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EU Tax Alert

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EU Tax Alert

In this publication, we look back on recent tax law developments within the European Union (EU). We discuss, amongst other things, relevant case law of the Court of Justice of the European Union (CJ), Opinions of its Advocate Generals (AG), as well as relevant case law of the national courts of the Member States.

Furthermore, we set out important tax plans and developments of the European Commission, the Council of the European Union (Council) and the European Parliament.

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Content

1. Highlights in this edition

European Commission opens public consultation on possible recast of the DAC

On 16 December 2025, the European Commission opened a public consultation on a possible legislative proposal to recast the Directive on Administrative Cooperation (2011/16) (DAC). The consultation targets a broad range of stakeholders and is open until 10 February 2026.

With the aim of making business easier and faster in Europe by cutting red tape and reducing burdens associated with reporting requirements, the European Commission is currently working on a possible legislative proposal to recast the DAC and its eight legislative amendments (DAC1-DAC9). The objectives of this initiative are two-fold. First, it aims to simplify and clarify reporting obligations under the DAC, with the aim of reducing the associated burdens for business stakeholders. Second, it aims to implement targeted improvements, with the aim of improving the overall functioning of the DAC.

The Commission will assess whether these objectives can be achieved by consolidating the DAC and all its amendments into a single legal instrument. This will make the text more coherent and clearer for all stakeholders. The Commission will also assess several policy options to simplify and streamline the legal framework. This will involve eliminating possible duplications of reporting elements and addressing possible inconsistent and/or inefficient reporting obligations. As regards DAC6, the Commission will carefully analyse and consider the need for possible amendments to the reporting hallmarks.

To improve the identification of taxpayers reported under the DAC, the Commission's policy options will be informed by the outcomes of the current study on the feasibility of introducing a common identifier and its associated verification mechanisms. The Commission will also assess the need to revise the current reporting thresholds for the sale of goods under DAC7. Lastly, the Commission will consider policy options to improve the scope and completeness of information exchanged under DAC1, by introducing certain mandatory requirements.

The possible recast of the DAC aims to tackle some of the problems already identified in: (i) the findings of the recent evaluation of the DAC (see page 18 below); (ii) the consultations carried out by the Commission on the simplification of the EU *acquis* on direct taxation (i.e. corporate tax Directives, the Anti-Tax Avoidance Directive and the DAC); and (iii) the recommendations arising from the 2021 and 2024 special reports of the European Court of Auditors. By focusing on specific issues that have not been sufficiently covered in these previous instances, the present consultation specifically looks for stakeholders' input on: (i) some of the policy options to simplify, clarify and improve the current functioning of the DAC; (ii) the compliance costs associated with some existing reporting obligations; (ii) the potential savings stemming from some of the policy options.

The call for evidence and the public consultation are open until 10 February 2026 and feedback can be submitted via the Commission's website.

European Commission unveils its 2026 Work Programme

On 23 October 2025, the European Commission published its 2026 Work Programme outlining its legislative priorities for the coming year including plans to launch new legislative initiatives, withdraw pending proposals, and review existing EU legislation.

Relevant to the area of direct taxation, the Commission announced two new initiatives aimed at reducing administrative burdens: the '28th Regime for Innovative Companies' which is expected in the first quarter of 2026, and the 'Omnibus on Taxation' scheduled for the second quarter of 2026. While both initiatives are intended to simplify tax rules and legislation for businesses operating across the EU, they have different specific purposes. The '28th Regime for Innovative Companies' would introduce, at EU level, an optional legal framework operating in parallel with national law, allowing companies opting for this regime to incorporate and operate under a single set of European rules rather than navigating twenty-seven different national systems. Differently, the 'Omnibus on taxation package' would introduce simplifications to existing EU legislation such as the ATAD and the DAC.

Furthermore, in its 2026 Work Program, the European Commission withdrew several pending proposals, including the Directive on preventing the misuse of shell entities for tax purposes (the 'Unshell' proposal), the Directive on a debt-equity bias reduction allowance (DEBRA), and the Directive on harmonizing transfer pricing rules (TP Directive). In addition, other legislative proposals remained in the Commission's programme, including the proposal on Business in Europe: Framework for Income Taxation (BEFIT), the Head Office Tax system for SMEs (HOT), a common system of digital services tax (DSTs), and rules on the corporate taxation of a significant digital presence.

Finally, it should be noted that the 2026 Work Programme is complemented by the Commission's report '2025 Overview Report on Simplification, Implementation and Enforcement' which highlights ongoing efforts to reduce administrative burdens and simplify EU rules, including in the field of taxation.

CJ judgment on the whether certain proof requirements for the exemption and refund of withholding taxes on dividends received by non-resident pension funds is compatible with EU law (*Santander Renta Variable España Pensiones*, C525/24)

On 27 November 2025, the CJ delivered its judgment in the case *Santander Renta Variable España Pensiones, Fondo de Pensiones* (C525/24). The case concerned the question of whether Portuguese legislation requiring non-resident pension funds to provide a declaration certified by their home State's supervisory authority as a condition for obtaining an exemption or refund of withholding tax on dividends received from Portuguese companies is compatible with the free movement of capital under Article 63 TFEU.

Santander, a Spanish pension fund, received dividends from Portuguese companies in 2020 and 2021. These dividends were subject to a final withholding tax at a rate of 25%. Under Portuguese law, pension funds established in another Member State may benefit from an exemption from corporation tax on such dividends, provided that they satisfy certain substantive conditions and, for immediate exemption at source, submit a declaration confirmed and certified by the authorities responsible for supervision in their Member State of residence. Santander claimed that it was unable to obtain the required declaration from the Spanish authorities and challenged the withholding, seeking annulment of the withholding acts and a full refund of the tax withheld, arguing that the proof requirements imposed only on non-resident pension funds were incompatible with the free movement of capital.

The CJ first recalled that Article 63 TFEU prohibits all restrictions on the movement of capital between Member States. It noted that measures which subject non-resident pension funds to additional administrative burdens, such as the requirement to provide a supervisory declaration not imposed on resident funds, are liable to deter non-residents from investing in Portuguese companies and therefore, constitute a restriction on the free movement of capital. The CJ observed that, under Portuguese law, resident and non-resident pension funds are subject to the same substantive conditions for exemption, but only non-resident funds are required to provide the additional proof in the form of a supervisory declaration.

The CJ then examined whether this restriction could be justified. It accepted that the need to guarantee the effectiveness of fiscal supervision and the effective collection of tax constitute overriding reasons in the public interest capable of justifying a restriction on the free movement of capital, provided that the measure is suitable and does not go beyond what is necessary.

While ultimately it is for the referring court to assess whether, and to what extent, the Portuguese legislation meets the specified conditions mentioned above, the CJ observed that the proof requirement (i.e., the certified declaration) applicable only to non-resident pension funds is suitable for securing the effectiveness of fiscal supervision and the effective collection of tax only if the authorities of another Member State have the necessary powers and competences to issue such a declaration, and if that declaration may be issued to the pension fund concerned within a reasonable period of time. If these two conditions are not met, the Court noted that the requirement to submit such a certified declaration would not be suitable for securing the effectiveness of fiscal supervision and the effective collection of taxes.

In considering whether such a requirement goes beyond what is necessary, the Court emphasized that two distinct scenarios must be assessed separately: first, the immediate exemption from withholding at source of corporation tax; and second, the subsequent refund of the withholding tax already levied.

First, concerning the immediate exemption at source, the CJ noted that, in such cases, the dividend-paying company must be certain that the conditions for exemption are met before deciding not to withhold tax. On such basis and assuming that the measure is found suitable, the CJ found that the obligation for a non-resident pension fund to provide the Portuguese companies paying the dividends with a certified declaration does not go beyond what is necessary for achieving the measure's objectives. The Court then left to the referring court the question of whether the legislation at issue in the main proceedings observes the principle of proportionality in the strict sense.

Second, regarding the refund procedure, where tax has already been withheld and the tax authority itself decides on the refund, the Court found that requiring the certified declaration as the sole means of proof goes beyond what is necessary. This because, in such cases, the tax authority can verify compliance with the substantive conditions for the reimbursement by relying on administrative cooperation tools provided by Directive 2011/16. Consequently, as regards the refund, the Court found that the requirement to submit a certified declaration as the sole means of proof, goes beyond what is necessary to attain the objectives pursued.

Accordingly, the CJ held that Article 63 TFEU does not preclude a Member State from requiring a non-resident pension fund to provide, for immediate exemption at source, a declaration confirmed and certified by the authorities responsible for supervision in the fund's Member State of residence, provided those authorities have the necessary powers and competences, the declaration can be obtained within a reasonable period, and there are no equally effective but less restrictive measures. However, the Court found that Article 63 TFEU precludes a Member State from requiring, for refunds, that the non-resident pension fund provide such a supervisory declaration as the sole means of proof of the substantive conditions.

CJ judgment on the VAT treatment of factoring fees (*Kosmiro*, C-232/24)

On 23 October 2025, the CJ delivered its judgment in the case *Kosmiro* (C-232/24), which deals with the VAT treatment of commission and fees arising from factoring services.

A Finnish company, A Oy (Kosmiro), provided factoring services through assignment of receivables (receivable transfers to factoring company) or factoring through pledge (receivable remains with principal). In the latter case, the receivable is used by the factoring company as collateral for the financing provided to the principal (the factoring company 'finances' the principal's invoices). The applicant charges a financing commission (depending on the payment term) and an arrangement fee for its services. The Finnish tax authorities initially treated parts of these fees as VAT exempt, but Kosmiro disputed this, prompting a preliminary ruling from the Finnish court. The main question was whether these fees fell within the VAT exemption for credit services or constituted VAT taxable debt collection services.

The CJ ruled that, for VAT purposes, the financing commission and the arrangement fee are to be seen as remuneration for one singly supply consisting of VAT taxed debt collection. For this purpose, it is not relevant if the factoring is executed through assignment of receivables or pledge. Regarding the latter, the CJ held that the financing - which on a standalone basis should be VAT exempt - should be seen as the consequence and extension of the debt collection.

2. Direct Taxation

Case Law

CJ judgment upholds General Court's dismissal of action seeking partial annulment of EU Minimum Tax Directive (*Fugro NV v Council*, C146/24 P)

On 30 October 2025, the CJ delivered its judgment in the case *Fugro NV v Council* (C146/24 P) where it dismissed an appeal against the order of the General Court of 15 December 2023, which found inadmissible an action seeking the partial annulment of the EU Minimum Tax Directive (Council Directive (EU) 2022/2523).

Fugro NV, a company established in the Netherlands and taxed under the Dutch tonnage tax scheme, brought an action before the General Court seeking partial annulment of Directive 2022/2523. Fugro claimed that the Directive, by subjecting certain shipping income to top-up tax, undermined the benefit of the national tonnage tax scheme, which had previously been approved by the European Commission as compatible State aid. On 15 December 2023, the General Court dismissed the action as inadmissible, holding that Fugro was not individually concerned by the Directive within the meaning of Article 263 TFEU.

On appeal before the CJ, Fugro argued that the General Court had erred in law in its interpretation of the concept of 'individual concern' within the meaning of the second limb of the fourth paragraph of Article 263 TFEU. Fugro submitted that it formed part of a limited class of operators - those benefiting from Commission-approved tonnage tax schemes - whose acquired rights would be affected by the Directive.

In its judgment, the CJ upheld the General Court's order and rejected Fugro's appeal. To arrive at such conclusion the CJ first held that the General Court had correctly carried out a two-step analysis (determining, first, that Fugro was concerned by the Minimum Tax Directive only in its objective capacity and in the same way as any other economic operator and, second, that it did not belong to a 'limited class of persons'), while basing its assessments on relevant case law. On such basis, the CJ found that the General Court cannot be accused of having inferred, only from the fact that the Directive 2022/2523 is of general application, that Fugro is not individually concerned by that directive.

Second, the CJ rejected the argument that the General Court had adopted an incorrect definition of the concept of 'limited class of operators'. This on the basis that, in its assessment, that Court took account of the definition of that concept, as relied on before it (i.e., a class composed of the persons benefiting from the Dutch tonnage tax scheme under decisions of the Netherlands tax authorities, validated by the Commission), and established that the beneficiaries of a favourable tax scheme, such as that Dutch tonnage tax scheme, did not form such a 'limited class of operators'.

Third, the CJ rejected the arguments according to which the General Court erred in law in holding that Fugro did not form part of a 'limited class of operators' at the date of adoption of Directive 2022/2523. This on the understanding that persons benefiting from the Dutch tonnage tax scheme, and the appellant in particular, were not specifically targeted by Directive 2022/2523, and that the class of persons that benefited from the tonnage scheme and where potentially affected by Directive 2022/2523 was not made up exclusively of persons identified or identifiable at the date of adoption of that directive and could yet be extended after that date.

Accordingly, the Court found that Fugro had not shown that it formed part of a 'limited class of persons' for the purposes of the relevant case law. On such grounds, the CJ rejected Fugro's appeal in its entirely, upholding the General Court's order of 15 December 2023.

CJ judgment on whether a less beneficial tax treatment of inter vivos transfers of assets to foreign family foundations is compatible with the free movement of capital (*Familienstiftung*, C-142/24)

On 13 November 2025, the CJ delivered its judgment in the case *Familienstiftung* (Case C-142/24) which addresses the question of whether Member States' rules providing for a more favourable tax treatment of the transfer of assets to family foundations established on national territory vis-à-vis transfers made to similar entities established in other Member States of the EEA, are compatible with the free movement of capital under Article 40 of the EEA Agreement.

The case involved a family foundation (*Familienstiftung*) that was established in 2014 in Liechtenstein by a German resident (Ms Y) to benefit her descendants. At the time of the transfer, Ms Y was living in Germany, and under German law, this transfer of assets to the foundation was classified as a gift inter vivos, making it subject to German gift tax. The foundation notified the German tax authorities of its establishment and submitted a tax declaration, arguing that, as a family foundation, it should benefit from the more favourable treatment that German law grants to tax class I (i.e., beneficiaries with the closest personal relationship with the deceased or donor). The Foundation argued that the condition set out by German law under which this favourable tax treatment was limited to family foundation established 'on national territory' should not be taken into account as it compromised the free movement of capital within the meaning of Article 40 of the EEA Agreement. The German tax office disagreed with such a view and applied the less favourable tax class for determining the gift tax (class III, which does not consider the family relationship between the beneficiaries of the foundation and the founder) on the grounds that the foundation was not established on German territory. This resulted in a higher tax rate and a lower tax-free allowance for the foundation. The German tax office argued that the preferential tax treatment given to a family foundation established 'on national territory' was justified because such advantages would be offset by the disadvantages arising from the substitute inheritance tax, which is levied only from German family foundations and cannot be imposed on foreign family foundations.

After a rejected appeal, the foundation brought the matter before the Finance Court in Cologne (*Finanzgericht Köln*), which ultimately referred the case to the CJ. The referring court asked whether Article 40 of the EEA Agreement precludes national legislation which provides that, for the purposes of the taxation of a transfer of assets to a family foundation, a more favourable tax class is applied to national foundations subject to substitute inheritance tax than that applied to foreign family foundations, which are not subject to this latter tax.

In its judgment, the Court first assessed which fundamental freedom was applicable and found that that the legislation at issue predominantly affects the free movement of capital, with any restrictions on the freedom of establishment being an inevitable consequence of the former and not justifying an independent examination.

Second, the CJ assessed whether the German legislation created a restriction on the freedom of capital. In this regard, the Court found that, in the case at hand, the preferential tax treatment given to national foundations is apparent as enabling them to benefit from tax class I meant a reduction of the taxable amount subject to gift tax by way of an increased allowance and a preferential tax rate. It considered that such legislation has the effect of reducing the value of the property transferred to a non-resident family foundation and, second, enables a resident family foundation to have greater financial means at its disposal than those available to non-resident family foundations. On such basis, the Court concluded that the German legislation created a restriction on the movement of capital.

Third, the Court assessed whether the difference in treatment introduced by the legislation at issue related to situations which are objectively comparable. It found that, both resident and non-resident family foundations are in an objectively comparable situation. This because Germany exercises its power to impose taxes irrespective of the place where foundations are situated, and because the differential treatment arises from a factor without any connection to the place where the family foundation was set up.

Fourth, the CJ examined whether the German legislation could be justified by an overriding reason in the general interest, such as the need to preserve the coherence of the tax system. In this regard, the Court found that by providing that only resident family foundations, which are subsequently subject to substitute inheritance tax, may benefit from the preferential tax-class treatment, the configuration of that tax advantage reflects a logical symmetry, as that advantage is offset by a specific tax charge, relating to the same tax and the same taxpayer. On such bases, the Court accepted that there is a direct link between the tax advantage and the corresponding tax charge which could justify the difference in treatment.

Finally, the Court examined whether the German rules are proportionate. It first found that the potential increase or decrease of the assets of a foundation, as well the uncertainties as to the amount to be levied by means of the substitute inheritance tax, cannot call into question the appropriateness of the German legislation. Second, it found that limiting the tax advantage to cases where Germany can later tax the foundation's assets does not go beyond what is necessary to achieve the objective. Finally, the CJ noted that the legislation at issue appears to be compliant with the proportionality *stricto sensu* test. This because limiting the grant of a more favourable tax class to situations where the transfer of assets to a family foundation can give rise to later taxation by way of substitute inheritance tax appears proportionate in the light of the measure objective, and also because nothing indicates that, assessed over time, the application of the legislation at issue would systematically give rise to a significantly higher tax burden for transfers of assets to a non-resident family foundation.

On those grounds, the CJ concluded that that the German legislation at issue is compatible with the free movement of capital under Article 40 of the EEA Agreement, provided that it complies with the principle of proportionality.

CJ judgment on whether activities pursued by employees in third countries should be considered when determining which Member State's social security legislation is applicable under Regulation 883/2004 (*GKV-Spitzenverband*, Case C-743/23)

On 11 December 2025, the CJ delivered its judgment in the case *GKV-Spitzenverband* (C-743/23). The case concerns the interpretation of Article 13(1) of Regulation (EC) No. 883/2004 on the coordination of social security systems read in conjunction with Article 14(8) of Regulation No. 987/2009, specifically regarding the concept of a 'substantial part of the activity' for workers who perform employment activities across several Member States (Switzerland being considered as one of them), and third countries. In essence, the case examines whether work performed in third countries must be considered when determining the applicable social security legislation under EU coordination rules.

The case involved an individual residing in Germany who was a full-time employee of a Swiss - based entity between 1 December 2015 and 31 December 2020. During that period, the individual worked 10.5 days per quarter in Switzerland, 10.5 days per quarter from his home in Germany and the remainder in a third country. The individual informed GKV-Spitzenverband, the German designated institution under Regulation No. 987/2009, that less than 25% of his activities were performed in Germany. Nonetheless, the GKV-Spitzenverband considered that German social security legislation was applicable and therefore, it issued an A1 certificate. This on the grounds that when considering the activities carried out only in Member States, 50% of the individual's activity took place in Germany.

In disagreement with such interpretation, the individual brought an action before the *Sozialgericht* (Social Court, Germany), claiming that activities performed in third countries should also be considered when determining which Member State's social security legislation is applicable under Regulation (EC) No. 883/2004. The *Sozialgericht* sided with the individual and annulled the decisions pursuant to which the A1 certificates were previously issued. GKV-Spitzenverband appealed this judgment before the Landessocialgerich für das Saarland (Court of appeal, Saarland, Germany), which referred the case to the CJ, asking whether for purposes of Article 13 (1) Regulation (EC) No. 883/2004 read in conjunction with Article 14(8) of Regulation No. 987/2009 all activities of an employee, including activities performed in third countries, must be taken into account when assessing whether a substantial part of the activity is pursued in the Member State of residence.

In its judgment, the CJ first analysed the wording, context and objectives of the relevant provisions and held that Article 14(8) of Regulation No. 987/2009, which refers to 'all the activities' of the worker, contains no linguistic or structural indication that the assessment should be limited to activity carried out only in Member States. The Court noted that this interpretation is reinforced by multiple language versions of the provision, all of which confirm an unrestricted reading.

Examining the broader context, the CJ emphasised that Regulation No. 883/2004 aims to ensure that persons are subject to only one social security legislation and that the applicable legislation must reflect their actual and objective employment situation. In the Court's view, excluding activity performed in third countries would distort this assessment and create a legal fiction contrary to the regulation's purpose. The CJ further noted that including thirdcountry activity does not undermine the system's functioning.

Practical concerns about verification were dismissed, as institutions can request documentation from the employer under established cooperation obligations. Applying these principles to the case, the CJ indicated that if the applicant did indeed perform only 16% of his total work in Germany, he did not pursue a substantial part of his activity in his Member State of residence, meaning that Swiss social security legislation would apply under Article 13(1)(b).

Considering the foregoing, the CJ ruled that Article 13(1) of Regulation No. 883/2004, read in conjunction with Article 14(8) of Regulation No. 987/2009, requires all activity - whether performed in Member States or in third countries - to be considered when determining whether a substantial part of the worker's activity is pursued in the Member State of residence.

CJ judgment on the interpretation of the requirement for workers to 'provide for the maintenance of a child' for the purposes of benefiting from a family allowance in respect of his spouse or registered partner's child (*Jouxy*, Joined Cases C296/24 to C307/24)

On 18 December 2025, the CJ delivered its judgment in the cases *Jouxy* (Joined Cases C296/24 to C307/24), which concern the interpretation and evidentiary requirements of the concept of 'providing for the maintenance' of a child under Article 45 TFEU, Article 67 of Regulation (EC) No 883/2004, and Article 7(2) of Regulation (EU) No 492/2011.

The cases were referred by the Luxembourg Cour de cassation and relate to the eligibility of frontier workers for family allowances in Luxembourg in respect of children of their spouse or registered partner, with whom they do not have a child-parent relationship. The applicants, who reside in Belgium, Germany, or France but work in Luxembourg, challenged the refusal by the Caisse pour l'avenir des enfants (CAE) to grant family allowances for the children of their spouse or partner, on the ground that such children were not considered 'members of the family' under Luxembourg law. The referring court sought clarification on whether the EU law provisions mentioned above must be interpreted as meaning that the condition for the grant to a non-resident worker, in the Member State of employment, of a family allowance for the child of his or her spouse or registered partner (namely, that that worker is required to 'provide for the maintenance' of that child), is satisfied solely by the fact that they share the same domicile, or if other objective factors must be taken into account in order to establish the existence of such maintenance.

The CJ first noted that, according to settled case law, a non-resident worker may receive payment of a State benefit in respect of a social advantage not only for his own child, but also for the child of his spouse or registered partner, to whom that worker is not related, where that worker provides for the maintenance of that child. It further found that the family allowance at issue constitutes both a social security benefit falling within the family benefits referred to in Article 3, (1)(j) of Regulation 883/2004, and a social advantage, within the meaning of Article 7(2) of Regulation 492/2011, to be recognized to both national and non-resident workers.

Second, the Court found that in the present case, the CAE, had rightly refused the family allowance to non-resident workers in respect of the children of their spouse or registered partner on the ground that the those workers did not provide for the entire maintenance of those children. In this regard, the CJ noted that the freedom of movement for workers must be interpreted broadly and that the concept of 'family member' of a frontier worker included the spouse or partner with whom the Union citizen has entered into a registered partnership, direct descendants who are under 21 years of age or who are dependents, and direct descendants of the spouse or partner. The Court also noted that where there is a common domicile between the non-resident worker and the child of the latter's spouse or registered partner, that objective factor is sufficient in principle in itself to demonstrate that the requirement relating to the maintenance of that child is satisfied. In this regard, the Court clarified that the common domicile does not necessarily have to be shared on a full-time basis, and that the national courts cannot require the non-resident worker to provide further proof that it contributes to the daily expenses or to the satisfaction of the special needs of the child concerned. Furthermore, it noted that where there is no common home in particular because of the child's studies, it must be possible to consider other objective factors of a certain stability. The CJ further clarified that the existence of a maintenance obligation on the part of the biological parent does not preclude the frontier worker from being regarded as providing for the child's upkeep.

On such basis, the Court found that the national courts may refuse to grant the family allowance only in exceptional circumstances where it is apparent that that worker has made false declarations or does not, in reality, participate in any way in the expenses connected with the maintenance of the child. It therefore concluded that the EU law provisions at issue must be interpreted as meaning that the requirement to 'provide for the maintenance' of a child, is satisfied where there is a family community between that worker and the biological or adopted child of his spouse or registered partner, which is characterized by the existence of a common home for the same worker and this child.

CJ judgment on whether duplicative notary's fees in cross-border inheritance are compatible with the free movement of capital (*Attal et Associés*, C-321/24)

On 30 October 2025, the CJ delivered its judgment in the case *Attal et Associés* (C-321/24). The case concerns the compatibility of French national legislation which provided that the remuneration of a French notary is to be calculated on the basis of the total gross assets of the estate, including assets located outside of France, with the free movement of capital.

The case involved, an individual (BC) who inherited an estate from her sister, who lived in Belgium. The estate included movable and immovable property located in both France and Belgium. The succession was opened before a Belgian notary, who prepared a declaration of succession covering all assets and charged fees based on the total gross assets of the estate. Under French Law, and for the purpose of calculating French taxes relating to the succession, BC was also required to use a French notary (Attal et Associés) to draw up a similar declaration of succession in France. The French notary also calculated fees based on the total gross assets of the estate, including the assets located in Belgium. BC subsequently paid inheritance tax both in France (calculated solely on the movable and immovable assets situated in such country) and Belgium (calculated on all the assets, but reduced by the taxes paid in France, in accordance with Article 10(b) of the Franco-Belgian Treaty).

Following an application by the French notary to the registrar of the *tribunal judiciaire de Paris* for a certificate of verification of costs in order to have formally assessed, inter alia, its fees for drawing up the declaration of succession, BC challenged the certificate drawn up by the registrar. BC requested the Paris tribunal to draw up a new certificate where the remuneration of the French notary is calculated on the basis of the assets located in France and not the assets of total estate. BC further requested a reimbursement of the difference between the fees already paid in advance.

In this context, the *tribunal judiciaire de Paris* asked the CJ whether the free movement of capital must be interpreted as precluding legislation of a Member State under which the fees of a notary whose services an heir is required to use, in certain circumstances, to draw up the declaration of succession provided for by national law are calculated on the basis of the total gross assets of the estate including property situated in that Member State and in another Member State, and not only on the basis of the gross assets corresponding solely to property situated in the first Member State, without taking into account the fees paid by the heir in return for the declaration of succession drawn up by a notary in the second Member State, which were also calculated on the basis of the total gross assets of the estate.

In its judgment, the CJ first confirmed the crossborder nature of the succession, noting that the estate included assets located in both France and Belgium and, therefore, it falls within the scope of the free movement of capital. The Court then held that the involvement of a French notary, whose fees are calculated on the basis of the total gross assets of the estate, is inseparable from the requirements of French tax law, the Franco-Belgian Treaty and the resolution of certain other questions relating to inheritance tax and registration charges. This because the declaration of succession must list all assets to enable the French authorities to determine inheritance tax correctly. The CJ emphasised that the French method for calculating notaries' fees applies identically to purely domestic and crossborder estates, meaning that it does not discriminate between situations involving foreign assets and those confined to France. While acknowledging that crossborder successions may generate additional notarial costs - because a second declaration must also be drawn up in Belgium - the CJ outlined that these additional burdens arise solely from the parallel exercise of tax competences by two Member States and, therefore, cannot be considered restrictions on capital movements. The CJ reiterated that disadvantages resulting only from the coexistence of different national tax systems fall outside the scope of the free movement of capital as long as they are nondiscriminatory.

Considering the foregoing, the CJ ruled that the French legislation at issue, which bases the French notary's remuneration on the total gross assets of the estate regardless of asset location and without regard to Belgian notarial fees, did not restrict the free movement of capital.

CJ judgment on whether a national income tax on additional income earned by producers of electricity from renewable sources is compatible with EU Law (*Braila Winds*, C-391/23)

On 16 October 2025, the CJ delivered its judgment in the case *Brăila Winds* (C-391/23) which discusses the compatibility of Romanian legislation imposing an 80% tax on additional income earned by electricity producers from renewable sources, while exempting producers using fossil fuels and biomass.

Brăila Winds SRL, a Romanian subsidiary of the Engie group, operates a wind power plant in Romania. Following the introduction of Law No 259/2021, Brăila Winds was required to pay an 80% tax on income exceeding an electricity price fixed by the national legislature, whereas fossil fuel and (from 2022) biomass producers were exempt. Brăila Winds paid the tax, then challenged the relevant administrative decree and tax returns before the Romanian tax authority (ANAF), which rejected its complaints. Brăila Winds then brought an action before the Curtea de Apel București (Court of Appeal, Bucharest), arguing that the tax was discriminatory, breached principles of fiscal neutrality, legal certainty, and legitimate expectations, and constituted unlawful State aid. The national court referred four questions to the CJ for a preliminary ruling. First, the national court asked the CJ whether the Romanian law, which imposes a high tax only on certain electricity producers (mainly renewables) while exempting others (fossil fuels and biomass), constitutes unlawful State aid or discrimination under EU law. Second, it questioned whether this tax violates the freedom of establishment, the freedom to provide services, and the right to property. Third, the court asked if the tax effectively restricts the freedom to set electricity prices, contrary to Directive 2019/944 and, fourth, whether it conflicts with EU environmental principles and climate neutrality goals set out in Article 191(2) TFEU and Regulation 2021/1119.

In its judgment, the CJ found the first and second questions inadmissible. This because, in the case of the first question, the information provided by the referring court was insufficient to determine whether the Romanian legislation can constitute 'State aid'. In the case of the second question, its inadmissibility was grounded on the lack of a cross-border element to assess compatibility with the EU fundamental freedoms, and the Court's lack of competence to assess the application of the right to property under the Charter in light of national legislation which does not entail a direct implementation of EU law. On the third question, the CJ held that the Directive 2019/944 does not harmonize Member States' tax systems in this area and, therefore, does not preclude national legislation imposing a tax on income from electricity sales above a certain price for renewable producers. Furthermore, subjected to the verification of the referring court, the CJ noted that the Bulgarian tax pursues, at least in part, a budgetary objective and is not intended to regulate the supply of electricity or to ensure the protection of consumers or that of free competition. The CJ further found that the Romanian tax does not amount to fixing the selling price or restricting the freedom to set prices, as its effect on prices is remote and uncertain.

Regarding the fourth question, the CJ ruled that Article 191(2) TFEU sets general environmental objectives and cannot be directly relied upon by individuals to exclude national legislation unless implemented by specific EU acts, which was not the case here.

Furthermore, the Court noted that Regulation 2021/1119 requires Member States to adopt strategies to achieve climate neutrality by 2050 but does not prohibit temporary national measures such as the Romanian tax. The CJ found that such a tax, limited in time and scope, does not in itself prevent the Member State from meeting its climate obligations under EU law. On this basis, the Court considered that the latter Regulation must be interpreted as not precluding the national legislation adopted by Romania.

Based on the above, the CJ ruled that neither Directive 2019/944 nor Regulation 2021/1119 preclude national legislation imposing a tax on additional income earned by producers of electricity from renewable electricity and, in the latter case, even if fossil fuel producers are exempted.

General Court's judgment on an individual's request to access confidential documents of the Code of Conduct Group on Business Taxation (*Nouwen v Council*, T-255/24).

On 10 September 2025, the General Court delivered its judgment in the case *Nouwen v Council* (T-255/24). The case concerns the admissibility of an action for annulment of Decision SGS 24/00008 of the Council by which the latter had refused to grant access to certain documents related to a revision of the Code of Conduct in the field of business taxation.

An individual had submitted an access request to the Council seeking the disclosure e-mails and annexes exchanged between 2019 and 2023 concerning the reform of the Tax Code of Conduct. The Council had initially stated it could not identify the requested documents. After further clarification by the individual, including pointing to a specific Council e-mail account used for Code of Conduct Group communications, the Council per Decision SGS 24/00008 located 75 relevant e-mails and granted full access to 55, refused access to 19 entirely and granted partial access to one, relying on exceptions provided by Regulation (EC) 1049/2001 relating to protecting international relations and financial, monetary or economic policy. Thereafter, the individual brought an action before the General Court seeking annulment of the decision of the Council.

The questions that the applicant brought before the General Court were whether the Council: (i) had incompletely or carelessly implemented the access request or provided inadequate reasoning in that respect, (ii) had unjustifiably refused access under the exceptions for protection of international relations and of financial, monetary or economic policy, including whether those exceptions actually applied to the specific documents at issue and whether the Council's reasoning was sufficient, and (iii) should have granted partial access to documents refused in full, rather than concluding that partial access was impossible.

The General Court first held that the Council had not failed to conduct an adequate search for documents. The General Court then examined the refusal of access and clarified that, although Member States may object to disclosure of documents originating from them, the Council must verify whether their objections fall prima facie within the exceptions provided by Regulation 1049/2001. After examining the content of the documents, the General Court found that most of the e-mails genuinely contained sensitive material relating to thirdcountry tax regimes, potential negotiation strategies, and future policy directions, meaning that disclosure could reasonably foreseeably undermine international relations or destabilize economic or fiscal policy. However, three documents (e-mails from Italy on 23 November 2021, Austria on 15 October 2021, and the redacted portion of the Lithuanian e-mail of 24 November 2021) contained no sensitive information and had even partly been made public elsewhere, therefore, the exceptions could not apply. The General Court further held that the Council had committed a manifest error in finding that partial access to the remaining documents was impossible, since many nonsensitive passages - editorial comments, procedural notes, general remarks - could easily be separated from sensitive parts.

Accordingly, the General Court annulled the Council's decision in part, requiring it to provide full access to the three nonsensitive e-mails and to reassess the remaining documents to grant partial access to all nonexempt sections.

Developments

Cyprus Presidency of the Council releases its program with focus on promoting the EU tax decluttering and simplification agenda

Cyprus has released the programme for its Presidency of the Council of the European Union which runs from 1 January to 30 June 2026. Regarding economic and financial affairs, the Cyprus Presidency notes that enhancing the EU's financial autonomy and reinforcing its global economic position will be the guiding principles of the Presidency in steering ECOFIN's agenda. In the area of Taxation, the Cyprus Presidency will focus on promoting the EU tax decluttering and simplification agenda, as part of the broader efforts to strengthen competitiveness. Furthermore, the Cyprus Presidency aims to progress legislative work towards a modernised Customs Union.

Regarding taxation, the Cyprus Presidency will continue efforts to combat tax evasion, aggressive tax planning and harmful tax competition. In the area of direct taxation, it will, inter alia, work on updating the EU list of non-cooperative jurisdictions, in line with the principles of tax good governance, as reflected in the Council Conclusions of February 2025. The Presidency will initiate work on the upcoming recast of the Directive on administrative cooperation in the field of taxation (DAC), in line with the Council Conclusions of March 2025. Building on the simplification agenda, the Cyprus Presidency stands ready to open discussions on the upcoming omnibus package to streamline direct taxation rules and enhance the competitiveness of EU businesses. It will also advance the discussions of the Intergovernmental Negotiating Committee on the United Nations Framework Convention on International Tax Cooperation, aiming to reach a balanced and inclusive outcome that reflects both EU values and global consensus.

Efforts will be undertaken to continue work on the revision of the Tobacco Taxation Directive and to conclude the technical work regarding the revision of the proposal for the VAT rules on distance sales of imported goods and import VAT. The Presidency will continue to efficiently address the cross-sectoral issues relating to the Carbon Border Adjustment Mechanism (CBAM) Regulation, including assessing the legal, financial, economic, and political feasibility of proposed solutions as well as examining relevant proposals and initiatives, with a view to reaching a General Approach. It also will stand ready to begin work on upcoming proposals including the proposal on the revision of the Regulation for administrative cooperation and combating fraud in the field of VAT.

Concerning the Customs Union, the reform of the EU Customs Union constitutes a priority for the Cyprus Presidency, where it will aim to conclude trilogue negotiations, reaching a political agreement, on the proposed Regulation establishing the Union Customs Code and the European Union Customs Authority (Customs Reform Package).

European Commission releases report on tax gaps to support competitiveness and fairer tax systems

On 11 December 2025, the European Commission released its 2025 Mind the Gap report which offers a comprehensive assessment of tax gaps in the EU and its 27 Member States. The Mind the Gap report is flanked by two technical reports estimating tax gaps for Value Added Tax (VAT) and Corporate Income Tax (CIT). The findings, presented in the Mind the Gap report along with the complementary research in the VAT Gap report and the CIT Gap report, reveal critical insights into tax compliance challenges and policy choices, which impact fiscal sustainability and competitiveness. They distinguish between tax gaps that emerge due to taxpayer non-compliance, such as tax evasion and avoidance, and policy choices - namely tax expenditures, such as tax reliefs or concessions. The reports are available here.

European Commission closes infringement procedures against eight Member States for failure to transpose the EU Minimum Tax Directive

On 11 December 2025, the European Commission announced the closure of infringement procedures initiated against Spain, Cyprus, Portugal, Lithuania, Estonia, Greece, Poland, and Latvia, regarding the transposition of the EU Minimum Tax Directive (Directive 2022/2523). The procedures were initially opened due to these Member States' failure to notify the European Commission of their national measures to implement this Directive. The closure of the procedures follows the Commission's confirmation that the relevant Member States have now complied with their notification obligations. This development marks the end of a series of actions pursued by the Commission throughout 2024 and 2025, including referrals to the CJ and the issuance of reasoned opinions. The Commission's decision confirms that the Minimum Tax Directive is now fully transposed across the EU.

Discussions on the taxation of ultra-high-net-worth individuals held at EU Parliament

On 11 December 2025, FISC, the European Parliament's Subcommittee on Tax Matters organized a hearing on the taxation of ultra-high-net-worth individuals. During the hearing, testimonies were provided by representatives from the European Commission, EU Tax Observatory, Tax Foundation Europe and the OECD. The presentations and debates held during the hearing are available here and the background document provided by the European Parliamentary Research Service on the subject is available here.

European Commission adopts DAC8's Implementing Regulation

On 26 November 2025, the Implementing Regulation 2025/2263 (IR) was published in the Official Journal of the EU. This IR amends Implementing Regulation 2015/2378 as regards the standard forms and computerised formats for the mandatory automatic exchange of information (AEOI) on reportable crypto assets, the communication of the yearly assessment, and the list of statistical data to be provided by Member States under Council Directive 2011/16/EU (DAC). The IR supports the application of the mandatory AEOI on crypto assets under Council Directive (EU) 2023/2226 (DAC8), by introducing detailed rules for ensuring that the European Commission can assess the effectiveness of the AEOI among Member States on these items.

Specifically, under the IR, Member States are required to submit to the European Commission by 1 May of each year an annual assessment regarding the AEOI during the previous calendar year, including practical results achieved, organization and resources deployed, litigation in this area, and the effective use of the data by the tax authorities. Additionally, the IR prescribes a standardized computerized format for the mandatory AEOI.

The IR is binding and directly applicable in all Member States, which must apply it as of 1 January 2026.

Council updates cooperation agreements with Switzerland, Liechtenstein, Andorra, Monaco and San Marino

On 20 November 2025, the Council approved updated EU tax cooperation and transparency agreements with five non-EU countries, namely Switzerland, Liechtenstein, Andorra, Monaco and San Marino. The updated agreements reflect new OECD standards in the field, expanding the automatic exchange of financial account information between the EU and those countries to include electronic money products and digital currencies.

The new protocols also revise the framework for cooperation between partners on the prevention of tax fraud and tax evasion. In the case of Switzerland, the framework includes the recovery of value-added tax (VAT) claims. In addition, the protocols strengthen due diligence and reporting requirements, allowing tax administrations to act faster and more effectively on the information they receive.

The updated agreements entered into force on 1 January 2026. It has been announced that the EU will also seek to now deepen cooperation in tax matters even further with Switzerland.

European Commission publishes second evaluation of the DAC

On 19 November 2025, the European Commission published its second evaluation of Council Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC), accompanied by a Commission Staff Working Document. The evaluation assesses the effectiveness, efficiency, coherence, relevance, and EU added value of the DAC and its amendments up to and including DAC6. The evaluation covers the period from 2018 to 2023.

The evaluation concludes that the DAC has proven to be an effective and efficient instrument for administrative cooperation in taxation within the EU. While significant progress has been made, further efforts are required to simplify the framework, harmonise its application, improve the penalty regimes and enhance the use of data. Based on previous communications, a first draft of the DAC recast proposal is expected to be published in Q2 2026.

For a more detailed analysis of the key findings of the DAC evaluation, as well as the Commissions intended actions, please see our dedicated web post on this topic.

European Parliament adopts resolution on the BEFIT proposal

On 13 November 2025, the European Parliament adopted a resolution expressing a positive opinion on the European Commission's proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT).

Upholding the position adopted by the Economic and Monetary Affairs Committee on 24 September 2025 (see EU Tax Law Alert 212), The resolution includes several amendments to the original BEFIT Proposal, including the introduction of: (i) a significant economic presence clause for tax allocation, (ii) a royalties limitation rule for companies forming part of a BEFIT group, (iii) rules to prevent companies from shifting profits to foreign subsidiaries based in low-tax jurisdictions without real economic activity, (iv) accelerated tax write-offs for assets supporting EU climate, social, digital and defence objectives, and (v) a possibility to use subsidiary losses to reduce parent company taxable income, with certain limitations.

Furthermore, the Resolution calls on the Council to consult the Parliament in case of any changes or substantial amendments to the approved text.

The European Parliament's resolution is not legally binding, but it signals broad support for the initiative and highlights the importance of continued dialogue between the Parliament and the Council as the legislative process on BEFIT advances. If adopted by the Council, Member States will be required to implement BEFIT into national law by 1 January 2028, with the new rules applying from 1 July 2028.

European Parliament's subcommittee on tax matters discusses digital taxation

On 16 October 2025, FISC, the European Parliament's Subcommittee on Tax Matters organized an interparliamentary committee meeting to discuss experiences on the taxation of digital activities at national and international level. Representatives of the European Commission, national tax administrations, economists, as well as members of national parliaments and the European parliament participated in the meeting. Arguments for and against the implementation of a digital services taxes (DSTs) were discussed. Moreover, specific aspects related to DSTs were debated, including their rate, tax base and certain legal challenges they raise. The materials concerning this FISC meeting can be accessed here.

Council adopts conclusions on tax incentives for the Clean Industrial Deal

On 13 October 2025, the Council of the European Union adopted conclusions supporting the use of tax incentives to advance the Clean Industrial Deal (CID), a central initiative aimed at building a competitive, climate-neutral industrial base in the EU. The conclusions were approved by the Council at its meeting held on 10 October 2025 and respond to a Commission recommendation on the topic, published on 2 July 2025.

In its conclusions, the Council stresses the need to reignite economic dynamism in Europe and to strengthen competitiveness and resilience. In that vein, the conclusions welcome the Commission's recommendation and the policy options it sets out to help achieve the objectives of the Clean Industrial Deal. At the same time, the Council highlights the need to keep tax incentives simple for companies and tax authorities, in particular given the differences in tax systems across the EU. The Council notes that tax incentives should be seen as one possible element to be considered by each Member State as part of an evolving policy mix to support the development of clean energy, industrial decarbonisation and clean technology. Further, the conclusions underline that flexibility in their application is key. They stress that Member States (some of which already have similar measures in place) are free to design, implement and apply tax incentives in accordance with their individual situations, taking into account potential budgetary impacts. Finally, the Council encourages Member States, with the support of the Commission, to evaluate, if appropriate, the effectiveness of tax incentives they have implemented and to exchange good practices with other Member States.

ECOFIN confirms EU list of non-cooperative jurisdictions for tax purposes

On 10 October 2025, the ECOFIN published its conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes and confirmed that Annex I of such a list remains unchanged. Therefore, this annex continues to include the same 11 jurisdictions as in the previous update on 18 February 2025, namely American Samoa, Anguilla, Fiji, Guam, Palau, Panama, Russia, Samoa, Trinidad & Tobago, the U.S. Virgin Islands, and Vanuatu.

However, Annex II of this list, which tracks jurisdictions with pending commitments, has been updated. Vietnam has fulfilled its commitment to implement country-by-country reporting standards for multinational enterprises and will be removed from the document. Furthermore, new commitments have been recorded from Greenland, Jordan, and Morocco to improve their implementation of these standards, as well as from Montenegro to enhance its automatic exchange of financial account information and exchange of tax information on request.

European Parliament makes calls for legislative simplification and removal of tax barriers for EU businesses

On 9 October 2025, the European Parliament (EP) published a resolution titled ‘The role of simple tax rules and tax fragmentation in European competitiveness’ (2024/2118(INI)), outlining suggestions for reforms in the tax domain to boost the EU’s competitiveness, while simultaneously continuing to address tax avoidance and tax evasion (the ‘Resolution).

The Resolution anticipates and contributes to the ongoing legislative endeavours and proposals on tax simplification already announced and expected from the European Commission in early 2026. The Resolution includes several possible options to address tax fragmentation and complexities, enhance tax simplification, digitalization, and EU competitiveness, accommodate the ongoing OECD/G20 two-pillar discussions, and overcome existing tax barriers in the internal market.

The proposed ideas and calls for action would, according to the European Parliament, reduce the cost of compliance for EU business, notably for small and medium-sized enterprises. Among others, the following ideas and calls for action are put forward by the resolution:

- A call for action for the Commission to create an EU Tax Data Hub to facilitate the automatic exchange of tax information and ease administrative burdens for both taxpayers and tax authorities;
- A call for tax declaration procedures for savings and investment accounts to be streamlined to encourage greater citizen participation in capital markets and stimulate investment;
- An encouragement to the Commission to assess the potential advantages and disadvantages of introducing a European 28th regime as a means to reduce tax barriers for EU businesses;
- A call for the Commission to evaluate the cost-effectiveness of tax incentives for research and development (R&D) and innovation, focusing on their impact in strengthening the global competitiveness of EU businesses; and
- A request to the Commission to consider targeted measures to address the specific tax challenges faced by frontier workers and digital nomads.

3. State Aid

Case Law

CJ dismisses appeals against General Court's orders and confirms Commission's decisions on Madeira Free Trade Zone

On 13 November 2025, the CJ delivered two judgments in the field of State aid which dismissed the appeals filed by several companies against two General Court's orders upholding the Commission's decision of 4 December 2020 on the aid scheme SA.21259 (2018/C) (ex2018/NN) implemented by Portugal for the Madeira Free Zone (MFZ) - Scheme III.

The first judgment was delivered in the case *Renco Valore and Others v Commission* (C-806/23 P) and concerned an appeal filed by Renco Valore SpA, Seopult LTD and Grapevine Investimentos e Serviços, Lda., against the General Court's order of 18 October 2023 (in joined cases T588/22 and T660/22). The second judgment was delivered in the case *AFG v Commission* (C-13/24 P) and concerned an appeal filed by AFG, S. A. against the General Court's order of 27 October 2023 (in case T-722/22).

The above judgments concern the Commission's decisions of 4 December 2020, which found that the implementation of the MFZ aid scheme (Scheme III) in Portugal is not in line with the Commission's State aid decisions of 2007 and 2013. The objective of the approved measure was to contribute to the economic development of the outermost region of Madeira through tax incentives. That is why the Commission decisions made the granting of tax reductions conditional on only benefiting companies that create jobs in Madeira and on applying the tax reductions to activities effectively and materially performed in Madeira. However, the Commission's investigation showed that the tax reductions were applied to companies that have made no real contribution to the development of the region, including jobs created outside Madeira (and even the EU), in breach of the conditions of the decisions and EU State aid rules. As a consequence, the Commission required Portugal to recover the incompatible aid (plus interest) from the companies not meeting the conditions.

AG Opinion on the applicability of procedural guarantees under national law to State Aid recovery procedures (*Utiledulci*, C-545/24)

On 18 December 2025, AG Biondi delivered his Opinion in the case *Utiledulci* (Case C-545/24) which deals with the issue of whether procedural guarantees foreseen under Member States' domestic laws are applicable to the execution of a European Commission's decision to recover unlawful State aid.

The AG Opinion also concerns the Commission's Decision of 4 December 2020 by which, the Madeira Free Zone aid scheme was held incompatible with the EU State aid rules (see development above). Based on such a decision, the tax authorities of Portugal initiated tax enforcement proceedings against Utiledulci in 2023 to recover the aid granted to it under that scheme. Utiledulci lodged a complaint against this procedure on the grounds that it did not provide for the possibility of requesting its suspension in accordance with Portuguese law (under national law, the collection of a tax debt shall be suspended in the context of a tax enforcement procedure in the event of payment by instalments or in the event of a complaint, appeal at first or second instance or objection to the enforcement on the grounds of the illegality or recoverability of the debt to which the enforcement relates). Utiledulci's complaint was rejected by the Portuguese tax authorities because the Commission notice required them to recover the aid after the expiry of the eight-month period. In disagreement with this denial, Utiledulci appealed before the *Tribunal Administrativo e Fiscal do Funchal*, which referred the case to the CJ asking whether the provisions of national law which provide the taxpayer with certain procedural guarantees permitting under certain conditions, the suspension of the tax execution proceedings must be disapplied where, in the absence of an ad hoc procedure provided for by national law, that procedure has been initiated in order to prevent unlawful and incompatible with the internal market State aid and the deadline set out in the Commission's decision ordering its recovery has expired.

In his Opinion, the AG highlighted case law under Article 16 of the EU State Aid Regulation, which requires a swift and effective recovery of unlawful State aid to restore the situation prior to its payment. He noted that this entails that beneficiaries must repay the aid along with default interest, and Member States must ensure repayment within the deadline set by the Commission - in this case, eight months. Furthermore, the AG noted that if a Member State encounters obstacles to recovery, it may request an extension from the Commission, providing justification. He further considered that recovery should follow national procedures but these must allow for the immediate and effective enforcement of the Commission's decision, with the consequence that any domestic rules that hinder this must be disregarded. The AG criticized Portugal's suspension system, noting that it undermines the goal of promptly restoring the pre-aid situation and prolongs the beneficiaries' undue competitive advantage. The AG notes that it is for the referring court to determine whether requiring security, such as a bank guarantee, for suspension could further delay recovery. In the AG's Opinion, economic hardship or losses from repayment cannot justify delays, nor does the absence of a specific national recovery system matter. In his view, a suspension must be supported by arguments challenging the validity of the Commission's decision.

In conclusion, the AG held that a general suspension of recovery contradicts the objectives of eliminating unlawful aid and ensuring the immediate and effective implementation of recovery decisions.

4. VAT

Case Law

CJ judgment on VAT liability of a managing partner (*Česká síť*, C-796/23).

On 11 December 2025, the CJ delivered its judgment in the case C-796/23 (*Česká síť*).

The Czech tax authorities treated a group of four legal entities as a single taxable person for VAT purposes (partnership). Each entity provided internet services to its own group of customers. The authorities considered that taken together as a partnership, the combined turnover exceeded the turnover threshold for the small enterprise exemption. Česká síť s.r.o. was designated as the responsible partner under Czech law and assessed for VAT on the combined turnover of all entities. The question arose whether it is compatible with EU VAT law for one partner to be held liable for the VAT due on all transactions of the partnership, even if other partners dealt with customers in their own name.

The CJ ruled that national law cannot make a managing partner liable for VAT on services supplied independently by other partners. A 'taxable person' under EU law is defined by independent economic activity carried out in one's own name and on one's own account, regardless of internal agreements.

CJ judgment on triangular transactions with four parties (*Ms Kljucarovci*, T-646/24)

On 3 December 2025, the General Court delivered its judgment in the case *Ms Kljucarovci* (T-646/24).

MS, a Slovenian company, purchased goods from German suppliers and resold them to Danish companies, applying the VAT simplification for triangular transactions. The goods were shipped directly from Germany to a fourth party in the supply chain. This fourth party in the supply chain was established in Denmark (ANC Group). A tax audit revealed that the Danish companies were shell entities that did not pay VAT. As a result, the Slovenian tax authority denied the application of the simplification measure and assessed VAT against MS. In dispute was whether physical delivery to the intermediary is required and whether knowledge of fraud affects entitlement to the simplification.

The General Court held that the VAT Directive does not require the goods to be physically delivered to the third party in the chain; delivery to the fourth party in the chain in the same Member State is sufficient to meet the conditions for triangular transactions. The awareness of the second party in the supply chain of the delivery destination does not affect the simplified triangulation scheme. However, the Court confirmed that national authorities must deny the simplification measure if it is established that the taxable person knew or should have known that the transaction was part of VAT fraud.

CJ judgment on the VAT exemption for credit negotiation services (*Versãofast*, T-657/24)

On 26 November 2025, the General Court delivered its judgment in the case *Versãofast* (T-657/24).

Versãofast is a licensed Portuguese credit intermediary working with several banks, including Caixa Geral de Depósitos (CGD). Its services include identifying potential mortgage customers, explaining available loan options, collecting and verifying documentation, submitting applications to banks and managing communications throughout the approval process. Versãofast receives a commission only when a mortgage contract is ultimately concluded.

Further to a tax audit, the Portuguese authorities denied Versãofast's right to deduct input VAT. They argued that the services provided to CGD were VAT exempt credit-negotiation activities, meaning Versãofast should not have deducted any VAT related to those services.

The General Court ruled that the VAT exemption for credit negotiation applies to the activities of a credit intermediary that facilitates the conclusion of credit agreements even if the intermediary cannot act on behalf of the bank or influence the terms of the loan. In this case, Versãofast's activities formed an integrated chain of mediation steps that enable customers to access mortgage loans. The fact that clients are free to choose any bank, and that Versãofast cannot decide or negotiate the loan terms, does not change this classification. Nor does the success-based remuneration model; rather, it underscores the intermediary nature of the service.

CJ judgment on evidence requirements for VAT exemption on intra-Community supplies (*Flo Veneer*, C-639/24)

On 13 November 2025, the CJ delivered its judgment in the case *Flo Veneer* (C-639/24).

Flo Veneer sold oak logs from Croatia to a Slovenian purchaser and treated the transactions as VAT exempt intra-Community supplies. During an audit, the Croatian tax authority found formal defects in the supporting documents (e.g., missing dates in CMRs) and denied the exemption. It did not dispute that the goods were actually transported to Slovenia. Flo Veneer submitted invoices, transport documents, and signed statements but failed to meet the specific documentation referred to in Article 45a of the VAT Implementing Regulation.

The CJ ruled that a VAT exemption cannot be refused solely because the supplier does not hold the documentation as listed in those provisions. The documentation list creates only a rebuttable presumption, and it does not limit other means of proof. National tax authorities must assess all evidence submitted to determine whether the goods were actually dispatched from one Member State to another.

CJ judgment on pro bono services (*Zlakov*, C-744/23)

On 23 October 2025, the CJ delivered its judgment in the case *Zlakov* (C-744/23).

The case concerns a Bulgarian lawyer who provided legal services free of charge (pro bono) to clients in financial difficulty. Since the case was won, the Court awarded the lawyer a fee, to be paid by the opposing unsuccessful party, based on applicable Bulgarian legislation. The lawyer requested that 20% VAT be added to this fee, arguing that it constituted consideration for VAT purposes.

The CJ ruled that such services, when remuneration is awarded by law, constitute a VAT taxable supply. The fact that payment depends on the uncertain outcome of the case does not change the nature of the transaction. The statutory fee ordered by the Court creates a direct link between the service and consideration. Therefore, VAT is due on the awarded fee even if the client did not pay and the amount comes from the opposing party.

CJ judgment on tooling in the automotive supply chain (*Brose Prievidza*, C-234/24)

On 23 October 2025, the CJ delivered its judgment in the case *Brose Prievidza* (C-234/24).

The case involved three companies: Brose Prievidza (Slovakia, the final customer), IME Bulgaria (manufacturer), and Brose Coburg (Germany, ordering the tooling). Brose Prievidza purchased automotive components from IME Bulgaria. The components were manufactured by IME Bulgaria using special tooling ordered and owned by Brose Coburg, a related German company. Brose Coburg later sold the tooling to Brose Prievidza. Bulgarian VAT was charged on this supply as the tools were sold within Bulgaria. The Bulgarian tax authorities denied Brose Preividza a refund of the Bulgarian VAT charged on the tooling, arguing that the Bulgarian VAT was incorrectly charged as the supply of the tooling was part of a zero-rated intra-Community supply (like the components).

The CJ ruled that Brose Prievidza is entitled to recover the Bulgarian VAT paid on the tooling. The supply of tooling must be treated as a separate domestic supply in Bulgaria, independent of the later intra-Community supply of parts. Because the tooling never physically left Bulgaria, it could not qualify as an exempt intra-Community supply. Therefore, the Bulgarian VAT invoiced by Brose Coburg was correctly applied. The Court also emphasized that the supplies did not constitute a single composite supply as they had their own economic purpose. Finally, the CJ found no evidence that the supplies were artificially separated for VAT advantage as questioned by the national court.

CJ judgment on the deemed supplier rules in cross-border electronic services (*Xyrality*, C-101/24)

On 9 October 2025, the CJ delivered its judgment in the case *Xyrality* (C-101/24).

The German developer, Xyrality GmbH, made mobile games available through an Irish app store. End users downloaded the games for free, but could make paid in-app purchases, which were processed and billed by the app store. Following the purchase, the end customer received an order confirmation by electronic mail, containing the logo of the app store and stating that a purchase had been made from Xyrality.

Xyrality claimed that the Irish platform is the (deemed) supplier for VAT purposes based on the commissionaire fiction in the VAT directive. This would mean that no VAT was due in Germany by Xyrality on its deemed supply to the Irish platform as the supply would be VAT taxable in Ireland based on the B2B VAT place of supply rules. The German tax authorities disagreed.

The CJ ruled that the commissionaire fiction applied to the electronically supplied services via an app store if the app store acts in its own name but on behalf of the supplier. This also applied before the introduction of the deemed supplier provision for app stores as of 1 January 2015). The place of supply between Xyrality and the app store is determined according to the general VAT rules for B2B services. As such, the VAT on Xyrality's services is due in Ireland. The CJ also confirmed that Xyrality is not liable for German VAT merely because it is mentioned on order confirmations, as the services are supplied to non-taxable persons and there is no risk of lost tax revenue.

AG Opinion on the VAT treatment of fees for unauthorized use of protected works (*Credidam*, T-643/24)

On 3 December 2025, the Opinion of AG Martin Y. Pérez De Nanclares was published in the case *Credidam* (T-643/24).

CREDIDAM, a Romanian collective management organization, claimed a Romanian guesthouse had communicated protected musical works to the public without a licence. Under Romanian law, unauthorized use triggers a fee that is tripled compared to the standard remuneration. CREDIDAM included VAT in its claim, whereas the guesthouse argued that the amounts were not subject to VAT. The national court referred questions to the General Court regarding whether such fees, including the surcharge for unauthorized use are subject to VAT.

AG Martin Y Pérez De Nanclares opined that that the obligation to tolerate the communication of protected works to the public, in exchange for a fee, qualifies as a supply of services for consideration. This applies even when the user has not obtained the required license beforehand. The AG considers that both the basic fee and the surcharge for unauthorized use may be regarded as a consideration for VAT purposes. However, this is subject to assessment by the national court based on the legal basis and purpose of the surcharge.

AG Opinion on the applicability of the special VAT scheme for travel agents to excursions combined with goods (*Voyages-café*, C-565/24)

On 27 November 2025, the opinion of AG Szpunar was published in the case *Voyages-café* (C-565/24).

P-GmbH & Co. KG organized promotional excursions, offering participants bus transport, meals, and a tourist program for a small fee. During these trips, the company sold goods, and the excursion fee did not cover the full cost of transportation services. The shortfall was offset by revenue from goods sales. The German tax authorities denied full VAT deduction on transport costs and questioned whether the special VAT scheme for travel agents, under which only the margin (difference between purchase and sale price) should be taxed, applied.

AG Szpunar opined that the special VAT scheme for travel agents does not apply in this specific context. This is caused by the fact that the excursion's fees charged to the travellers do not cover the full cost of the transportation services purchased by P-GmbH & Co. KG from other taxable persons and, further, the costs of transportation services purchased by P-GmbH & Co. KG are in part also a component of the price of the goods supplied by P-GmbH & Co. KG. Applying the special scheme here would conflict with the VAT neutrality principle and the right to deduct input tax. The excursions and the supplies of goods should instead be treated under general VAT rules, according to the AG.

AG Opinion on incorrect invoicing in intra-Community acquisitions (*Finanzamt Österreich v D GmbH*, T-638/24).

On 29 October 2025, the opinion of AG Martín y Pérez de Nanclares was published in the case *Finanzamt Österreich v D GmbH* (T-638/24).

D GmbH, an Austrian company, purchased goods from Austrian suppliers and used its Austrian VAT ID for deliveries to other EU Member States. The invoices incorrectly included Austrian VAT, even though the supplies were exempt as intra-Community transactions. The Austrian tax authority taxed the corresponding intra-Community acquisitions, leading to a dispute over whether this was permissible when VAT had already been invoiced in error.

AG Martín y Pérez de Nanclares opined that although the VAT is payable when shown on an invoice, this does not prevent the simultaneous taxation of intra-Community acquisitions. Incorrect invoicing of VAT for exempt supplies does not alter the obligation to levy VAT on acquisitions in the Member State that issued the VAT ID. Therefore, both obligations can coexist, and invoice corrections do not retroactively eliminate the tax liability resulting from the intra-EU acquisition of the goods.

AG Opinion on services by an association to its members (*Digipolis*, T-575/24)

On 22 October 2025, the opinion of AG Martin Y Pérez De Nanclares was published in the case *Digipolis* (T-575/24).

Digipolis was created as an intermunicipal association by several Belgian cities. Digipolis provided ICT and telematics services both to its members and to third parties. Belgium applies an administrative practice whereby a commissioning association and its members are treated as a single entity for VAT purposes. As a result, services supplied by the association to its members are treated as internal transactions and fall outside the scope of VAT.

In 2010, additional public bodies (such as childcare and urban-development organisations) joined Digipolis as members. Following a tax audit, the Belgian tax authorities argued that

VAT should have been applied on the services supplied to these newly joined members, which Digipolis disagreed with.

AG Martín y Pérez de Nanclares opined that Belgium's emanation theory is incompatible with EU VAT law when applied to an association that independently carries out an economic activity. Such an association must be treated as a taxable person, and services for remuneration supplied to its members constitute taxable transactions. National law cannot reclassify them as internal, non-taxable operations unless there should be a VAT group, which was not the case.

5. Customs Duties, Excises and other Indirect Taxes

Case Law

CJ judgment on the last sale for export to the EU customs territory in the context of successive sales (*Grupo Massimo Dutti SA*, C-500/24)

On 30 October 2025, the CJ delivered its judgment in the case of *Grupo Massimo Dutti SA* (C-500/24) concerning whether, in the case of two sales prior to their introduction into the EU customs territory, the first sale can be considered the sale for export for customs valuation purposes.

Massimo Dutti is a company involved in the distribution of fashion products. In 2014 and 2015, it imported into the EU customs territory a variety of these products which had been manufactured in Asian countries. Prior to the importation, the items were sold by the manufacturers to a company established outside the EU customs territory (the first sale) and subsequently, resold to Massimo Dutti (the second sale). Following the second sale, most of the products were imported into the EU customs territory, where they were either placed on the EU market or exported to third countries. Upon import, the customs value was declared using the transaction value method, taking into account the invoice price from the first sale.

The Spanish tax authority took the position that the first sale had not been concluded for export to the EU customs territory and that the value of the second sale should be taken as the customs value upon import. Consequently, it issued customs duty assessment notices in respect of the imports in 2014 and 2015. Massimo Dutti brought an action against that decision before the Audiencia Nacional (National High Court, Spain). Following the proceedings, the Tribunal Supremo (Supreme Court, Spain) referred questions to the CJ for a preliminary ruling.

The CJ considered that the fact that products which are the subject of a sale are imported into the EU customs territory, can serve as an adequate indication that they were sold for export to the EU customs territory. However, pursuant to the customs legislation applicable in 2014 and 2015, when subsequent sales take place prior to the introduction of goods into the EU customs territory, it must be demonstrated to the customs authorities that any sale earlier than the last sale took place for export to the EU customs territory. It is not sufficient to merely show at the time of the earlier sale that the products will be transported to the EU and introduced into the EU customs territory. Instead, it must be substantiated beyond any reasonable doubt that those products were intended to be marketed in that territory at the moment of that first sale.

Consequently, the CJ considered that when, at the time of an earlier sale, the commercial destination of the products was unknown and their planned introduction into the EU customs territory was still pending a decision on their final destination, this is not sufficient to prove that such a sale took place for the export of those products to the EU customs territory. For example, if the products are released for free circulation but, at the time of the earlier sale, it had not yet been determined where those goods would ultimately be marketed.

In light of the foregoing, the CJ concluded that when goods are subject to two sales prior to their introduction into the EU customs territory, the first sale cannot be considered to have taken place for the export of those goods to the EU customs territory if, at the time of the first sale, it had only been established that those goods were intended to be introduced into the EU customs territory but it had not yet been established where those goods would ultimately be marketed.

CJ judgment on the relevant point in time for the purpose of determining the customs value (*Compañía de Distribución Integral Logista SA*, C-348/24)

On 30 October 2025, the CJ delivered its judgment in the case of *Compañía de Distribución Integral Logista SA* (C-348/24) (Logista) concerning whether the customs value of certain products should be determined on the basis of the sale that led to their introduction into the EU customs territory and placement under the customs warehousing procedure, or on the basis of a subsequent sale under which they were released for free circulation in the EU customs territory.

Corporación Habanos sold cigars to Altadis (first sale) and transported them to Spain, where they were stored under the customs warehousing procedure. Subsequently, some of the cigars were sold to tobacconists within the EU customs territory. Before the sale to the tobacconists took place, Altadis transferred ownership of the cigars to Logista, which then released them for free circulation (import) and subsequently sold and supplied them to the tobacconists (second sale). Upon import, the customs value of the cigars was established on the basis of the first sale.

With regard to these imports, the Spanish Tax Authority took the position that the first sale could not be taken into account for the purposes of determining the customs value and, consequently, that the customs value was to be established on the basis of the second sale. As such, it issued assessment notices to Logista for the imports where the first sale was taken into account, which were challenged by Logista. Following legal proceedings, the Tribunal Supremo (Supreme Court, Spain) referred questions to the CJ for a preliminary ruling.

The CJ considered that the customs debt had been incurred at the time of acceptance of the customs declaration upon import. Consequently, the amount of import duties applicable is determined at the time of acceptance of the customs declaration related to the products concerned. In cases where products are first placed under the customs warehousing procedure and imported at a later point in time, the declarant may declare the customs value of the products concerned based on the circumstances prevailing at the time they were placed under the customs warehousing procedure.

As such, the CJ considered that, in the context of subsequent sales where the first sale takes place prior to the placement of the products under the customs warehousing procedure and the second sale takes place when the products are imported, the customs value of those products upon import into the EU customs territory may be determined on the basis of the transaction value at the time of the first sale.

Furthermore, the CJ clarified that the customs authorities of an EU Member State may determine on a case-by-case basis whether a proof of origin - used for the purpose of applying tariff preferences to imported products - that has been submitted after the expiry of its period of validity, may be used to establish whether particular goods are eligible for preferential tariff treatment. However, these customs authorities are not obliged to accept such proof of origin, even if an expired proof of origin was previously used for the application of a preferential tariff treatment to other products before the expiry of its period of validity under the same quota.

Developments

Final text confirming the 12-month delay and the simplification of the EUDR, published in the Official Journal of the EU

On 26 November 2025, the European Parliament adopted various amendments to the European Commission’s proposal to simplify the EU Deforestation Regulation (‘EUDR’).

On 10 December 2025, a provisional agreement was reached with the European Council. Subsequently, on 18 December 2025, the Council formally adopted the revision, and the adopted text was published on 23 December 2025 in the Official Journal of the EU. The EUDR sets out mandatory due diligence requirements for operators and traders dealing with certain products that are placed on the EU market, made available on the EU market, or exported from the EU, to ensure that these products are free from deforestation and have been produced in compliance with the relevant legislation of the country of production.

According to the adopted amendments, economic operators will have an additional year to prepare to comply with the EUDR, meaning that the requirements set out in the EUDR will apply starting 30 December 2026 for regular undertakings and 30 June 2027 for micro- or small-sized undertakings. Other changes include, among others, a reduced administrative burden for downstream undertakings and the exclusion of Chapter *ex* 49 (including printed books and other paper products) from the scope of the EUDR. Furthermore, the classification of the size of an undertaking will no longer be based solely on the total balance sheet, net turnover and average number of employees, but also on the specific data related to the activities subject to the EUDR. This change will allow more operators to benefit from the simplifications available to micro-, small and medium-sized undertakings.

Publication of amended CBAM Regulation and several implementing acts

On 17 October 2025, the amended Regulation (EU) 2025/2083 as regards simplifying and strengthening the Carbon Border Adjustment Mechanism (CBAM) was published in the Official Journal of the EU. The amendments entered into force on the third day following publication and are directly applicable in all Member States. This marked the final step in CBAM formal adoption process, signed by the European Parliament and by the Council.

Following this official publication, on December 2025 the European Commission released several legal and technical documents on CBAM, further specifying the framework for its definitive phase starting from 1 January 2026. The documents released include several implementing and delegated acts with annexes addressing key operational aspects of CBAM's scope to downstream goods, strengthen anti-circumvention measures and support decarbonization objectives.

Proposal to protect the Union steel market

On 7 October 2025, the European Commission presented a proposal for a Regulation aimed at protecting the EU steel sector. The proposal seeks to address global overcapacity and rising import restrictions, which threaten the competitiveness and long-term viability of the EU steel industry. Compared to the current safeguarding measures in place, the proposed Regulation would introduce reduced import quotas, an increased out-of-quota tariff rate and additional reporting requirements for importers of steel products. The measures laid out in the proposed Regulation are expected to replace the current safeguard measures on steel, which are set to expire on 30 June 2026. The key aspects of the legislative proposal are discussed below:

- Duty-free imports of steel products from non-EEA countries will be subject to an import quota of 18.3 million tons a year, which is a reduction of 47% compared to the 2024 import quotas. The quotas are distributed across product categories based on their share of total imports between 2022 and 2024. The import quotas will be administered on a quarterly basis, and unused tariff quota volumes will not be carried over to the next quarter.
- When duty-free imports of a steel product within a product category exceed the allocated import quota for that product category, a 50% customs duty applies to all imports exceeding the import quota. This out-of-quota tariff is an increase from the current safeguard measures, where the out-of-quota tariff is set at 25%.
- The proposal includes additional reporting requirements upon import. At the time of importation, importers should provide evidence such as a mill certificate identifying the country of 'melt and pour' of the steel used in the production of the steel product.

The legislative proposal follows the ordinary legislative procedure, meaning that it must be formally adopted by the Council of the EU and the European Parliament and may be subject to changes during this legislative procedure.

Get in contact

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