

AG Opinion on Right to Judicial Review in Tax Cooperation

Thomas Wahl

News

Orders to provide information made in the context of the cross-border data exchange between tax authorities must be subject to judicial reviews. In addition, the requesting authority has the duty to state reasons in its request for information. These are the main conclusions by AG *Juliane Kokott* in her opinion in the cases [C-245/19](#) and [C-246/19](#). They refer to questions for a preliminary ruling put forward by the Higher Administrative Court of Luxembourg.

Facts of the cases

In the cases at issue, the Spanish tax authority requested information from the Luxembourg tax authority concerning an artist residing in Spain. In order to comply with the requests, the Luxembourg tax authority first issued an order against a Luxembourg company to provide it with copies of the contracts concluded between said company and other companies concerning the artist's rights and with other documents, in particular copies of related invoices and bank account details. In a second order, a Luxembourg bank was requested to provide information concerning accounts, account balances, and other assets of the taxpayer herself and concerning assets which she held for other companies controlled by her. The Luxembourg law in force at that time (2016/2017) precluded legal challenges against both orders.

The orders were challenged before the Luxembourg courts by the Luxembourg company to which the first order was addressed (C-245/19), the Luxembourg bank to which the second order was addressed (C-246/19), the companies mentioned in it, and by the artist (the concerned taxpayer).

Questions by the referring court

The referring court asked the CJEU:

- Whether national legislation that does not foresee legal challenges against the requirements to provide information in the context of administrative tax cooperation within the framework of [Directive 2011/16](#) runs counter to the fundamental rights enshrined in the Charter;
- How specifically and precisely a request must be drafted in order to allow the requested tax authority to assess whether the information sought is “foreseeably relevant” to the administration and enforcement of the domestic tax laws of the Member States, because only foreseeably relevant information is covered by administrative cooperation under Directive 2011/16.

The Advocate General's conclusions

AUTHOR

Thomas Wahl

Senior Researcher
Max Planck Institute for the
Study of Crime, Security and
Law

ISSN: 1862-6947
<https://eu crim.eu>



Regarding the first question, AG Kokott concluded that, under Art. 47 CFR (the right to an effective remedy) not only the addressee of an order to provide information, but also the taxpayer concerned and third parties (in the cases at issue: several companies) must be able to obtain judicial review of such orders. The transmission of data interferes with the fundamental rights of the natural and legal persons concerned.

Regarding the second question, the AG concluded that the requesting authority must justify the request for information so that the requested authority can examine whether the information sought does not clearly lack foreseeable relevance for the requesting authority's tax assessment. The request must contain specific indications of the facts and transactions that are relevant for tax purposes, so that impermissible "fishing expeditions" can be ruled out. The requirements imposed by the duty to state reasons increase with the extent and sensitivity of the information sought.

Put in focus

The case at issue follows up [case C-682/15, *Berlioz Investment Fund*](#). In this case, the CJEU had already ruled that a person who is obliged to provide information in the context of an exchange between national tax authorities under Directive 2011/16 has the right to review the legality of the information request in the requested Member State indirectly by challenging the decision by which the requested authority has imposed a pecuniary penalty on account of his refusal to provide information (see [eucrim 2/2017](#), pp. 55-56).

The reference for a preliminary ruling in the present cases C-245/19 and 246/19 now deals with the appeal directly against the information order issued by the national tax authority, which intends or is required to provide information to the requesting tax authority of another Member State. Not only the party obliged to provide information, but also the taxpayer and other third parties concerned are defending themselves here.

About eucrim

eucrim is the leading journal which regularly informs about current developments in European criminal and "criministrative" law.

All news items are freely accessible at: <https://eucrim.eu/news/>

Stay informed by emailing to eucrim-subscribe@csl.mpg.de to receive alerts for new releases of issues.

The project is co-financed by the Union Anti-Fraud Programme (UAFP), managed by the [European Anti-Fraud Office \(OLAF\)](#).



**Co-funded by
the European Union**