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Judgment of the Court in Case C-623/22 | Belgian Association of Tax Lawyers and Others

Combating aggressive tax planning: the Court upholds the validity of various provisions of the EU directive

An EU directive ¹ provides that all intermediaries and, in their absence, the taxpayer involved in potentially aggressive cross-border tax arrangements (that may lead to tax avoidance and evasion) must report them to the competent tax authorities ('the reporting obligation').

In 2020, some organisations representing lawyers and tax consultants, and some bar associations brought proceedings before the Belgian Constitutional Court. They submit that the Belgian law transposing the directive must be annulled given that the directive, in their submission, breaches certain provisions of the Charter of Fundamental Rights of the European Union and certain general principles of EU law.

The Belgian Constitutional Court decided to refer questions to the Court of Justice for a preliminary ruling.

In its judgment, the Court holds, first of all, that the fact that the directive does not limit the reporting obligation solely to the area of corporate taxes does not affect the validity of that directive in the light of the principles of equal treatment and non-discrimination, and of Articles 20 and 21 of the Charter of Fundamental Rights.

Next, it holds that the degree of precision and clarity of the terminology used in the provisions of the directive submitted for its consideration does not call into question the validity of that directive in the light of the principles of legal certainty and legality in criminal matters, and it similarly holds that the interference with the private life of the intermediary and the relevant taxpayer entailed by the reporting obligation is defined in a sufficiently precise manner in view of the information which that reporting must contain.

Moreover, in its judgment of 8 December 2022 (*Orde van Vlaamse Balies and Others*), the Court had held that the obligation imposed on a lawyer, who is exempt from the reporting obligation as a result of legal professional privilege, to notify other intermediaries involved in the tax arrangement of their own reporting obligations ('the obligation to notify') breached that legal professional privilege ². In today's judgment, the Court explains that the judgment of 8 December 2022 applies only in respect of lawyers within the meaning of the directive to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained ³ and not in respect of other professionals who may be authorised to ensure legal representation. The confidentiality of the relationship between a lawyer and his or her client enjoys very specific protection, which relates to the special position occupied by a lawyer in the judicial organisation of the Member States and to the fundamental task entrusted to him or her and which is recognised by all the Member States.

Finally, the Court holds that the reporting obligation imposed on intermediaries who are not entitled to a waiver from that obligation as a result of the legal professional privilege by which they are bound and, in default, on the relevant taxpayer constitutes a proportionate and justified interference in the right to respect for private life, understood as the right of everyone to organise his or her private life.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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Images of the delivery of the judgment are available on '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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¹ Council [Directive 2011/16/EU](#) of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, as amended by Council [Directive \(EU\) 2018/822](#) of 25 May 2018.

² See also [Press Release No 198/22](#).

³ [Directive 98/5/EC](#) of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained, as amended by Council [Directive 2013/25/EU](#) of 13 May 2013.