



## LAWYER-CLIENT PROFESSIONAL SECRECY VS. TAX INFORMATION REQUEST

The case at hand represents a classic example where the cooperation among member states' tax administrations, the establishment of cross-border information exchange, and the protection of a lawyer's professional secrecy came into conflict.

The situation began when the Luxembourg tax authority issued an order to a lawyer, requesting specific information and documents related to one of his client. The lawyer refused to comply opposing professional secrecy. Consequently, the Luxembourg tax administration fined the lawyer for failing to comply with the order. This matter was first brought before the administrative court and ultimately escalated to the Administrative court of appeal of Luxembourg.

The Administrative Court of Appeal then referred the case to the European Court of Justice (ECJ) for guidance on the compatibility of Council Directive 2011/16/EU of February 15, 2011, concerning administrative cooperation in the field of taxation (the "Directive"), and the Charter of Fundamental Rights of the European Union (the "Charter"). This inquiry focused particularly on the protection of lawyers' professional secrecy guaranteed by Article 7 of the Charter, as well as Article 52(1), which states that any limitations on these fundamental rights must be both necessary and proportionate.

The ECJ determined in its ruling, C-432/23, delivered on September 26, 2024, that Article 7 of the Charter ("Article 7") must be interpreted to ensure that legal assistance of a lawyer in the field of corporate law are encompassed by the enhanced protection of privileged communication between a lawyer and his client.

Thus a requirement from the tax administration to a lawyer to provide documentation and information related to his client for the purpose of an information exchange requested under the Directive constitutes an infringement of the right to respect the privileged communication between the lawyer and his client, as guaranteed by Article 7.

However, the ECJ also clarified that the principle outlined in Article 7 is not absolute and may allow for certain exceptions. Article 52, paragraph 1, of the Charter indeed puts some limitations on the exercise of these rights, provided such limitations are (i) prescribed by law, (ii) respect the essential content of these rights, and (iii) adhere to the principle of proportionality by being necessary and effectively addressing recognized objectives of general interest by the European Union or the need to protect the rights and freedoms of others.

It appears that current Luxembourg legislation, particularly § 177 (2) of the Luxembourg Tax Code ("Abgabenordnung"), generally excludes consultations and representations provided by lawyers in tax matters from the protection of professional secrecy, with the exception of situations that may fall under tax criminal law.

The ECJ concluded that this provision and its application in the present case, rather than being confined to exceptional situations, constitute a violation of the essential content of the right to respect the privileged communications between a lawyer and his client in accordance with Article 7, and therefore represent an unjustifiable interference.