

Request for a preliminary ruling from the Cour constitutionnelle (Belgium) lodged on 29 September 2022 – Belgian Association of Tax Lawyers and Others v Premier ministre/ Eerste Minister

(Case C-623/22)

Language of the case: French

Referring court

Cour constitutionnelle

Parties to the main proceedings

Applicants: Belgian Association of Tax Lawyers and Others, Ordre des barreaux francophones et germanophone, Orde van Vlaamse Balies and Others, Institut des conseillers fiscaux et des experts-comptables and Others

Defendant: Premier ministre/ Eerste Minister

Questions referred

Does Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements 1 infringe Article 6(3) of the Treaty of the European Union and Articles 20 and 21 of the Charter of Fundamental Rights of the European Union and, more specifically, the principles of equality and non-discrimination as guaranteed by those provisions, in that Directive (EU) 2018/822 does not limit the reporting obligation in respect of cross-border arrangements to corporation tax, but makes it applicable to all taxes falling within the scope of Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, 2 which include under Belgian law not only corporation tax, but also direct taxes other than corporation tax and indirect taxes, such as registration fees?

Does Directive (EU) 2018/822 infringe the principle of legality in criminal matters as guaranteed by Article 49(1) of the Charter of Fundamental Rights of the European Union and by Article 7(1) of the European Convention on Human Rights, the general principle of legal certainty and the right to respect for private life as guaranteed by Article 7 of the Charter of Fundamental Rights of the European Union and by Article 8 of the European Convention on Human Rights, in that the concepts of ‘arrangement’ (and therefore the concepts of ‘cross-border arrangement’, ‘marketable arrangement’ and ‘bespoke arrangement’), ‘intermediary’, ‘participant’, ‘associated enterprise’, the terms ‘cross-border’, the different ‘hallmarks’ and the ‘main benefit test’ that Directive (EU) 2018/822 uses to determine the scope of the reporting obligation in respect of cross-border arrangements, are not sufficiently clear and precise?

Does Directive (EU) 2018/822, in particular in so far as it inserts Article 8ab(1) and (7) into Directive 2011/16/EU, infringe the principle of legality in criminal matters as guaranteed by Article 49(1) of the Charter of Fundamental Rights of the European Union and by Article 7(1) of the European Convention on Human Rights, and infringe the right to respect for private life as guaranteed by Article 7 of the Charter of Fundamental Rights of the European Union and by Article 8 of the European Convention on Human Rights, in that the starting point of the 30-day period during which the intermediary or relevant taxpayer must fulfil its reporting obligation in respect of a cross-border arrangement is not fixed in a sufficiently clear and precise manner?

Does Article 1(2) of Directive (EU) 2018/822 infringe the right to respect for private life as guaranteed by Article 7 of the Charter of Fundamental Rights of the European Union and by Article 8 of the European Convention on Human Rights, in that the new Article 8ab(5) which it inserted in Directive 2011/16/EU, provides that, where a Member State takes the necessary measures to give intermediaries the right to a waiver from filing information on a reportable cross-border arrangement where the reporting obligation would breach legal professional privilege under the national law of that Member State, that Member State is obliged to require the intermediaries to notify, without delay, any other intermediary or, if there is no such

intermediary, the relevant taxpayer, of their reporting obligations, in so far as the effect of that obligation is to oblige an intermediary bound by legal professional privilege subject to criminal sanctions under the national law of that Member State to share with another intermediary, not being his client, information which he obtains in the course of the essential activities of his profession?

Does Directive (EU) 2018/822 infringe the right to respect for private life as guaranteed by Article 7 of the Charter of Fundamental Rights of the European Union and by Article 8 of the European Convention on Human Rights, in that the reporting obligation in respect of cross-border arrangements interferes with the right to respect for the private life of intermediaries and relevant taxpayers which is not reasonably justified or proportionate in the light of the objectives pursued and which is not relevant to the objective of ensuring the proper functioning of the internal market?

¹ OJ 2018 L 139, p. 1.

¹ OJ 2011, L 64, p. 1.