

Dispute Resolution

The ECJ Reaffirms the Protection of Legal Professional Privilege

On September 26, 2024, the European Court of Justice (the "ECJ"), rendered a preliminary ruling in Case C-432/23 reaffirming the protection of legal professional privilege afforded by the Charter of Fundamental Rights of the EU (the "Charter").

The preliminary ruling was requested by the Higher Administrative Court of Luxembourg in a matter opposing a law firm against Luxembourg tax authorities.

What Is Legal Professional Privilege?

Legal professional privilege ("LPP") is the right to confidentiality of the communications between clients and their lawyers when engaged in:

- (i) defense activities (e.g., in civil or criminal proceedings); or
- (ii) providing legal advice.

The confidentiality of legal advice must cover both its content and its existence to ensure the independence of lawyers. Confidentiality and trust with one's lawyer are also legitimate client expectations in a democratic society.

LPP receives strengthened protection under Article 7 of the Charter, which states:

*"Everyone has the right to respect for his or her private and family life, home and **communications**".*

While the protection of LPP is not absolute, any limitations must adhere to the principle of proportionality and be essential to achieving objectives of general public interest.

What is the dispute at hand?

LPP has faced challenges from public authorities over recent years, particularly in the area of tax law.

In the present case, Luxembourg tax authorities imposed a broad information order to a Luxembourg law firm (the "Information Order"), requiring access to all documentation (such as engagement letters, client contracts, reports, memoranda, communications, and invoices) related to services provided to a Spanish client company in connection with company law matters.

The Information Order was made at the request of the Spanish tax authorities under Directive 2011/16, as amended, which establishes a framework for cooperation and information exchange between EU tax authorities.

The law firm refused to provide the requested information, invoking LPP as counsel for its Spanish client. The Luxembourg tax authorities rejected this argument and threatened a fine unless the information was provided.



Louis-Guillaume Roldán
lroldan@gsk-lux.com

When the law firm persisted, it was fined, prompting it to challenge the decision in Luxembourg's lower administrative court, which upheld the fine. On appeal, the Higher Administrative Court referred the matter to the ECJ for a preliminary ruling on Directive 2011/16 and the Charter.

Analysis and ruling by the ECJ

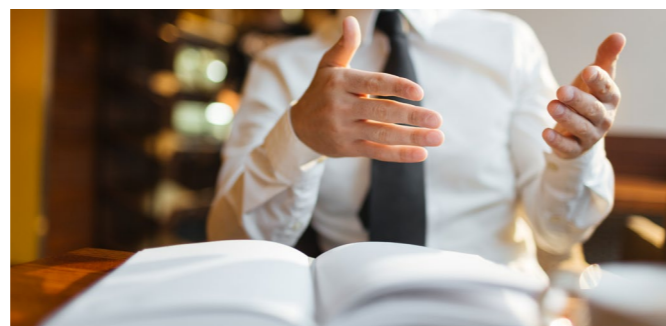
Directive 2011/16 requires EU member states to use their own information-gathering measures when responding to an information request from another member state.

In Luxembourg, Article 177 of the general tax law, known as the "Abgabenordnung" (the "AO"), excludes certain tax matters from the protection of LPP, including information a lawyer may receive when providing advice in tax cases.

The ECJ considered national provisions such as Article 177 AO as infringing on fundamental rights guaranteed by Article 7 of the Charter, finding that such exclusions lack justification and fail to meet the principle of proportionality.

The ECJ ruled that the Information Order was thus incompatible with Articles 7 and 52(1) of the Charter, reaffirming that legal advice falls under LPP.

Finally, this ruling calls into question the distinction made under Luxembourg's Article 177 AO that excludes tax legal advice from the protection of LPP by differentiating it from other areas of law.



Practice Area News

Luxembourg Government to Recruit 200 Judges and Judicial Attachés. On July 24, 2024, draft bill n°8299A establishing positions for judicial attachés as part of a multi-year recruitment program aimed at strengthening the country's judicial system was enacted into law.

The **Luxembourg Government** plans to create up to 200 new positions in the judiciary – mainly judges and judicial attachés – by 2027. This initiative supports the government's commitment to improve the efficiency and quality of the judiciary in response to the nation's growing population and expanding financial sector.

Luxembourg Commercial Courts to Move to Newly Renovated Premises. On September 27, 2024, the **Luxembourg Government** submitted draft bill n°8441 to transform the former national library, a UNESCO heritage-listed building dating back to 1575, into the new premises for the commercial chambers of the Luxembourg District Court.

If the project is approved, the UNESCO building will be fully renovated to provide comfortable facilities, larger courtrooms with wooden fixtures and enhanced security.

This move will address the inadequacy of the commercial courts' current premises, which no longer meet the standards.

In the Firm

• **GSK Stockmann** is a leading independent European corporate law firm with over 250 professionals across our offices in Germany, Luxembourg, and the UK.

Our lawyers advise domestic and international clients in relation to Litigation, Banking & Finance, Capital Markets, Corporate/M&A and Private Equity, Investment Funds, Real Estate, Regulatory and Insurance, as well as Tax.

See more [HERE](#).

