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## **Opinion Statement CFE 1/2026 on the European Commission Public Consultation on Rule of Law Reports 2026**

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CFE Tax Advisers Europe is the European association of tax institutes and associations of tax advisers. Founded in 1959, CFE brings together 33 national tax institutes, associations and tax advisers' chambers from 24 European countries. CFE was the initiator of the Global Tax Advisers Platform through which it is associated with more than 600,000 tax advisers worldwide. CFE is part of the EU Transparency Register no. 3543183647-05.

We would be pleased to answer any questions you may have regarding our Opinion Statement. For further information, please contact Eduardo Gracia Espinar, Chairman of the Professional Affairs Committee or Aleksandar Ivanovski, Director of CFE at [info@taxadviserseurope.org](mailto:info@taxadviserseurope.org). For further information regarding CFE Tax Advisers Europe please visit our web page <http://www.taxadviserseurope.org/>

CFE notes that growing rule-of-law challenges arise in the EU from the expansion of tax law enforcement, AML and tax administration powers, in particular in relation to access to taxpayer data, mandatory disclosure of tax related information and cross-border information exchange.

CFE fully supports the underlying aim of the legislation at European level, and implemented at Member State level, which pursues legitimate policy and public interest objectives, however, we also note that appropriate safeguards and effective judicial remedies must be in place and equally functional across Member States. If such safeguards are not in place, this would risk undermining legal certainty, proportionality and effective judicial protection.

Recent case law of the European Court of Human Rights (ECtHR) confirms that tax enforcement is subject to judicial scrutiny of the Court and fully within the fundamental-rights architecture of the European Convention of Human Rights:

- In *Latorre Atance v. España* (2025)<sup>1</sup>, the European Court of Human Rights found a violation of Article 6 ECHR, the right to a fair trial, and the following: conflicting judgments by the same Chamber of the Audiencia Nacional in closely related assignment-of-liability proceedings (one of which held the applicant liable for third-party tax debts); failure to justify divergent outcomes or address decisive submissions on validity of payments; breach of the principle of legal certainty and insufficient reasoning impaired the fairness of the proceedings. The Court found the domestic judgment to be based on manifestly inconsistent reasoning, undermining legal certainty and effective judicial protection. The Court stressed that arbitrariness in judicial decision-making in tax matters is incompatible with the right to a fair trial and the Convention.

Leading tax practitioners have underlined that this judgment confirms a structural point: tax disputes are not exempt from the core requirements of coherence, foreseeability and reasoned judicial control. Where courts fail to exercise real and consistent scrutiny over tax authorities, the judicial system itself becomes part of the arbitrariness.<sup>2</sup>

- In *Ferrieri and Bonassisa v. Italy* (2026)<sup>3</sup>, the Court found a violation of Article 8 ECHR where tax authorities were granted wide and effectively unchecked discretion to access detailed banking data without sufficient legal limits, independent oversight or effective judicial review. The Court reaffirmed that even in taxation, wider powers must be based on clear and foreseeable judicial oversight, i.e. accompanied by proportionate safeguards and effective judicial remedies.

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<sup>1</sup> Application no. [33818/22](#); judgment ECtHR of 18 December 2025

<sup>2</sup> Gloria Marín Benítez (Uría Menéndez), "Las amistades (nada) peligrosas. Epílogo, a propósito de *Latorre Atance v. España*," FiscalBlog 22 December 2025; Commentary outlining the ECtHR's Article 6 finding and its implications for legal certainty and judicial reasoning in tax liability disputes, available at <https://fiscalblog.es/las-amistades-nada-peligrosas-epilogo-a-proposito-de-latorre-atance-c-espana/>

<sup>3</sup> Applications nos. [40607/19](#) and [34583/20](#); judgment ECtHR of 8 January 2026

Together, these judgments articulate a clear European standard: tax administrations are subject to effective rule of law constraints in exercise of their legitimate public duties. Administrative efficiency without effective judicial control erodes the rule of law. CFE therefore recommends that the Rule of Law Report systematically assess whether Member States ensure, in tax and related administrative domains:

- clear legal bases and published guidance that limit discretion in practice;
- necessity and proportionality testing applied operationally, not only in abstract;
- data-minimisation, storage limitation, access controls and independent oversight;
- effective judicial review and interim relief where fundamental rights are at stake; and
- timely and coherent implementation of final national and Strasbourg judgments.

Where EU standards evolve (e.g. data protection, procedural rights), the Rule of Law cycle should also examine how Member States ensure legal certainty for pre-existing international cooperation instruments and administrative regimes. Tax administration is a rule-of-law domain where abstract principles become operational reality for businesses, professionals and individuals. The Rule of Law cycle offers a unique opportunity to ensure that, as enforcement tools become more powerful and data-driven, the legal infrastructure of safeguards, remedies and judicial control evolves in parallel.

### **Are There Any Horizontal Developments Relevant For The Rule Of Law In The Area Of Checks And Balances And Effective Judicial Protection?**

A significant horizontal development concerns the rapid expansion of administrative enforcement powers in tax and related domains, in particular in relation to data access, mandatory disclosures and cross-border information exchange. These developments increasingly affect fundamental rights and market functioning, yet procedural safeguards and remedies are not evolving at the same pace.

Recent ECtHR case law confirms that tax enforcement falls fully within the scope of core rule-of-law guarantees. In *Latorre* (2025), the Court held that manifestly inconsistent judicial reasoning in tax liability cases violates Article 6 ECHR by undermining legal certainty and effective judicial protection. In *Ferrieri* (2026), the Court found a violation of Article 8 ECHR where tax authorities enjoyed wide and effectively unchecked discretion to access detailed banking data without sufficient safeguards or independent oversight. These judgments establish that administrative efficiency cannot displace proportionality, foreseeability and effective judicial control.

## Are There Any Concerns Regarding The Effectiveness Of Remedies And Judicial Review?

From the perspective of cross-border operators and intermediaries, remedies in highly technical administrative domains often remain fragmented, slow, or formally available but practically ineffective. This creates a structural asymmetry: obligations and sanctions operate immediately and across borders, while access to review is delayed, uncertain, or lacks suspensive effect.

In such conditions, compliance becomes defensive rather than lawful. Businesses and intermediaries over-collect and over-report “to de-risk,” even where the legal basis is unclear or contested. This undermines legal certainty and produces uneven market conditions across the Single Market.

CFE recommends that the Rule of Law Report systematically examine whether Member States ensure, in tax and related administrative domains:

- clear and foreseeable legal bases limiting administrative discretion in practice;
- operational application of necessity and proportionality;
- data-minimisation, storage limitation, access controls and independent oversight;
- effective judicial review, including interim relief where fundamental rights are at stake;
- timely and coherent implementation of final national and Strasbourg judgments;
- Courts specialising in tax matters; and
- “Tax courts” that are organically and functionally independent from the tax authorities and offer a two-instance level to taxpayers to guarantee an independent and specialised review of tax matters, which are technically very complex by nature.

The Rule of Law cycle should therefore assess not only the formal existence of remedies, but their practical effectiveness in domains characterised by large volumes of automated or cross-border data flows, highly technical complex matters in an ever-evolving tax world, and severe financial or reputational consequences for non-compliance.

## Rule of Law Issues Related to Professional Privilege and Broader Structural Issues Related to Tax Procedure and Enforcement/ Tax Administration

Recent EU case law confirms that professional privilege is a structural component of the rule of law, that even disclosure of due diligence reports can be circumventing these guarantees. As confirmed in the judgment C-432/23 *Ordre des Avocats du Barreau de Luxembourg*, the Court of Justice held that Article 7 of the Charter of EU Fundamental Rights necessarily guarantees the confidentiality of legal advice, both as regards its content and its very existence, and that, save in exceptional circumstances, individuals must be able legitimately to trust that their lawyer will not disclose, without their consent, that they have sought his or her services.

Any obligation that compromises this principle, including information requests under administrative cooperation regimes (due diligence reports etc.), therefore constitutes an interference with the right to respect for communications protected by Article 7 of the Charter. The judgment confirms that even in the context of tax enforcement and anti-fraud cooperation, the core guarantees of confidentiality and trust in legal advice remain structurally protected.

By way of example, the Tax Tribunals of the Spanish Ministry of Finance (*Hacienda*), have established a criterion which states that, for the purposes of Spanish tax audits, authorities can request extensive information from a due diligence file if the request is properly motivated and the information has clear tax relevance. Spanish first instance courts treat all such requests as lawful and tax-relevant, provided they meet basic administrative principles.<sup>4</sup>

This tension with the Court of Justice judgment in *Ordre des Avocats du Barreau de Luxembourg* illustrates how expansive information-gathering powers are operationalised in practice. By treating broad due-diligence material as presumptively “tax-relevant” and therefore disclosable, provided that the request is formally motivated, the approach risks collapsing the distinction between what is useful to the administration and what is necessary and proportionate under fundamental-rights standards.

Read against the CJEU’s jurisprudence on Article 7 of the Charter, such an interpretation exposes a structural gap: legality is reduced to formal competence and generic relevance, while the substance of professional secrecy and the confidentiality of legal advice are left to be asserted by the taxpayer under threat of sanctions in the first instance that can only be revoked by a judge at a later stage. This dynamic exemplifies a wider rule-of-law concern in highly technical enforcement domains: the burden of proof and therefore protection of fundamental rights shifts from the State to the individual, and compliance becomes driven by risk aversion rather than by clear, foreseeable and rights-compliant law where tax authorities must abide by the law and respond for any liabilities incurred in case of a negligent performance of their duties towards taxpayers.

National enforcement mechanisms which penalise refusal to disclose information may collide with these EU standards. Effectively, some obligations which require the taxpayer to provide information in a tax audit/ tax inspection procedure which compromises professional secrecy, constitutes an interference with the right to respect for communications. As such, national rules must be interpreted so as to allow taxpayers to rely on professional secrecy, because the opposite would entail a breach of the criteria established by the Court of Justice in its judgment of 26 September 2024.

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<sup>4</sup> Resolución TEAC 00/04521/2022/00/00, 15/10/2025, available at: <https://serviciotelematicosext.hacienda.gob.es/TEAC/DYCTEA/criterio.aspx?id=00/04521/2022/00/0/1&q=s%3d1%26rs%3d%26rn%3d%26ra%3d%26fd%3d01%2f01%2f2024%26fh%3d07%2f11%2f2025%26u%3d%26n%3d%26p%3d%26c1%3d%26c2%3d%26c3%3d%26tc%3d1%26tr%3d%26tp%3d%26tf%3d%26c%3d2%26pg%3d>

This analysis illustrates a broader rule-of-law risk in highly technical administrative areas where enforcement tools are increasing in powers, but the safeguards are either unavailable or non-existent, the compliance is driven by fear of sanctions rather than by foreseeable law, which is a key element of a rules-based society.<sup>5</sup>

This issue is closely connected to the culture of tax inspection. The rule of law requires that tax administrations, and in particular audit services, operate as constructive components of a wider socio-economic system in which each actor plays a legitimate role: the taxpayer, the lawyer, the adviser, the accountant, and the tax inspector alike.

Structural features in some Member states that compromise impartiality, such as variable remuneration for inspectors linked to assessment outcomes, irrespective of subsequent court outcome, risk eroding neutrality and public trust. Combined with opacity of “audit and bonus reward for successful audit methodologies”, such incentives may place legitimate tax enforcement objectives in tension with fundamental rights and with the principle that public authorities must act independently, proportionately, and in good faith.

## Conclusion And Final Recommendations

The expansion of tax administration entails a corresponding shift in how the rule of law works in practice. As enforcement becomes increasingly data-intensive, automated, and cross-border, constitutional guarantees in relation to administrative enforcement should always prioritise protection of fundamental rights.

The case-law of the European Court of Human Rights and the Court of Justice establishes a clear normative framework: tax enforcement does not constitute an exception. Legal certainty, proportionality, professional secrecy, and effective judicial protection are critical in the Union legal order governed by the rule of law.

The EU’s Rule of Law cycle provides a unique institutional mechanism to ensure that the growth of administrative power is matched by an equivalent development of safeguards, oversight, and remedies. In technically complex areas such as taxation, enforcement powers must be exercised strictly within the judicial and oversight frameworks that preserve fundamental rights: such coherence strengthens the legitimacy of the Union’s legal order.

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<sup>5</sup> Eduardo Gracia Espinar and Nicole Ciferni (Ashurst LLP): “El alcance del secreto profesional de los abogados tributarios en España a la luz de la reciente jurisprudencia de la UE” / “The scope of professional secrecy of tax lawyers in Spain in light of recent EU case law.” (2025.)