some European countries.**

ETAF's call to action: Safeguarding professional secrecy in EU law

To preserve the integrity of tax systems and uphold fundamental rights, ETAF urges the European Commission, the European Parliament, the Council and all EU Member States to:

1. **Explicitly enshrine professional privilege for tax advisers in EU law:** Professional secrecy must be formally recognised in all relevant EU legislative acts as a binding legal right and obligation for regulated tax professionals. This recognition should reflect the equal standing of tax advisers with lawyers in their role as independent guarantors of legal certainty and client rights. A clear and consistent definition of professional privilege — accompanied by accurate translations across all EU languages — is essential to avoid interpretative inconsistencies that currently undermine legal coherence.
2. **Promote a harmonised application across Member States:** To prevent legal fragmentation and unequal treatment, EU institutions must promote a unified framework to ensure consistent protection of professional secrecy across the EU. We call on the European Commission to issue interpretative guidance clarifying the scope and applicability of professional privilege across the relevant regulated professions.
3. **Ensure proportionality and legal safeguards in new reporting obligations:** Future EU reporting requirements must be proportionate, respect legal certainty and provide adequate protection against self-incrimination and breaches of confidentiality. Any exceptions to professional secrecy must be strictly limited and legally justified.
4. **Recognise the crucial compliance role of regulated tax advisers:** Rather than treating tax advisers as potential risk factors, policymakers should acknowledge the essential role of regulated tax advisers in supporting tax compliance, upholding the rule of law and ensuring effective tax administration across the EU.

Final remarks

Professional secrecy is not a privilege — it is a democratic necessity. It underpins the trust between tax advisers and clients, protects fundamental rights and supports the fair functioning of tax systems.

ETAF and its member organisations remain committed to working closely with European institutions to secure a legislative environment that respects professional secrecy, ensures legal certainty and guarantees equal protection for all EU citizens and businesses.

Notes

For further information on this position paper, please contact: Marion Fontana, EU Policy Officer, marion.fontana@etaf.tax, Phone: +32 2 2350 105 | Mobile: +32 471 78 90 64

About ETAF

The European Tax Adviser Federation (ETAF) is a European umbrella organisation for tax professionals whose activities are regulated by law. It is established as an international not-for-profit organisation (AISBL) governed by Belgian law, based in Brussels and was launched on 15th December 2015. It represents more than 220 000 tax professionals from France, Germany, Belgium, Romania, Hungary, Austria and Croatia. ETAF is a registered organisation in the EU Transparency Register, with the register identification number 760084520382-92.