

# BSP Newsletter

## 2024 July edition



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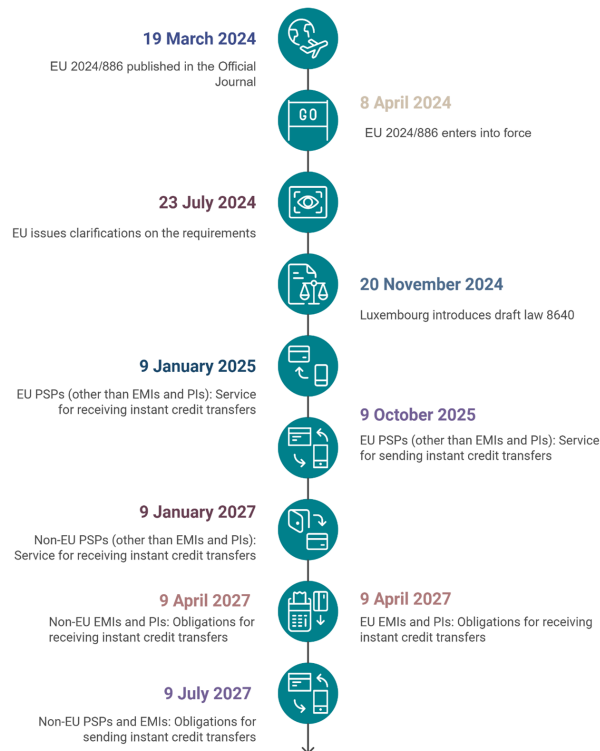
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## TEST 1 PICTURE

### Test

Key Milestones in the Implementation of Regulation (EU) 2024/886



In a case involving a Luxembourg law firm which had been ordered by the Luxembourg Tax Authorities to

disclose all documentation relating to advice given to a client for the purpose of an exchange of information upon request with the tax authority of another EU Member State, the Luxembourg Higher Administrative Court (*Cour administrative*) decided to stay proceedings and to refer a number of questions to the Court of Justice of the European Union (the “**ECJ**”) for a preliminary ruling on the compatibility of Directive 2011/16/EU and Luxembourg national legislation with the Charter of Fundamental Rights of the European Union and, more specifically, with the protection of lawyers' professional secrecy guaranteed by Article 7 of that Charter. Please refer to our [October 2023 Newsletter](#) for more details on the background of the case and the reference for preliminary ruling.

On 26 September 2024, the ECJ handed down its ruling, which in substance follows Advocate General Juliane Kokott's opinion, on which we reported in our [July 2024 Newsletter](#).

The ECJ first of all points out that lawyers' professional secrecy enjoys special protection, guaranteed by Article 7 of the Charter and Article 8(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which is justified in particular by the fact that lawyers are entrusted with a fundamental task in a democratic society, namely the defence of litigants. Confirming its previous case law, the ECJ held that the protection of professional secrecy also covers legal advice and that the secrecy of such advice necessarily guarantees both its content

and its existence. In addition, the ECJ states that the special protection of professional secrecy extends without distinction to all areas of law.

As a result of the foregoing, the Court concludes that an injunction decision, issued in the context of an exchange of information on request in tax matters, and requesting a law firm to disclose all documentation relating to advice given to a client in company law matters, constitutes an interference with the right to respect for communications between a lawyer and his client.

While legal professional privilege, like all the other fundamental rights enshrined in the Charter, is not an absolute prerogative, the ECJ points out that any limitation must be provided for by law, respect the essential content of the right in question and satisfy the principle of proportionality.

In that regard, the ECJ notes that current Luxembourg legislation (in particular § 177(2) of the *Abgabenordnung*) generally excludes from the protection of professional secrecy advice and representation provided by a lawyer in tax matters, with the exception of that which may fall within the scope of criminal tax law. In the ECJ's view, that provision and its application in the present case, far from being confined to exceptional situations, entail an infringement of the essential content of the right to respect for communications between lawyers and their clients, and thus an interference which cannot be justified.

It can thus be inferred from the ECJ's conclusions that the application of § 177 (2) of the *Abgabenordnung* is now invalid in the context of an exchange of information on request in tax matters with another Member State of the European Union. The case will now return to the Luxembourg Higher Administrative Court (*Cour administrative*), which will hand down a final ruling in the upcoming weeks.



Right by you in Luxembourg

# CONTRIBUTORS

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