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By PwC Deutschland | 09. Dezember 2022

ECJ: Reporting and notification obligations of lawyers as intermediaries

In an answer to a preliminary request from the Belgian Constitutional Court the European Court of Justice held that the obligation for a lawyer to inform other intermediaries involved is not necessary and infringes the right to respect for communications with his or her client.

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Background

Two lawyers' professional organizations brought actions before the Belgian Constitutional Court. In their opinion, it is impossible to provide information to other intermediaries without breaching the legal professional privilege by which lawyers are bound. The Belgian Constitutional Court asked the ECJ to clarify the issue.

ECJ decision

The ECJ decided that the obligation to notify laid down by the Directive infringes the right to respect for communications between a lawyer and his or her client.

In its judgment, the ECJ recalls first that Article 7 of the Charter of Fundamental Rights of the European Union protects the confidentiality of all correspondence between individuals and affords strengthened protection to exchanges between lawyers and their clients. That specific protection afforded to lawyers' legal professional privilege is justified by the fact that lawyers are assigned a fundamental role in a democratic society, that of defending litigants. That role requires that any individual is able to seek advice freely from his or her lawyer, a principle recognized in all Member States. Legal professional privilege also covers legal consultation, both regarding its content and its existence. Other than in exceptional situations, clients must have a legitimate expectation that, without their consent, their lawyer will not disclose to anyone that they are consulting him or her.

The Court points out that the amendment made in 2018 to the directive forms part of international tax cooperation aimed at contributing to the prevention of the risk of tax avoidance and evasion, which constitutes one of the objectives of general interest recognized by the EU. However, the notification obligation on a lawyer subject to legal professional privilege is not necessary to attain that objective. All intermediaries are required to file that information with the competent tax authorities. No intermediary can claim that he or she was unaware of the reporting obligations - which are clearly set out in the Directive - to which he or she is directly and individually subject.

Source

ECJ judgment of 8 December 2022 **C-694/20** *Orde van Vlaamse Balies u.a.*

A first summary of the decision to be found in the ECJ's **Press Release No. 198/22**.

Schlagwörter

intermediaries, reporting obligation