

Tax controversy series

Administrative Tribunal - Judgement on the foreseeable relevance concept in the context of exchange of information

On 24 October 2025, the Luxembourg Administrative Tribunal (*Tribunal Administratif*, 24 Octobre 2025, n°52988) (the “Administrative Tribunal” or the “Tribunal”) assessed the merits of a request of exchange of information (“EOI”) in light on the foreseeable relevance criteria.

Summary of the case

In February 2025, the Belgian tax authorities submitted a request for EOI to their Luxembourg counterparts. Broadly, they asked to be provided with a copy of a specific copyright license agreement, the identity of any parties to that agreement who were Belgian tax residents, and the methodology and calculations underpinning the determination of the copyright fees.

Finding the request both formally valid and of foreseeable relevance, the Director of the Luxembourg Direct Tax Administration complied and issued an injunction in May 2025 compelling the taxpayer to produce the requested information. However, the taxpayer refused to comply, arguing that the information was not foreseeably relevant, and subsequently lodged an appeal before the Administrative Tribunal seeking the annulment of the injunction decision.

Judgement of the Administrative Tribunal

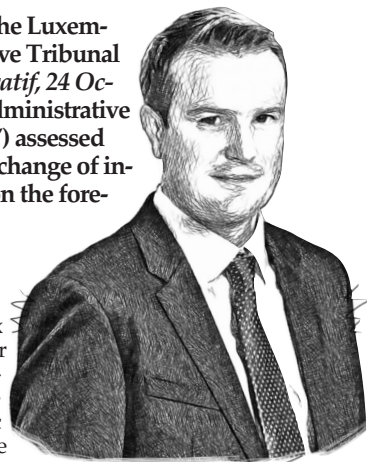
The Administrative Tribunal’s judges opened their reasoning by noting that the EOI upon request relied on by the Belgian tax authorities was based on several European and international instruments, and notably on the EU Directive 2011/16/UE on Administrative Cooperation (the “DAC”) and the double tax treaty between Belgium and Luxembourg.

In this respect, consistent with previous case law⁽¹⁾, they recalled that under EU law, the DAC should take precedence between Member States and, together with the Luxembourg law of 29 March 2013 (the “Law of 2013”) that implemented it into Luxembourg legislation, the judges defined the legal framework applicable to the injunction under review.

Having set the stage, the Tribunal emphasized that, pursuant to Article 6bis of the Law of 2013, the tax authorities are only required to communicate the information referred to in the request to the extent that they consider that “in accordance with [their] national law, there is a reasonable possibility that the requested information will be relevant to the tax affairs of one or several taxpayers [...] and be justified for the purposes of the investigation”.

The Tribunal further referred to Article 3 of the Luxembourg law of 25 November 2014 according to which the required tax authorities should:

1. Check the formal admissibility of the request; and
2. Ensure that the requested information is not entirely devoid of foreseeable relevance with respect to either:
 - i) the identity of the person targeted by the request,
 - ii) the identity of the information holder, or
 - iii) the purpose of the tax procedure being conducted.



Convention and its Article 26, and further formalized through the OECD’s 2002 Model Agreement on Exchange of Information on Tax Matters, the mechanism was designed to combat cross-border tax evasion by allowing tax authorities to request specific, taxpayer-related information from foreign counterparts “to the widest possible extent”. The OECD’s subsequent standards, endorsed by the G20, transformed the practice from a discretionary tool into a global obligation.

Over time, the principle of “foreseeable relevance” emerged as the key safeguard, balancing effective cooperation and the protection of taxpayers against indiscriminate *fishing expeditions*. Broadly, when a requesting authority fails to demonstrate that the information sought is foreseeably relevant to a specific tax examination or investigation, the requested authority may legitimately decline the request.

Within the EU, this international framework was reinforced by the DAC, which harmonized and expanded the EOI between Member States. The DAC established common procedural rules and legal obligations, later strengthened through successive amendments (DAC 2 – DAC 9), reflecting the EU’s ongoing commitment to tax transparency and the fight against base erosion and profit shifting. Early indications of the scope of foreseeable relevance were provided in DAC 1, notably recital 9 and Article 20(2), which required that a request identify the taxpayer, the fiscal purpose of the information, and sufficient context to establish relevance.

In line with OECD standards, the Luxembourg Law of 2013 adopted the principle of “foreseeable relevance” to define the scope of information that may be exchanged upon request. In their early days, the domestic rules on the EOI were challenged on a regular basis, notably in light of the EU Charter of Fundamental Rights, which led Luxembourg and EU courts to progressively clarify such standard:

- In the landmark case “Berlioz”⁽²⁾, the CJEU confirmed that the judicial review in the requested state is limited to ensuring that the information request is not manifestly devoid of foreseeable relevance, without assessing the material facts or substantive tax law of the requesting state.
- This principle was reinforced in CJEU joined cases rendered in October 2020⁽³⁾, which specified that even preliminary or broadly described information could satisfy the foreseeable relevance criterion, provided it relates to a defined taxpayer, covers a relevant period, and bears a sufficient connection to the tax under investigation.
- In 2021⁽⁴⁾, the CJEU further clarified that a request may concern a group of taxpayers identifiable through common characteristics, not necessarily named individually, ensuring the effectiveness of information exchange while protecting the taxpayers’ rights.

Since the Berlioz case, Luxembourg administrative courts have consistently applied the principles set forth by the CJEU, hence leading to judgements with

generally predictable outcomes. Notably:

- **Administrative jurisdictions do not examine the material facts or compliance with the requesting state’s tax law**; any challenge based on inaccuracies must be addressed to the competent authorities of the requesting state.⁽⁵⁾
- **Minimal information – taxpayer identity and fiscal purpose – is sufficient** to justify foreseeable relevance in an injunction decision.⁽⁶⁾
- **Requests satisfy foreseeable relevance** when reasonably related to the taxpayer and investigation, even when concerning a group of companies. Procedural safeguards, such as limiting disclosure to taxpayer identity and fiscal purpose, are sufficient to protect rights while maintaining effective cooperation.⁽⁷⁾⁽⁸⁾

Overall, in their decisions, Luxembourg judges seemingly aim to achieve a careful balance: requests must be sufficiently circumscribed to avoid *fishing expeditions*, yet flexible enough to allow meaningful information exchange. In recent years, however, while there has been little to no deviation from the judges in the reasoning followed to assess the legitimacy of the procedure challenged, one may observe that disputes on EOI for tax matters have not even slightly decreased (dozen of cases are referred to the Tribunal every year), suggesting persistent misunderstandings by taxpayers, or their dissatisfaction with the process. In practice, Luxembourg administrative jurisdictions maintain a high evidentiary standard, almost invariably concluding that claimants have failed to substantiate a lack of foreseeable relevance, and thus ruling in favor of tax authorities.

In this context, this new judgement is notable as one of the rare instances where the taxpayer’s appeal succeeded, with the judges accepting the factual evidence presented to challenge the relevance of the information requested. Since the taxpayer was effectively required to prove that the transaction in question no longer existed for the period covered by the request, one may easily understand why similar outcomes are seldom achieved.

In light of the high evidentiary threshold, we strongly recommend taxpayers consult experienced tax professionals to determine the most appropriate strategy when facing an injunction based on an EOI request.

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1) Administrative Court, 8 June 2022, no 47527C

2) CJEU, 16 May 2017, C-682/15

3) CJEU, 6 October 2020, C-245/19 and C-246/19

4) CJEU, 25 November 2021, C-437/19

5) Administrative Tribunal, 20 June 2022, n°45672; Administrative Court, 7 March 2023, n°48650C

6) Administrative Court, 17 November 2022, n°47734C; Administrative Court, 20 April 2023, n°48650C

7) Administrative Tribunal, 9 October 2023, n°48716 and 48717

8) For a detailed analysis of the DAC and in particular of these ECJ decisions and administrative court decisions and judgments, refer *inter alia* to E. Lebas, La directive sur la coopération administrative 1 à 8 et au-delà - Précis de droit fiscal international, 12 March 2024, Legitec.