



Press and Information

Court of Justice of the European Union

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Judgment in Case C-682/15

Berlioz Investment Fund SA v Directeur de l'administration des contributions directes

The courts of one Member State may review the legality of requests for tax information sent by another Member State

That review is limited to verifying whether the information sought is not — manifestly — devoid of any foreseeable relevance to the tax investigation concerned

In the course of a review of the tax affairs of French company Cofima, the French tax administration sent to the Luxembourg tax administration in 2014 a request for information concerning Cofima's Luxembourg parent company, Berlioz Investment Fund. In response to the Luxembourg tax authorities' request, Berlioz provided all the information sought, except for the names and addresses of its members, the amount of capital held by each member and the percentage of share capital held by each member. According to Berlioz, that information was not foreseeably relevant to the checks being carried out by the French tax administration.

As a result of Berlioz' refusal to provide that information, in 2015 the Luxembourg tax administration imposed an administrative fine of €250 000. Berlioz applied to the Luxembourg administrative courts for cancellation of the fine and annulment of the 'information order' (the decision of the Luxembourg authorities directing Berlioz to provide the information at issue). At first instance, the Administrative Tribunal of Luxembourg reduced the fine to €150 000 but declined to determine whether the information order was well founded. The Tribunal relied in that regard on Luxembourg law, under which it is possible to apply for cancellation or reduction of the fine, but not annulment of the request for the exchange of information or of the information order.

Berlioz then lodged an appeal with the Administrative Court of Luxembourg, arguing that its right to an effective judicial remedy, as guaranteed by the Charter of Fundamental Rights of the EU, had been infringed. The Administrative Court of Luxembourg referred the matter to the Court of Justice for a determination, in particular, as to whether it can examine the validity of the information order and, therefore, of the French tax administration's request for information serving as the basis for the information order.

In today's judgment, the Court of Justice finds, first of all, that the Charter of Fundamental Rights of the EU is applicable, since, by imposing a fine on Berlioz because of its refusal to provide the information sought, the Luxembourg tax authorities implemented the EU directive on administrative cooperation in the field of taxation.¹

The Court goes on to find that the national court hearing an action against a fine imposed on a person for failure to comply with an information order must be able to examine the legality of that order if it is to comply with the right to an effective judicial remedy, enshrined in the Charter.

Next, the Court notes that such an information order can be lawful only if the requested information is 'foreseeably relevant' for the purposes of the tax investigation in the Member State seeking it. The obligation imposed on the tax authorities of one Member State to cooperate with the tax authorities of another Member State extends only, according to the wording of the directive itself, to the communication of information that is 'foreseeably relevant'. Accordingly, the Member States

¹ Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ 2011 L 64, p. 1).

are not at liberty to engage in ‘fishing expeditions’ or to request information that is unlikely to be relevant to the tax affairs of the taxpayer concerned. It is certainly for them to determine the information they consider that they would need. They cannot, however, request information that is of no relevance to the investigation concerned, since the person to whom an information order is addressed must be entitled to rely in court on the non-compliance of the request for information with the directive and, therefore, on the resulting illegality of the information order.

The Court adds that the authorities of the requested Member State (the Luxembourg tax authorities, in this case) must not confine themselves to a brief and formal verification of the regularity of the request for information but must also satisfy themselves that the information sought is not devoid of any foreseeable relevance for the purposes of the tax investigation, having regard to the identity of the taxpayer under investigation and the purpose of that investigation. Likewise, the court in the requested State (the Luxembourg court, in this case) must be able to review the legality of the request. However, it must only verify that the information order is based on a sufficiently reasoned request for information concerning information that is not — manifestly — devoid of any foreseeable relevance to the tax investigation concerned.

Lastly, the Court of Justice considers that, if the court of the requested State is to be able to conduct its judicial review, it must have access to the request for information and to any additional information which the authorities of the requested State may have been able to obtain from the authorities of the requesting State. The Court of Justice adds that the person to whom the information order is addressed may, however, be barred from having access to the request for information because it is secret, and that that person does not therefore have a right of access to the whole of that request. Nevertheless, in order to be given a fair hearing, that person must have access to key information in the request for information (namely the identity of the taxpayer concerned and the tax purpose for which the information is sought), and the court may provide that person with certain other information if it considers that the key information is not sufficient.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court’s decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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