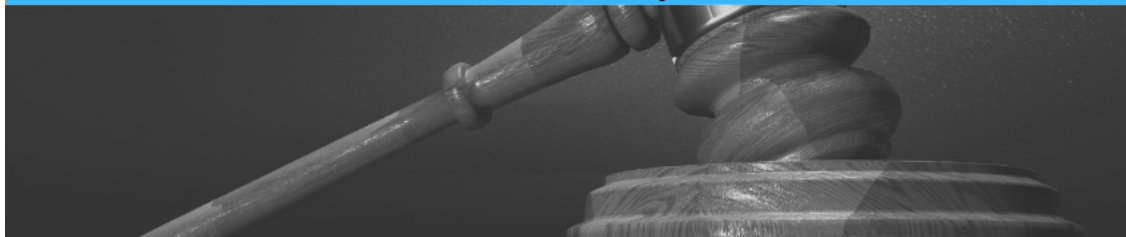


EUROPEAN COURT OF JUSTICE UPDATE ÉTAT LUXEMBOURGEOIS V L C-437/19



The CFE's ECJ TaskForce has issued an opinion statement analysing the decision of the European Court of Justice in *C-437/19 État Luxembourgeois v L* concerning the conditions for information requests and taxpayer remedies

CASE BACKGROUND

The case arose from a preliminary ruling request made by the Luxembourg Supreme Administrative Court (Cour administrative) in the course of a judicial review of an information request sent by the French tax authorities to the Luxembourg tax administration.

The French tax authorities had requested information regarding the shareholders of Luxembourg resident company L, which they had identified both as the parent of a French real estate company and the direct owner of additional real estate in France. To substantiate the request relating to the - unidentified - shareholders of L, France had explained that individuals indirectly holding real estate in France were liable to declare such property ownership.

The Luxembourg tax administration issued an order requesting L to provide the names and addresses of L's shareholders, its direct and indirect beneficial owners, the distribution of L's share capital and a copy of the company's shareholder register. Following L's non-compliance with that order, the tax director imposed a fine on L.

L brought an action against the penalty to the Administrative Court, which concluded that the information request had been contradictory and annulled the tax director's decision because of doubts concerning the identity of the taxpayer to which the information request related. The Luxembourg administration appealed that decision.

The Luxembourg Supreme Administrative Court did not agree with the first instance judgment, considering the low standard of review that a request be "manifestly devoid of foreseeable relevance" for it to be invalid raised several other questions on the request's legality.

Principally, these concerned whether a taxpayer needs to be "individually identified" and whether the addressee of an information order must be given all relevant information to make a decision whether to comply or challenge the order at the time they receive it. Thus, the Supreme Administrative Court decided to stay the proceedings and to refer the questions to the ECJ for a preliminary ruling.

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ANALYSIS

The Court held – relying strongly on AG Kokott’s Opinion – that group requests without individually identifying and naming the subjects of an investigation are covered by Directive 2011/16 as long as there is a “clear and sufficient explanation that [the requesting authority] is conducting a targeted investigation into a limited group of persons, justified by reasonable suspicions of non-compliance with a specific legal obligation”.

As to whether an information holder must – pursuant to Article 47 of the Charter – be given the opportunity to provide the requested information without having to pay a penalty after an incidental judicial review had ruled the order to be valid, the Court held that the right to an effective remedy guaranteed in Article 47 of the Charter presupposes both that national courts can review the information request in order to assess its legality, and also that the person concerned must be able to ascertain the reasons upon which the order they receive is based. Given that in the case at hand L did not have the possibility to challenge the information order directly – which the ECJ reiterated to be in violation of Article 47 of the Charter – it follows that the addressee of the information order must be given the opportunity to comply.

The case is the latest in a series of judgments on the conditions for exchange of information as regulated by EU law. It confirms and builds on those previous decisions, while providing some clarification on previously unanswered issues.

The CFE Tax Advisers Europe welcomes the judgment of the Court as it provides further clarification on the legal protection of the information holders afforded by Article 47 of the Charter of Fundamental Rights of the European Union in cases of cross-border exchange of information. Article 47 of the Charter guarantees that national courts can review the cross-border information request in order to assess its legality and also that the information holder must be able to ascertain the reasons upon which the order they receive is based.

Moreover, the CFE Tax Advisers Europe welcomes the illumination regarding the concept of “foreseeable relevance”, but also notes that additional clarification will be needed to distinguish permissible group requests from illegal “fishing expeditions”.

We invite you to read the statement for further information and remain available for any queries you may have.

**READ THE FULL OPINION
STATEMENT HERE**
