

Judgment of the Court (Grand Chamber) of 8 December 2022 (request for a preliminary ruling from the Grondwettelijk Hof – Belgium) – Orde van Vlaamse Balies, IG, Belgian Association of Tax Lawyers, CD, JU v Vlaamse Regering

(Case C-694/20) ¹

(Reference for a preliminary ruling – Administrative cooperation in the field of taxation – Mandatory automatic exchange of information in relation to reportable cross-border arrangements – Directive 2011/16/EU, as amended by Directive (EU) 2018/822 – Article 8ab(5) – Validity – Legal professional privilege of the lawyer – Exemption from the reporting obligation for the benefit of lawyer-intermediaries subject to legal professional privilege – Obligation on that lawyer-intermediary to notify any other intermediary who is not his or her client of that intermediary’s reporting obligations – Articles 7 and 47 of the Charter of Fundamental Rights of the European Union)

Language of the case: Dutch

Referring court

Grondwettelijk Hof

Parties to the main proceedings

Applicants: Orde van Vlaamse Balies, IG, Belgian Association of Tax Lawyers, CD, JU

Defendant: Vlaamse Regering

Operative part of the judgment

Article 8ab(5) of Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, as amended by Council Directive (EU) 2018/822 of 25 May 2018, is invalid in the light of Article 7 of the Charter of Fundamental Rights of the European Union, in so far as the Member States’ application of that provision has the effect of requiring a lawyer acting as an intermediary, within the meaning of Article 3(21) of that directive, as amended, where he or she is exempt from the reporting obligation laid down in paragraph 1 of Article 8ab of that directive, as amended, on account of the legal professional privilege by which he or she is bound, to notify without delay any other intermediary who is not his or her client of that intermediary’s reporting obligations under paragraph 6 of that Article 8ab.

¹ OJ C 128, 12.4.2021.