

ECJ Preliminary Ruling Request: *Ordre des avocats du barreau de Luxembourg* (Case C-432/23) – Cour Administrative (Luxembourg) Submits Referral on Scope of Professional Secrecy

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On 23 October 2023, a preliminary ruling request lodged on 12 July 2023 was published in the Official Journal of the European Union. In the referral, the Cour Administrative (Luxembourg) made reference to the Court of Justice of the European Union (ECJ) in the case *F and Ordre des avocats du barreau de Luxembourg v. Administration des contributions directes* (Case C-432/23) on the scope of professional secrecy.

The Cour Administrative (Luxembourg) requested the ECJ to answer the following questions:

1. Does legal advice provided by a lawyer on matters of company law – in this case on setting up a corporate investment structure – fall within the scope of the strengthened protection of exchanges between lawyers and their clients afforded by article 7 of the [Charter](#)?
2. If the first question is answered in the affirmative, does a decision by the competent authority of a requested Member State adopted in response to a request from another Member State in the context of an exchange of information on request on the basis of [Directive on Administrative Cooperation \(2011/16\) \(DAC\)](#), ordering a lawyer to provide it, broadly speaking, with all available documentation relating to its relations with its client, a detailed description of the operations on which it advised and an explanation of its involvement in those processes and the identity of its interlocutors, constitute an interference with the right to respect for communications between lawyers and their clients, guaranteed in article 7 of the Charter?
3. If the second question is answered in the affirmative, does Directive 2011/16 comply with articles 7 and 52(1) of the Charter in so far as it does not include, beyond article 17(4), any provision which formally permits interference with the confidentiality of exchanges between lawyers and their clients in the context of the system of exchange of information on request and which itself defines the scope of the limitation on the exercise of the right in question?
4. If the third question is answered in the affirmative, can the arrangements relating to the duty of cooperation of lawyers (or of a law firm) as third parties holding information in the context of the application of the mechanism for the exchange of information on request established by Directive 2011/16, in particular specific limitations to take into account the effect of their legal professional privilege, be governed by the provisions of domestic law of each Member State regulating the duty of cooperation of lawyers, as third parties, in a tax investigation in the context of the application of domestic tax legislation in accordance with the reference made by article 18(1) of that directive?

5. If the fourth question is answered in the affirmative, in order to comply with article 7 of the Charter, must a national legal provision establishing the arrangements relating to the duty of cooperation of lawyers as third parties holding information, like that applicable in the present case, include specific provisions which:

- ensure respect for the essence of the confidentiality of the communications between lawyers and their clients; and
- introduce specific conditions to ensure that the lawyer's obligation to cooperate is reduced to what is appropriate and necessary for the achievement of the objective of Directive 2011/16?

6. If the fifth question is answered in the affirmative, must the specific conditions to ensure that cooperation by lawyers with the tax investigation is reduced to what is appropriate and necessary for the achievement of the objective of Directive 2011/16 include the obligation for the competent authority of the requested Member State:

- to carry out an enhanced check of whether the requesting Member State has, beforehand, actually exhausted the usual sources of information which it could have used in the circumstances for obtaining the information requested, without running the risk of jeopardizing the achievement of those objectives, in accordance with article 17(1) of directive 2011/16; and/or
- to have, beforehand, unsuccessfully contacted other potential information holders in order to be able, as a last resort, to contact a lawyer in his or her capacity as a potential information holder; and/or
- properly to balance, in each individual case, the objective of general interest against the rights at issue in such a manner that a decision ordering that information be provided could validly be issued in respect of a lawyer only if additional conditions are met, such as the requirement that the financial implications of the ongoing check in the requesting State reach or are likely to reach a certain significance or are likely to fall within the scope of criminal law?