

Boundaries of attorney-client confidentiality in Luxembourg

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The Court of Justice of the European Union has underscored its commitment to safeguarding attorney-client confidentiality after a recent tax dispute involving the Luxembourg direct tax administration.

On 26 September 2024, the Court of Justice of the European Union (CJEU) rendered its case C-432 / 23 offering insights regarding the boundaries of attorney-client privilege in the context of communications with Member States' tax authorities. With its decision, the CJEU calls for a careful balance between the legitimate objectives of tax regulation and the preservation of the inviolable principle of attorney-client confidentiality.

Background of the case

The administrative court of Luxembourg introduced a reference for a preliminary ruling concerning a dispute between a Luxembourg law firm jointly with the Luxembourg bar association (the Claimants) against the Luxembourg direct tax administration (*Administration des contributions directes* - ACD).

The central issue revolved around the requirement for the Claimants to provide information and documents requested by the ACD for a client-related tax investigation, despite claims that this would violate the attorney-client privilege of the law firm.

The request of the ACD was grounded by paragraph 177 of the Luxembourg general tax law (*Abgabenordnung* (AO)) that prohibits a lawyer, when subject to a request for information by the ACD, from denying access to information entrusted to him in the exercise of his profession.

This applies specifically to facts that came to the lawyer's knowledge while providing advice or representation in tax matters to a client, except in the limited instances where providing such information could potentially subject his client to the risk of criminal charges.

Key conclusions of the CJEU on attorney-client privilege

The CJEU clarified the below two key points in its judgment:

Protection of lawyer-client communications

In this decision, the CJEU ruled that paragraph 177 AO is almost entirely removing the protection that attorney-client privilege must enjoy under Article 7 of the fundamental rights of the EU (the **Charter**), effectively emptying this protection in this branch of law. Therefore, the paragraph 177 AO breaches the fundamental principle of the right to confidentiality in communications between lawyer and client.

By this decision the CJEU made clear that legal consultations provided by a lawyer, regardless of the area of law involved, benefit from protection guaranteed by Article 7 of the Charter.

Therefore, an injunction requiring a lawyer to provide information related to their relations with their client constitutes an interference with the right to respect for communications between a lawyer and its client.

Limitation to the professional secrecy principle

The CJEU nevertheless clarified that the rights consecrated in Article 7 of the Charter should not be seen as absolute. According to Article 52 of the Charter, restrictions on these rights may be imposed, provided such limitations are established by law, that they respect the essential content of said rights, and that, in compliance with the principle of proportionality, they are necessary and genuinely meeting the objectives of general interest recognised by the EU.

The CJEU emphasised that any limitation on the protection of lawyer-client communications must respect the essential content of the right to respect for these communications. A national regulation or administrative practice that would authorise a generalised interference in these communications would be contrary to the Charter, as was the case of paragraph 177 AO.

Conclusion

With this decision the CJEU's clearly confirms once again the principle of a lawyer's professional secrecy. This is notably consistent with the CJEU's earlier decision in case C-694 / 20, which addressed the obligations under Directive (EU) 2018/822, amending Directive 2011 / 16 / EU, concerning the automatic and compulsory exchange of information in the field of taxation related to reportable cross-border arrangements (**DAC 6**).

In that context, the CJEU had found the requirement for lawyers to inform other intermediaries, who are not their clients, about their reporting duties under DAC 6 as not only unnecessary in combating aggressive tax planning but also invalid in light of Article 7 of the Charter.

This new decision emphasises the CJEU's commitment to safeguarding attorney-client confidentiality against overly broad regulatory requirements. The fight against aggressive tax planning must not compromise the foundational legal principle of professional secrecy of the lawyer profession which constitute a key pillar of the functioning of any democratic system.

Moreover, the decision could serve also as a directive for Member States to ensure their legal frameworks are fully aligned with the Charter's protective measures. With this decision the CJEU calls for a careful balance between the legitimate objectives of tax regulation and the preservation of the inviolable principle of attorney-client confidentiality to be found.

How can Ogier help?

If you are facing tax information request from the authorities, please feel free to contact our tax experts should you wish to discuss and understand more on your obligations and the practical consequences of this CJEU decision.

Our tax team has developed a pragmatic approach around the principles of proactive prevention and strategic resolution to assist our clients with tax information requests and, when not avoidable, resolve tax litigation matters. Find out more: [Tax law in Luxembourg](#).

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