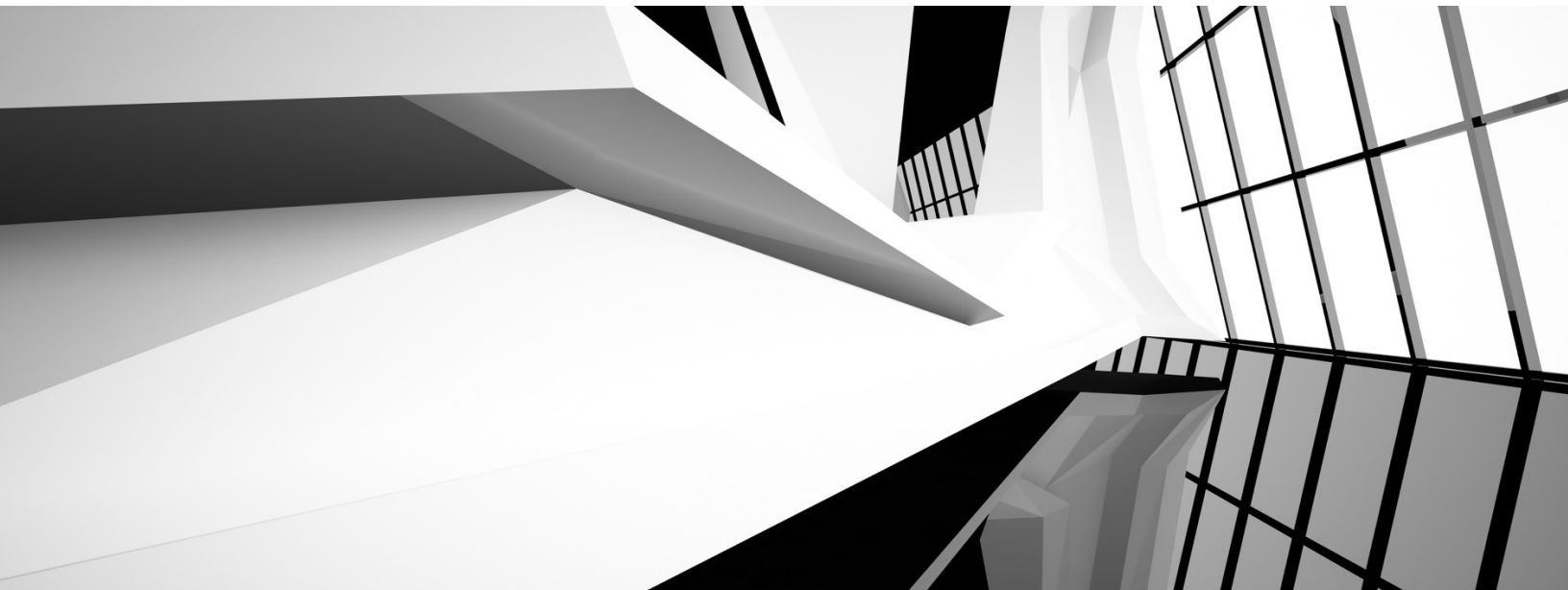


Praxio Spotlight

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DAC6 Directive : Breach of lawyer's professional secrecy?



The Luxembourg Bar has recently expressed its opposition to the bill implementing DAC6 into Luxembourg law. According to Mr François Prüm, departing chairman of the Luxembourg Bar Association, the bill affects the professional secrecy obligation of lawyers.

DAC6 of 25 May 2018 aims at enabling Member States to identify new risks of tax evasion more quickly and take measures to block harmful arrangements. It requires intermediaries who develop or become aware of a "potentially aggressive" tax planning scheme to report such scheme to the tax authorities. Intermediaries means tax advisers, accountants, bankers, trustees and lawyers.

It should be noted that DAC 6 leaves the door open to certain exemptions from the reporting obligations. Each Member State can take the necessary measures to grant intermediaries the right to be exempted from the obligation to provide information concerning a cross-border arrangement if such obligation to report is contrary to the professional secrecy applicable under the national law of that Member State. For example, in implanting DAC6 into their national laws Germany and Austria have provided for a full exemption for lawyers from the reporting obligation. However, in Luxembourg, the bill thus far does not mention such exemption. If the bill is enacted as it is, it would have as consequence the violation of the lawyer's professional secrecy obligation, which might undermines the legal profession as a whole since lawyers' non-disclosure privilege is a corner stone of their profession.

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