

CJEU: Notification Obligation for Lawyer-Intermediaries under DAC 6 Invalid

News

Thomas Wahl

On 8 December 2022, the CJEU (sitting in for the Grand Chamber) declared a provision of Directive 2011/16 invalid, according to which a lawyer must inform other intermediaries involved in a tax arrangement of his/her duty to report.

The [judgment](#) is based on [Case C-694/20](#) (*Orde van Vlaamse Balies & Others*), in which the Belgian Constitutional Court referred the question on the validity of the provision to the CJEU following legal actions brought by Belgian lawyers' associations. The question concerns Art. 8ab(5) of the [Directive 2011/16](#) on administrative cooperation in the field of taxation, which was inserted by Directive 2018/822 (commonly known as DAC 6). According to this provision, Member States may take the necessary measures to give intermediaries the right to a waiver from filing information on a reportable cross-border aggressive tax arrangement where the reporting obligation would breach the legal professional privilege under the national law of that Member State. However, in such circumstances, intermediaries must be required to notify, without delay, any other intermediary or, if there is no such intermediary, the relevant taxpayer of their reporting obligations under paragraph 6 of Art. 8ab of the amended Directive 2011/16.

The judges in Luxembourg held that the obligations for a lawyer-intermediary subject to legal professional privilege to notify without delay other intermediaries of their reporting obligations entails an unjustifiable interference with the right to respect for communications between lawyers and their clients, guaranteed in Art. 7 of the Charter of Fundamental Rights, given that the third-party intermediaries would have to disclose not only the arrangement but also the identity of the lawyer and the client to the tax authorities. According to the CJEU, the notification obligation on a lawyer subject to legal professional privilege is not necessary in order to attain the objective of the Directive, which is to combat potentially aggressive tax practices and to prevent tax evasion and tax fraud, but not to check whether lawyers are justified in relying on their confidentiality.

AUTHOR

Thomas Wahl

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

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