FASTER Directive and GDPR Compatibility

To: European Commission & EU Member States' Ministries of Finance
Subject: GDPR considerations regarding the FASTER Directive (COM(2025)50)

Issue at a glance

The FASTER Directive introduces broad reporting obligations requiring certified financial intermediaries to collect and transmit detailed personal data of all final investors, including those not eligible for withholding tax relief. This includes sensitive data (e.g. TINs, dates of birth, addresses) and may be transmitted through the full chain of intermediaries. As outlined in the following pages, this raises serious concerns under the GDPR, in particular regarding:

- **Data minimization** – data is collected and shared beyond what is necessary for the Directive's objective;
- **Necessity and proportionality** – no sufficient justification for reporting all investors or for chain wide data transmission;
- **Risk exposure** – indirect reporting multiplies processing and transfer moments, increasing breach risks.

As a result, the Directive in its current form appears legally vulnerable from a GDPR and fundamental rights perspective, which may give rise to implementation uncertainty and litigation risk.

Legislative reality

It is recognized that the FASTER Directive has been formally adopted, and that its core reporting architecture is now fixed at EU level. Fundamental changes therefore cannot be achieved through implementation alone.

Call to the European Commission (Tax Omnibus)

We invite the European Commission to address these concerns in the context of the Tax Omnibus initiative, which aims to ensure EU tax legislation remains coherent, proportionate and aligned with fundamental rights, including data protection. FASTER provides a clear case for such review. Addressing this is not only a matter of policy coherence, but also of reducing legal vulnerability of the Directive under EU data protection law.

Call to Member States (implementation)

Within the available discretion, Member States can mitigate the identified risks in their national implementation. In particular, they are encouraged to:

- avoid indirect (chain-wide) reporting and favor direct reporting models;
- limit processing of personal data where not relevant for withholding tax relief;
- ensure implementation choices comply with data minimization, necessity and proportionality under the GDPR.

Closing

This note aims to support a balanced approach: achieving FASTER's objectives while safeguarding compliance with EU data protection standards while also strengthening the robustness and durability of the FASTER framework.

Management Summary

The FASTER Directive (COM(2025)50) seeks to streamline and secure the granting of withholding tax relief within the European Union. However, as adopted, the Directive raises substantial concerns regarding its compatibility with the General Data Protection Regulation (GDPR), in particular with the principles of data minimisation, necessity and proportionality as laid down in Article 5 GDPR, read in conjunction with Article 6(1)(c) and (e) GDPR and Article 52 of the Charter of Fundamental Rights of the European Union.

A central issue is the reporting model established by the Directive. Annex II requires certified financial intermediaries to report a comprehensive set of personal data relating to all final investors, including tax identification numbers, dates of birth and address details, irrespective of whether the investor is entitled to withholding tax relief or submits a refund claim. This obligation applies even where the underlying policy objective – the verification of lawful tax relief – does not require individual-level identification, in particular for investors who pay the maximum withholding tax rate by default.

The Directive further allows source Member States to rely on indirect reporting through the entire chain of certified financial intermediaries. This entails repeated transmission of the same sensitive personal data across multiple entities, thereby significantly increasing the number of processing and transfer moments and, correspondingly, the risks of unauthorised access and data breaches. No convincing justification is provided showing that this chain-wide transmission is necessary in order to achieve the Directive's stated objectives, especially where less intrusive alternatives, such as direct reporting, are available.

The analysis of the legislative history reinforces these concerns. The draft proposal COM(2023)324, on which the European Data Protection Supervisor based its opinion, differed in material respects from the final Directive. In particular, it did not provide for indirect chain-wide reporting and introduced a targeted exemption from reporting anti-abuse-specific information in lower-value cases. This reflects an earlier, more functionally constrained approach to data collection, aligned with specific enforcement purposes. The final Directive departs from that approach by mandating significantly more extensive and intrusive data processing, without a renewed necessity and proportionality assessment.

This evolution constitutes a material expansion of the scope and intensity of mandatory personal data processing under Union law. Yet no updated privacy impact analysis or explicit justification accompanies this shift. As a result, the earlier EDPS consultation cannot be assumed to cover the final architecture and risk profile of FASTER as adopted.

While certain mitigations may be conceivable at Level-2, the core reporting obligations – including the requirement to transmit full investor-level personal data through the entire intermediary chain – are embedded directly in the Directive itself. This limits the ability of implementing measures to restore compliance with the principle of data minimisation.

From a GDPR and rule-of-law perspective, the Directive therefore remains legally vulnerable. The case demonstrates the importance of renewed scrutiny where legislative negotiations result in a progressive expansion of data processing obligations beyond those originally assessed. A reconsideration of the chosen reporting architecture at Directive level is warranted to ensure that FASTER achieves its policy objectives while remaining compliant with EU data protection and fundamental rights standards.

Introduction

The FASTER Directive COM(2025)50 [1] has been adopted. The accompanying Level-2 measures have not yet been established, not even in draft form. Based on the current text, FASTER appears to be insufficiently compatible with the General Data Protection Regulation (GDPR) [2] on two essential points, in particular with Article 5 of that Regulation:

- **data minimisation** (Article 5(1)(c) GDPR);
- **necessity and proportionality** (Article 5(1)(a) and (c) GDPR), in conjunction with Article 52 of the Charter of Fundamental Rights of the European Union [3].

It follows that the processing of personal data resulting directly from obligations under Union law is lawful only if it can be based on Article 6(1)(c) or Article 6(1)(e) GDPR, and only insofar as that processing is **necessary for the specific and explicit purpose defined by the legislation**. In cases where processing is mandated at Union level, the Union legislator is required further to EU law to analyse and justify that the necessity and proportionality requirements are met [4].

Data minimisation

Annex II to the FASTER Directive requires, without further explanation or justification, that **all final investors** be reported by Certified Financial Intermediaries (CFIs). This also includes investors who do not submit a refund claim or who are not entitled to a refund of withholding tax.

Where these investors are natural persons, this requirement entails the reporting of a **broad range of identifying personal data** to the source Member State. This concerns not only financial data, but inter alia [5]:

- tax identification numbers (such as the Dutch BSN);
- dates of birth;
- (residential) addresses;
- in combination with data on shareholdings and dividend income.

These personal data are processed even though the intended purpose of FASTER – the lawful and efficient application of withholding tax relief – does not require individual identification for this category of all investors. Investors who do not submit a refund claim or who are not entitled to a withholding tax refund pay the maximum withholding tax rate.

The principle of data minimisation does not require the absolute exclusion of data processing, but rather a **differentiated approach**, under which the nature and scope of the personal data processed are aligned with the specific purpose pursued by the processing. For investors without a right to a refund, personal data could therefore be reported in **anonymised or aggregated form**, without undermining the objective of the Directive. The absence of such differentiation, or of any justification therefor, indicates that the principle of data minimisation has not been adequately applied.

Proportionality

Article 10(4) of the FASTER Directive provides that source Member States may opt to receive reporting indirectly, namely via the chain of CFIs. Annex II B explicitly prescribes that, even in the case of indirect reporting, the personal data of the final investor must be transmitted to the source Member State.

This implies that the same set of identifying personal data – including tax identification numbers, dates of birth and address details – is transmitted through **all intermediating CFIs**. As a result, the number of processing and transfer moments increases significantly. Each additional transfer moment increases the risk of data breaches,

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[1] Directive - 2025/50 - EN - EUR-Lex
[2] Regulation - 2016/679 - EN - gdpr - EUR-Lex
[3] EUR-Lex - 12012P/TXT - EN - EUR-Lex
[4] See for example 19-02-25_proportionality_guidelines_en.pdf
[5] See for example Annex II B in conjunction with article 10

unauthorised access and other misuse, without it being demonstrated that this increased risk is necessary to achieve the objective of the Directive.

In light of Article 52 of the EU Charter, it must be assessed whether this data processing:

- pursues a legitimate objective of general interest;
- is suitable for achieving that objective;
- is necessary, in the sense that no less intrusive alternative is available;
- and is proportionate in the strict sense.

In particular, the necessity test appears to be insufficiently substantiated, given that the intended objective – verifying the lawful granting of withholding tax refunds – can also be achieved via **direct reporting**, without the transmission of personal data through the entire CFI chain. The chosen architecture is therefore insufficiently proportionate in relation to the objective pursued.

Implicit reconstruction objective

In conjunction with the above, it is relevant that the Directive nowhere explicitly formulates, nor independently substantiates, as an objective that source Member States should be able to **reconstruct the full distribution of dividends and related withholding tax across the entire intermediary chain**. To the extent that such a reconstruction objective can be inferred from the chosen reporting architecture, an explicit necessity assessment and proportionality justification are lacking, for example in the recitals.

However, communications from DG TAXUD, in particular within the so-called "Large Group", indicate that such a reconstruction objective is indeed envisaged. The German MiKaDiv legislation serves as a model in this respect.

The absence of an explicit objective definition and necessity assessment in FASTER points to an implicit shift of purpose (function creep), which further underscores the lack of data minimisation and proportionality. This also affects principles of legal certainty and legislative transparency, which carry particular weight where Union law obligations have direct effect.

How did this situation arise?

Recital 32 of the FASTER Directive COM(2025)50 states:
"The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council and delivered an opinion on 8 August 2023."

The opinion of the European Data Protection Supervisor (EDPS) is publicly available [6]. Footnote 3 of that opinion indicates that the assessment was based on a draft version of the Directive, namely COM(2023)324 [7].

Analysis of COM(2023)324

It is not uncommon for the European Data Protection Supervisor to deliver an opinion on the basis of a draft legislative proposal. In the present case, this procedural circumstance is relevant for assessing the scope and limits of the privacy analysis undertaken. The draft proposal COM(2023)324 differs in several material respects from the final Directive COM(2025)50, in particular as regards the architecture and intensity of data reporting obligations.

First, the draft proposal did not provide for any mechanism of indirect reporting through the entire chain of certified financial intermediaries [8]. Accordingly, the multiplication of processing and transmission moments that arises from mandatory chain-wide reporting in the final Directive did not occur under COM(2023)324. As a

[6] 2023-0685_d2347_edps_opinion_en.pdf
[7] EUR-Lex - 52023PC0324 - EN - EUR-Lex
[8] See a.o. page 13 of COM92023324, under "What has to be reported?"

result, the proportionality concerns associated with extensive onward transmission of personal data through multiple intermediaries did not yet arise in the draft version.

Second, Article 9(2) of COM(2023)324 introduced an explicit reporting threshold, providing that certified financial intermediaries were not required to report the information referred to in Annex II, heading E, where the total dividend paid to the registered owner on the owner's shareholding in a company did not exceed EUR 1000.

Annex II, heading E of COM(2023)324 relates exclusively to information concerning the application of anti-abuse measures, namely data on holding periods around the ex-dividend date and information on non-settled financial arrangements involving the underlying shares. This heading does not contain identifying personal data such as name, tax identification number, date of birth or address, which are instead covered by headings B and C of Annex II.

The effect of Article 9(2) COM(2023)324 was therefore not that natural persons with small dividend amounts fell entirely outside the reporting obligations. Rather, the provision created a targeted exemption from the reporting of anti-abuse-specific information for cases involving limited dividend amounts. Identification of investors and reporting of dividend flows remained possible, but the contextual data necessary to assess certain abusive dividend-stripping schemes was structurally excluded for that category of cases.

This design choice has a meaningful implication for the interpretation of the objectives of the draft proposal. By explicitly exempting small-scale dividend situations from the reporting of anti-abuse information, the draft Directive accepted that reconstruction of dividend distributions from a comprehensive anti-abuse perspective would be incomplete for a significant subset of cases. In the absence of any recital or provision indicating that full chain reconstruction for anti-abuse purposes nonetheless formed an overriding objective, this suggests that such comprehensive reconstruction was not conceived as a primary or autonomous aim of COM(2023)324.

However, it should be noted that COM(2023)324 itself also did not explicitly address the data minimisation concerns identified above. While the draft proposal adopted a more functionally constrained reporting model, it did not provide a substantive justification for the collection and transmission of identifying personal data relating to all final investors, including those without a refund entitlement. In particular, the proposal did not explain why less intrusive alternatives – such as anonymised or aggregated reporting for maximum-rate investors – would be insufficient to achieve its stated objectives. The questions raised under the principle of data minimisation therefore already remained unanswered at the level of the draft proposal.

Conclusion

The final FASTER Directive contains material amendments compared to the draft proposal COM(2023)324 on which the opinion of the European Data Protection Supervisor was based. These amendments do not merely refine existing reporting obligations, but fundamentally alter both the **architecture** and **intensity** of personal data processing mandated under Union law.

Under COM(2023)324, reporting obligations were more functionally delimited. While identification of investors and dividend flows was required, the draft proposal deliberately restricted the reporting of **anti-abuse-specific information** in lower-value cases through an explicit threshold mechanism. This design choice accepted that reconstruction of dividend distributions for anti-abuse purposes would be structurally incomplete for a defined category of cases, reflecting a targeted and purpose-specific approach to data collection.

By contrast, the final Directive abandons this differentiated model. It introduces mandatory **direct and indirect** reporting through the entire chain of certified financial intermediaries and requires the transmission of a full set of identifying personal data regardless of dividend amount, refund entitlement, or the specific relevance of such data to the verification of lawful withholding tax relief. This results in a **significantly broader and more intensive processing of personal data of natural persons**, including tax identification numbers, dates of birth and address details, combined with a substantial increase in processing and transfer moments.

Crucially, this expansion of data processing was not accompanied by a renewed privacy assessment or an explicit re-evaluation of necessity and proportionality, notwithstanding the fact that the nature, scope and risks of the processing changed materially compared to the draft proposal reviewed by the EDPS. The earlier consultation therefore cannot be assumed to cover the final design choices embedded in COM(2025)50.

The correction of the analysis of COM(2023)324 strengthens – rather than weakens – the GDPR critique of the final Directive. It demonstrates that the Union legislator initially opted for a **functionally constrained reporting model**, particularly with respect to anti-abuse enforcement, and only at a later stage shifted towards a system enabling comprehensive, person-level chain reconstruction. This shift occurred without an explicit articulation of a new or autonomous objective, and without the corresponding necessity and proportionality assessment required under Article 5 GDPR, Article 6(1)(c) and (e) GDPR, and Article 52 of the Charter.

While certain mitigations may in theory be envisaged in Level-2 measures, a structural resolution of the identified privacy concerns exceeds the scope of implementing powers. The obligation to report the full set of personal data listed in Annex II, including in cases of indirect, chain-wide reporting, is embedded directly in the Directive itself. As a result, systematic compliance with the principle of data minimisation cannot be achieved without legislative amendment at Directive level.

From the perspective of the Commission and the EDPS, this underscores a core rule-of-law concern: where successive legislative iterations progressively expand the scope and intrusiveness of mandatory data processing, renewed scrutiny of necessity, proportionality and purpose limitation is not optional but required. In the absence of such scrutiny, FASTER remains legally vulnerable under EU data protection law and merits reconsideration at the level of the primary legislative act.