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Big data tax audits: the conceptualisation of fishing expeditions

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Abstract

The technological ability to collect, process and extract new and predictive knowledge from big data has changed our society. Based on large amounts of information about e.g. location, payments and communication, patterns can be detected and profiles about citizens can be generated and applied. This knowledge acquired from big data is valuable to tax administrations because it makes the global fight against tax fraud more efficient. The use of big data by tax administrations does raise significant legal questions, however, one being the extent to which such use could qualify as a 'fishing expedition'. It has been argued that tax administrations are not allowed to search ('fish') for information, the existence of which is uncertain.

A closer look at the concept of 'fishing expeditions' unveils that there is no generally accepted definition, although authors and judges often refer to it. This article provides an oversight of the main characteristics of this concept using a selection of case law of the ECtHR, CJEU and the EGC, literature and policy documents. The identification of these characteristics enabled us to draw conclusions on what fishing expeditions possibly are, and which consequences this may have for the legitimacy of the gathering and use of big data by tax administrations.

Keywords (5): fishing expeditions, big data, tax audits, privacy, data protection

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1. Introduction

There are numerous definitions of big data, the majority of which focus on the technical ability to collect, process, and extract valuable knowledge from massive amounts of data with high velocity and variety (Council of Europe, 2017, p. 2). In terms of data protection, the most pressing concern is the analysis of those data using software to extract new and predictive knowledge for individual and collective decision-making (Council of Europe, 2017, p. 2). Individuals discuss, exchange, and disclose data about nearly all facets of their life on a daily basis (McPeak, 2015, p. 236). The generation of these big data and the aggregation thereof is useful not only to businesses, but also to governments and the ways in which they pursue various public-interest goals, like the levy of taxes.

It has been said that data are the fuel that tax administrations use to collect taxes, monitor them and support auditing decisions (Scarcella, 2019, p. 2; Ehrke-Rabel, 2019a, p. 291). Moreover, the current era of big data presents new potential for tax administrations to acquire data. They obtain information directly from taxpayers (including private information such as information on disabilities, insolvency, death, pregnancy (Ehrke-Rabel, 2019a, p. 285) or dependent children as this information is all tax relevant), but they also increasingly gather data from other domestic or foreign public authorities and from third parties such as employers, businesses, banking or financial institutions (Ehrke-Rabel, 2019b, p. 80; Scarcella, 2019, p. 2; Jensen & Wöhlbier, 2012, pp. 22–25) and payment service providers (*SMS Parking Case—ECLI:NL:GHSHE:2014:2803*, 2014; Delanote, 2018; De Raedt, 2016). Additionally, tax administrations use artificial intelligence (AI) tools for *e.g.* monitoring taxpayers' internet usage (de la Feria & Amparo Grau, 2022, p. 2; Decree No. 2021-148 of 11 February 2021 on the terms and conditions for the implementation by the Directorate General of Public Finances and the Directorate General of Customs and Indirect Rights of computerised and automated processing allowing the collection and exploitation of data made public on the websites of online platform operators, 2021; De Raedt, 2017, pp. 448–449; Wired Staff, 2007). The use of these big data allows tax administrations (assisted by AI) to identify and cluster taxpayers based on the likelihood of non-compliance. This makes the fight against tax fraud more efficient, which is beneficial to a country's economic well-being.

However, tax administrations' exploitation of big data potentially has a huge influence on a large number of citizens and entails a risk for fundamental rights. The example of the Dutch Child Care Benefits Scandal (*Toeslagenaffaire*) (in which the tax administration wrongly accused thousands of families of fraud after following predictions made by algorithms that analysed the available data sets on the beneficiaries), exemplifies the potential negative consequences very well (Hadwick & Lan, 2021; Henley, 2021). By using a nationality-based variable, the prediction model primarily identified families with a nationality other than Dutch as fraudulent. As a result, the prediction model discriminated against a relatively large number of families, forcing them to give back benefits they had received legitimately. Many of them fell into debt and poverty as a result. Another Dutch example is SyRi (*Systeem Risico Indicatie* (*System Risk Indication*)), a tool for detecting and preventing fraud in the areas of benefits and taxation. SyRI is a predictive model trained by making use of data-analysis algorithms and profiling and it decides, by cross-referencing personal data from citizens in various databases, which citizens warrant further investigation (Calders & Van de Vijver, 2020). The system was implemented in the Netherlands without any form of transparency for citizens, and the Dutch government blocked all attempts from concerned parties to shed light on this. It turned out that SyRi primarily targeted people living in low-income neighbourhoods. The Court in The Hague found SyRi to be disproportionate and in violation of the right to privacy at the beginning of 2020 (*SyRi—ECLI:NL:RBDHA:2020:1878*, 2020; Vervloesem, 2020). The aforementioned examples illustrate the impact of big data gathering and usage by tax administrations on fundamental rights of citizens, such as the right to not be discriminated, the right to a fair trial, data protection rights and the right to privacy.

The use of big data by tax administrations clearly raises significant legal and regulatory challenges. An underexplored challenge relates to the conformity of these big data tax audits[1] with '*the prohibition of fishing expeditions*'. It has been argued that tax administrations are not allowed to search ('fish') for information if its existence is uncertain. Given that it is generally unknown what information a big data set will possibly generate, it is possible that big data audits contravene the prohibition of fishing expeditions. However, the prohibition of fishing expeditions does not appear to have a widely agreed definition in policy documents, literature and case law at the level of the European Union and the Council of Europe. A fishing expedition is *e.g.* seen as '*an excessive request for discovery*' (*Opinion of Advocate-General Kokott in Alessandro Tedesco v Tomasoni Fittings Srl and RWO Marine Equipment Ltd. (Case C-175/06)*, 2007, §§71-73; *Opinion of Advocate-General Wahl in Italmobilaire SpA v. European Commission (Case C-268/14 P)*, 2015, §80) but also as '*a request outside the scope of the subject-matter*

[1] Big data tax audits entail all actions with big data conducted by a tax administration. Think of a big data request for information, automatic exchange of big data sets, using AI-algorithms on big data sets, or AI-based scraping from the internet.

of the inspection decision' (Michalek, 2014; Polley, 2013) or as '*gaining access to a database for purposes different than the original purpose*' (Buttarelli, 2012). The concept is also used in the context of tax investigations where third parties are relied upon to obtain information about non-identified taxpayers or unspecified groups of persons (group requests) (Oberson, 2018; Debelva & Diepvens, 2016; Pross et al., 2012). In addition to this interpretative ambiguity, there is also no explicit legal ground for the prohibition of fishing expeditions.

Due to the lack of consistency in the interpretation of fishing expeditions, it is impossible to establish whether big data tax audits exhibit characteristics of what is considered to be a prohibited fishing expedition. Therefore, it is necessary to conduct a conceptual analysis of what fishing expeditions entail. Hence, the main research question addressed in this article is *'What features are attributed to fishing expeditions in case law, legal doctrine and policy documentation?*'. Accordingly, the objective of this article is to propose an interpretation of fishing expeditions that 1) addresses the current interpretational gap and 2) determines whether big data tax audits conform with the concept of fishing expeditions. To achieve this objective, the expression 'prohibition of fishing expeditions' is broken down and consequently analysed step-by-step based on an in-depth analysis of case law, policy documents and literature (*infra*, section 2).

While the prohibition of fishing expeditions lacks an explicit legal ground (*supra*), this article does not discuss the implicit legal grounds associated with the concept. Nevertheless, a separate section of this article (*infra*, section 3.3.4.) highlights the implicit legal grounds that emerged during the analysis of the interpretation of the concept, which can serve as a foundation for future research.

2. Methodology

2.1. Case law selection

This article focusses on case law from the courts at the level of the Council of Europe and the European Union, namely the European Court of Human Rights (ECtHR), the Court of Justice of the European Union (CJEU) and the European General Court (EGC). After all, how these courts interpret the prohibition of fishing expeditions is of particular interest (hierarchy of courts). Subsequently, their interpretation(s) can be compared to those provided at a specific Member State level. It is further noted that due to the absence of an explicit legal ground for the prohibition of fishing expeditions legislation cannot be used as a starting point for the analysis presented in this article. Therefore, case law serves as the primary source of information despite being classified as a secondary source of law within the civil law system.[2]

Online databases were consulted to detect useful case law. Both the *Hudoc*-database (at the level of the ECtHR) and the *Curia*-database (at the level of the CJEU and EGC) have the advantage of publishing all *judgments* (and a large selection regarding *decisions*[3] in case of the ECtHR) (CJEU, z.d.; Council of Europe & European Court of Human Rights, z.d.-b, z.d.-a; Vols, 2021, p. 132). It is therefore possible to analyse every judgment and almost every decision that provides an interpretation of the concept of fishing expeditions (Vols, 2021, p. 132). The cases were found by using the search forms of the aforementioned online databases in which the following (combinations of) keywords were used: *'fishing expedition(s)', 'pre-trial (discovery/investigation)', 'pêche aux informations', 'dragnet(s)', sleepnet, sleepnetvistechniek and combinations of 'fishing', 'discovery' and 'pre-trial' + (discovery/investigation)*'. These keywords were chosen since, based on a preliminary and exploratory literature review, they can be considered similar notions or notions related to fishing expeditions, translations or synonyms.

The searches based on the (combinations of) keywords were performed separately on each database until 5 October 2022. The oldest result on the *Hudoc*-database dates back from 1988, while the oldest result retrieved from the *Curia*-database dates back to 1981. The number of unique results is shown in Table I. The term '*unique results*' means every judgment, decision or Opinion (Advocate-General (AG) or ECtHR judge) that was not previously identified during the use of other keyword combinations.

[2] In civil law systems, other than in common law systems, the legislation is regarded as the primary source of law. Case law, literature and policy document are, by nature, secondary sources of law in a civil law system.

[3] At the level of the European Court of Human Rights, there is a difference between judgements and decisions: 'A decision is usually given by a single judge, a Committee or a Chamber of the Court. It concerns only admissibility and not the merits of the case. Normally, a Chamber examines the admissibility and merits of an application at the same time; it will then deliver a judgment'. See: Council of Europe, 'The ECHR in 50 questions', Public Relations Unit of the Court, 9, https://www.echr.coe.int/Documents/50Questions_ENG.pdf.

TABLE I. NUMBER OF UNIQUE CASES FOUND IN EACH DATABASE

Database	Number of results
HUDOC	55 (=100%)
CURIA	92 (=100%)

A total of 147 cases were analysed for the purpose of this article.

From the 55 results from the *Hudoc*-database, textual analysis revealed that only 8 results were useful. One decision and three judgments contained an (implicit) interpretation of fishing expeditions by the ECtHR (*De Legé v. The Netherlands*, 2022; *Striedinger v. Austria*, 2021; *Sigurdur Einarsson and others v. Iceland*, 2019; *Akkoc v. Turkey*, 2000). Additionally, 5 judges of the ECtHR gave an interpretation of fishing expeditions in 4 separate Opinions (*Partly Concurring and Partly Dissenting Opinion of Judge Pinto De Albuquerque in Big Brother Watch and Others v. The United Kingdom*, 2021; *Partly Dissenting Opinion of Judge Pavli in Sigurdur Einarsson and Others v. Iceland*, 2019; *Concurring Opinion of Judge Lemmens in Erduran and EM Export Diş Tic. A.Ş. v. Turkey*, 2018; *Concurring Opinion of Judge Zupancic and Judge De Gaetano in Vinci Construction et GTM Génie Civil et Services c. France*, 2015). In 47 results there was no (implicit) interpretation. These results were not further analysed.

From the 92 results from the *Curia*-database, only 16 results were useful. Five judgments contained an interpretation of the concept of fishing expeditions by either the CJEU (n=3) (*AD ea. V. Paccar Inc, DAF Trucks NV, DAF Trucks Deutschland GmbH*, 2022; *État luxembourgeois*, 2021; *État luxembourgeois*, 2020) or the EGC (n=2) (*WT v. Commission (Case T-91/20)*, 2022; *Nexans France SAS and Nexans SA v. European Commission (T-135/09)*, 2012). Further, 5 different AG's gave an interpretation of the concept of fishing expeditions in 11 different Opinions (*Opinion of Advocate-General Pitruzzella in Les Mousquetaires, ITM Entreprises SAS v. European Commission (C-682/20 P)*, 2022; *Opinion of Advocate-General Kokott in État luxembourgeois (C-437/19)*, 2021; *Opinion of Advocate-General Kokott in État luxembourgeois (Joint Cases C-245/19 and C-246/19)*, 2020; *Opinion of Advocate-General Kokott in Nexans France and Nexans v European Commission (C-606/18)*, 2020; *Opinion of Advocate-General Wahl in Deutsche Bahn AG (Case C-583/13 P)*, 2015; *Opinion of Advocate-General Wahl in Italmobilaire SpA v. European Commission (Case C-268/14 P)*, 2015; *Opinion of Advocate-General Kokott in Nexans SA and Nexans France SAS v European Commission (C-37/13)*, 2014; *Opinion of Advocate-General Kokott in Solvay SA v European Commission (Case-109/10 P)*, 2011; *Opinion of Advocate-General Kokott in Alessandro Tedesco v Tomasoni Fittings Srl and RWO Marine Equipment Ltd. (Case C-175/06)*, 2007; *Opinion of Advocate-General Jacobs in Malika Tennah-Durez v. Conseil National de l'Ordre des Médecins (Case C-110/01)*, 2002; *Joined opinion of Advocate-General Fennelly in Commission of the European Communities v Imperial Chemical Industries plc (ICI) (Case C-286/95 P.) and Commission of the European Communities v Solvay SA. (Joined cases C-287/95 P and C-288/95 P.)*, 1999). In 76 results there was no (implicit) interpretation. These results were not further analysed.

The total amount of useful Judgments and Opinions is shown in Table II. '*Useful*' means every judgment or Opinion in which an (implicit) interpretation of the concept of fishing expeditions is provided.

TABLE II. NUMBER OF USEFUL UNIQUE CASES

Database	Number of results
HUDOC	8 (= 14.55%)
CURIA	16 (= 17.39%)

Given the scarcity of relevant case law and Opinions at the level of the European Union and the Council of Europe (n=24), no further distinction by area of law was made. Hence, this article does not exclusively cover tax law since the concept of fishing expeditions encompasses various legal fields. Therefore, this article presents a non-contextual examination of the concept, which must be understood independently from its application within distinct legal domains. Table III illustrates the different legal disciplines that are present in the relevant case law and Opinions examined for this research.

TABLE III. OVERVIEW USEFUL CASE LAW AND OPINIONS

Court/AG/Judge	Case	Area of law
ECtHR	*Akkoc v. Turkey*	Human rights; criminal law; torture; detention
	Sigurdur Einarsson & Others v. Iceland	Human rights; criminal prosecution; market manipulation; right to fair trial
	Striedinger v. Austria	Human rights; criminal prosecution; company law; right to fair trial
	De Legé v. the Netherlands	Human rights; right to fair trial; tax law
Judge Zupancic & De Gaetano	*Vinci Construction v. France*	Human rights; competition law; right to fair trial; right to privacy
Judge Lemmens	*Erduran v. Turkey*	Human rights; tax law; right to privacy; right to fair trial
Judge Pavli	*Sigurdur Einarsson & Others v. Iceland*	Human rights; criminal prosecution; market manipulation; right to fair trial
Judge Pinto De Albuquerque	*Big Brother Watch & Others v. UK*	Human rights; data protection; privacy; surveillance
CJEU	*Etat Luxembourgeois 2020*	Tax law
	Etat Luxembourgeois 2021	Tax law
	PACCAR	Competition law
EGC	*Nexans v. Commission*	Competition law
	WT v. Commission	Staff Regulations of officials; Conditions of employment of other servants
AG Fennelly	*Commission v. ICI & Solvay*	Competition law
AG Wahl	*Deutsche Bahn v. Commission*	Competition law
	Italmobilaire v. Commission	Competition law
AG Kokott	*Tedesco*	Intellectual Property law
	Solvay v. Commission	Competition law
	Nexans v. Commission (2014)	Competition law
	Nexans v. Commission (2020)	Competition law
	Etat Luxembourgeois 2020	Tax law
	Etat Luxembourgeois 2021	Tax law
AG Pitruzzella	*Les Mousquetaires and ITM v. Commission*	Competition law
AG Jacobs	*Tennah-Durez*	Freedom of movement of workers

2.2. Coding of the case law

This research employed an *inductive approach* to map the interpretation of the concept of fishing expeditions in case law. This approach involves the development of a theory based solely on empirical material, (Mortelmans, 2013, p. 399) meaning that the results all have to be derived from the data (*in casu* the case law) without the use of a pre-constructed scheme (Mortelmans, 2013, p. 447) – in contrast to a deductive approach.

The exact phrasing used by a court in a particular judgment/decision or by the ECtHR judges and AGs' in their Opinions was used to identify the characteristics of the concept. In order to do so, the data were collected and on the basis thereof a theory was formed by making sense of the data (*i.e.* the differences in the exact phrasing) and absorbing them into more abstract pieces (*i.e.* interpretations) (Mortelmans, 2013, p. 402), leading to the development of these interpretations that revealed the characteristics of the concept of fishing expeditions (*i.e.* the theory around the concept) (see also *infra*, section 3.1.).

For the execution of this inductive approach this research used Nvivo, the most prominent software program for this type of qualitative research analysis. Nvivo was employed to code the exact phrasing used in relation to the concept of fishing expeditions. Coding refers to the process of assigning a brief term to a piece of data (Mortelmans, 2017, p. 114) where the researcher interpreted the precise language used by the courts and subsequently applied a code to the identified phrasing. Similar phrasings were grouped together under a single code, such as code no.14, which encompassed the use of the interpretation 'request based on speculations'. This code was attributed to several related phrases, including *'justified doubt rather than mere suspicions, [...] does not entitle authorities to indulge in fishing expeditions'* (*Opinion of Advocate-General Jacobs in Malika Tennah-Durez v. Conseil National de l'Ordre des Médecins (Case C-110/01)*, 2002, §50); *'request based on speculations'* (*Opinion of Advocate-General Kokott in État luxembourgeois (C-437/19)*, 2021, §53); and *'the existence of a fishing expeditions depends on whether there were sufficient suspicions*' (*Opinion of Advocate-General Pitruzzella in Les Mousquetaires, ITM Entreprises SAS v. European Commission (C-682/20 P)*, 2022, §104). A Matrix Coding Query was retrieved in Nvivo, allowing for a quantitative overview of all codes associated with fishing expeditions, which was further graphically represented using Excel.[4]

[4] Coding the exact phrasing to describe the concept of fishing expeditions will also be beneficial when the same inductive approach will be used to analyse another set of data such as, for example, domestic case law. The method used in this article is used in the context of a larger research project which analyses domestic case-law and its interpretation of the prohibition of fishing expeditions in the same manner.

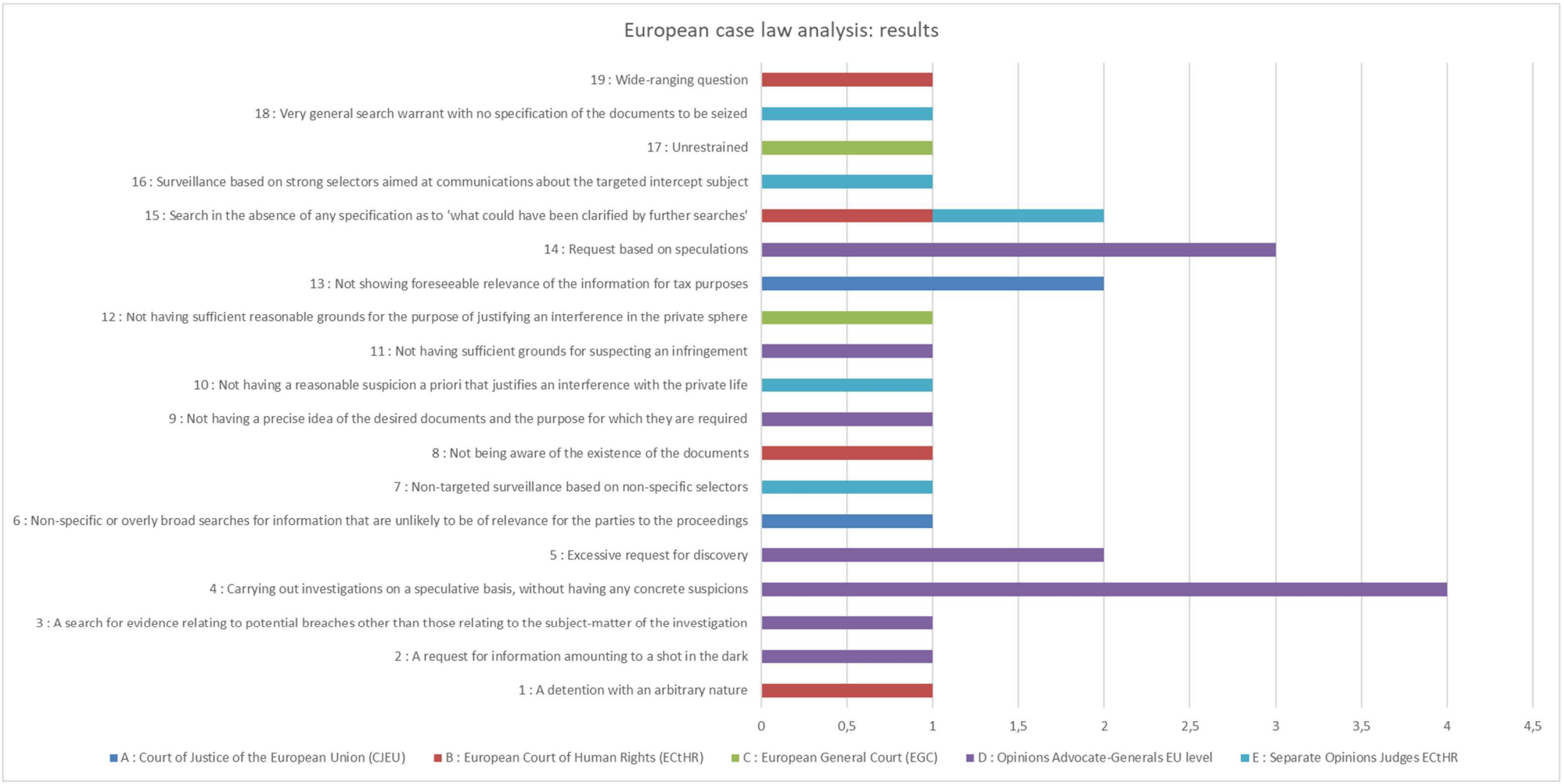

Figure 1: Overview of the different phrasings and interpretations of fishing expeditions in the European case law

Figure 1 shows how frequently a certain phrasing or interpretation of fishing expeditions appeared in the European case law. In total, there are 19 codes (see Figure 1, numbered from 1 to 19). Figure 1 supports the earlier finding that fishing expeditions are interpreted in a variety of ways.

3. When do authorities 'fish'?

3.1. From codes to characteristics: preliminary results of the case law analysis

Phrasing is the choice of words used to express something (Cambridge Dictionary, 2022). An individual can use a certain phrasing to explain a phenomenon while another individual can use a different phrasing to explain the same phenomenon. This is also true for the prohibition of fishing expeditions.

Based on Figure 1, fishing expeditions are being most referred to as 'investigations on a speculative basis, without having any concrete suspicions' (see Figure 1, no. 4) and as 'requests based on speculations' (see Figure 1, no. 14). These can both be considered as different phrasings for the same interpretation: a speculative request/investigation. These phrasings originated from the AG's at the level of the European Union. The ECtHR and its judges in a separate Opinion have described fishing expeditions as 'searches in the absence of any specification as to what could have been clarified by further searches' (see Figure 1, no. 15). The ECtHR further interprets fishing expeditions as 'not being aware of the existence of the documents' (see Figure 1, no. 8) and 'a detention with an arbitrary nature' (see Figure 1, no. 1). Its judges on the other hand, refer also to fishing expeditions as *e.g.* 'not having a reasonable suspicion a priori that justifies an interference with the private life' (see Figure 1, no. 10). These phrasings at both levels (the level of the European Union and the Council of Europe) point to the fact that there were no concrete suspicions whilst conducting searches, which is tantamount to a fishing expedition. Nos. 2, 11 and 12 found in Figure 1 are also a confirmation of this interpretation, although the wording is different.

The second most common phrasings are 'excessive request for discovery' (see Figure 1, no. 5) and 'not showing foreseeable relevance of the information for tax purposes' (see Figure 1, no. 13). 'Foreseeably relevant information' means that the information requested by a tax administration should be foreseeably relevant for the purpose of which it is being requested, *i.e.* tax purposes, otherwise the request is considered to be a fishing expedition. This phrasing is supported by the CJEU. On the other hand, an 'excessive request for discovery' points to the broadness of a request. Similar phrasings in that regard are for example 'unrestrained' (see Figure 1, no. 17), 'very general search warrant with no specification of the documents to be seized' (see Figure 1, no. 18) and 'wide-ranging question' (see Figure 1, no. 19). Other phrasings were also found in European case law. In the Opinions of the AG's, a fishing expedition is also seen as *e.g.* 'a search for evidence relating to potential breaches other than those relating to the subject-matter of the investigation' (see Figure 1, no. 3); or as 'not having a precise idea of the desired documents and the purpose for which they are required' (see Figure 1, no. 9).

In conclusion, when an attempt was made to categorise all phrasings of a fishing expedition, it appeared that, in case law, fishing expeditions are frequently being referred to while utilizing a variety of interpretations that refer to two main elements: speculation and excessiveness. A further examination of policy documents and legal scholarship revealed that fishing is indeed considered speculative and/or excessive. These main elements can therefore be identified as the distinctive conceptual characteristics of a fishing expedition. An explanation of what these two characteristics precisely entail is provided below under point 3.3.

3.2. Two preliminary remarks

Before discussing the concept of fishing expeditions and its two characteristics more in detail, it is necessary to address two other key findings of this study. Specifically, this research has first of all corroborated that fishing expeditions are prohibited at the level of the Council of Europe and the European Union. Secondly, a prohibited fishing expedition always requires an 'expedition'. These two preliminary findings are set out in the paragraphs below.

3.2.1. Normative framework: a prohibition

A normative framework embodies the values and norms that determine how something is perceived (Dickson, 2022, pp. 8–9; Hume, 1985, pp. 469–470). In that regard, our analysis demonstrated that fishing expeditions are perceived as prohibited at the level of the European Union and the Council of Europe in case-law, policy documents and legal scholarship. In competition law, AG Fennelly already mentioned in 1999 that fishing expeditions are prohibited (*Joined opinion of Advocate-General Fennelly in Commission of the European Communities v Imperial Chemical Industries plc (ICI) (Case C-286/95 P.) and Commission of the European Communities v Solvay SA. (Joined cases C-287/95 P and C-288/95 P.)*, 1999, §67). This opinion is shared by different authors (e.g. Siragusa & D'Ostuni, 2007, p. 482 and subsequent authors mentioned in this paragraph) for numerous reasons. Michalek considers fishing expeditions to be an abuse of public power (Michalek, 2014, p. 135, 2015, p. 181). The fact that they are prohibited is also considered as a fundamental and crucial safeguard for the protection of the

right to defence (Michalek, 2015, p. 199). Fishing expeditions are generally also considered forbidden in the context of mass surveillance by intelligence services. In that regard, in his Separate Opinion to the *Big Brother Watch* case, Judge Pinto de Albuquerque emphasises that '[…] *the Convention does not allow for 'data fishing' or 'exploratory' expeditions* […]' (*Partly Concurring and Partly Dissenting Opinion of Judge Pinto De Albuquerque in Big Brother Watch and Others v. The United Kingdom*, 2021, §22). He states that domestic law should be sufficiently clear with regard to the procedures and conditions according to which authorities are empowered to resort to bulk interception, *e.g.* there should be a '*strict prohibition of data fishing or exploratory expeditions*'(*Partly Concurring and Partly Dissenting Opinion of Judge Pinto De Albuquerque in Big Brother Watch and Others v. The United Kingdom*, 2021, §34). In this same field, the European Parliament also refers to the prohibition of the use of preventive *dragnets* and links it to the presumption of innocence (European Parliament, 2014). In the field of tax law, Debelva, Diepvens and Dessain refer to 'the prohibition of fishing expeditions' in case of international exchange of information on request for tax purposes (Debelva & Diepvens, 2016, p. 302; Dessain et al., 2010, p. 7). Advocate-General Kokott emphasised in her Opinion to the *État Luxembourgeois* case (exchange of tax information) that Member States should be not allowed to engage in mere fishing expeditions (*Opinion of Advocate-General Kokott in État luxembourgeois (Joint Cases C-245/19 and C-246/19)*, 2020, §127). Clearly, conducting a fishing expedition is either prohibited, not allowed or not desirable and should be avoided (See also: Kokott & Pistone, 2022, pp. 280, 409, 421, 502; European Parliamentary Research Service (EPRS), 2021, p. 167; Oberson, 2018, p. 22; European Commission, 2017a; Debelva, 2015, p. 13; Noseda, 2014, p. 3,6; Dourado, 2013, p. 17; Economic Crime Cooperation Unit, Action Against Crime Department, Directorate General Human Rights and Rule of Law, Council of Europe, 2013, p. 75; OECD & ATAF, 2013, p. 15; Polley, 2013, p. 10; Pross et al., 2012, p. 186; Buttarelli, 2009, p. 5). Hence, the fact that a fishing expedition is prohibited, is the normative basis from which this article starts.

3.2.2. 'Expedition' as a precondition

A fishing expedition requires, as the term itself states, an 'expedition'. An expedition is an organised journey for a particular purpose (Cambridge Dictionary, z.d.). It implies an intentional investigation with a particular purpose, like *e.g.* a 'request for information' (*Opinion of Advocate-General Kokott in État luxembourgeois (Joint Cases C-245/19 and C-246/19)*, 2020) or an 'inspection decision' (OECD, 2018). An expedition thus refers to gathering information or analysing data with a certain intention. Conversely, information obtained without any specific intention is not an expedition and cannot be considered a prohibited fishing 'expedition'.

Obtaining information without a particular intention can best be illustrated by giving a few examples: the recording of a crowd on the street, the retention of meta data regarding user communications by telecom operators, the automatic exchange of tax information, and so on. In those examples, there is no intention to investigate something or somebody at the moment the data is being gathered. What could amount to a prohibited fishing expedition, however, is an intentional investigation (with a particular purpose) of the data after its prior gathering. This issue arises when the decision is made to act on the data, to search for something within the collected big data set, with or without the aid of advanced algorithms that reveal particular patterns or identify individuals who require further investigation.

3.2.3. Ad interim

The normative framework and the precondition leave out one part of the expression 'prohibition of fishing expeditions', *i.e.* 'fishing'. Everyone accepts that a fishing expedition is prohibited, but what does the prohibition entail? In part 3.1 of this article, reference was already made to a first preliminary finding that, when categorising all phrasings of a 'fishing expedition', it appeared that a variety of notions point to two elements: speculation and excessiveness. These main elements are, based on the case law analysis, identified as the distinctive conceptual characteristics of fishing expeditions. The following part of this article aims to demonstrate that the existence of these two elements as characteristics of a fishing expedition also emerge in the selection of policy documents and legal doctrine.

3.3. Fishing: speculative and/or excessive

First, this article argues that fishing refers to the *speculative* nature of the expedition and hence to having no justifiable grounds or specific suspicions related to (a) certain person(s), compan(y)(ies) or facts that can justify the expedition. Second, this article reveals that fishing can also refer to the *excessive*, non-targeted nature of the expedition, which means that the description of the desired information is not targeted enough. Both characteristics can occur separately, or at the same time.

3.3.1. Speculative fishing

When there are no reasonable grounds or suspicions to justify an expedition, the expedition is considered to be speculative. The speculative aspect occurs in a variety of legal areas and contexts, and covers many interpretations of the concept of fishing expeditions. Important to emphasise is that this characteristic can occur even when the expedition is sufficiently targeted (*infra* characteristic 2, section 3.3.2.). Hence, there shall be a prohibited fishing expedition when the expedition is targeted, but when there are no reasonable grounds or suspicions that justify it. The speculative characteristic of a fishing expedition is described in the paragraphs that follow per area of law. Taking into account these different areas of law, further clarifications regarding the applicable legal instruments are provided when deemed necessary.

TAX LAW. – The existence of the speculative aspect of a fishing expedition is present in the context of administrative cooperation in the field of taxation. In that regard, reference must first be made to article 26 of the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention, that establishes a general but non-binding framework for States around the world to share information on request in tax matters with one another.[5] The application of article 26 OECD Model Tax Convention requires several conditions to be met, one of which being the standard of the 'foreseeable relevance' of the information that will be exchanged. Fishing expeditions are defined in both the Manual on Exchange of Information and the 2012 update of the Commentary on Article 26 OECD Model Tax Convention as '*speculative requests for information that have no apparent nexus to an open inquiry or investigation*' [i.e. related to a certain taxpayer] (OECD, 2006, p. 9, 2012, p. 4; OECD & ATAF, 2013, p. 15). Despite the non-binding character of both instruments, many authors refer to this interpretation of the OECD when describing fishing expeditions (Oberson, 2018, p. 22; Musselli & Buergi Bonanomi, 2018, pp. 17, 44; Debelva & Diepvens, 2016, p. 301; Taghon, 2014, p. 58; Pankiv, 2013, p. 11; Pross et al., 2012, p. 187).

Further, in the framework of articles 1, 5-7, 20.1 and 20.2 of EU Directive 2011/16 on administrative cooperation in the field of taxation (DAC1) (Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, 2011, p. 16) regarding the exchange of information on request, the same standard of foreseeable relevance is used. Recital 9 DAC1 states: '*The standard of "foreseeable relevance" is intended to provide for exchange of information in tax matters to the widest possible extent and, at the same time, to clarify that Member States are not at liberty to engage in "fishing expeditions" or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer*'. This Directive sets, in the field of direct taxation, a consistent approach to mutual assistance and (automatic) exchange of information (Karaboytcheva, 2021, p. 2). It is furthermore important to emphasise that, notwithstanding the similarity of the standard of foreseeable relevance at the level of the OECD and the EU, this standard in DAC1 is to be interpreted autonomously on the basis of EU law (For more information, see *Opinion of Advocate-General Kokott in État luxembourgeois (Joint Cases C-245/19 and C-246/19)*, 2020, §§113-125).

In 2012, the standard of the foreseeable relevance from article 26 OECD Model Tax Convention was extended to '**group requests'**. EU legislation did not adopt this amendment until DAC7 (EU Directive 2021/514 on administrative cooperation in the field of taxation) (Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation, 2021, p. 514; Serrat, 2021). Also, there was no proper definition of foreseeable relevance prior to the approval of DAC7 (Serrat, 2021). DAC7 thus introduced for the first time an entire article (article 5a) dedicated to what the standard of foreseeable relevance entails in the framework of information upon request. It further determines a series of rules for group requests to avoid fishing expeditions (*infra*) (Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation, 2021, p. 514; Serrat, 2021). AG Kokott says in this regard that '*it follows from recital 4 of Directive 2021/514* [DAC7] *that the new provision is intended to provide the tax administrations with a clear legal framework for the continuing use of group requests. It follows from this wording alone that this is a declaratory amendment to the directive and that group requests were therefore also permissible previously. The amendment was made for reasons of legal certainty and legal clarity, both for persons required to pay taxes and provide information and for the tax administrations*' (*Opinion of Advocate-General Kokott in État luxembourgeois (C-437/19)*, 2021, §72).

Clearly, there is a connection between the standard of 'foreseeable relevance' of the information and the prohibition of 'fishing expeditions' (Debelva, 2015, p. 11; Dourado, 2013, p. 10; European Commission, 2017b, p. 2; OECD, 2006, p. 9) (see Figure 1, no. 13). In that regard, requesting information lacking foreseeable relevance for tax investigation purposes is tantamount to a fishing expedition.

[5] The author wants to emphasise that the framework of article 26 OECD Model Tax Convention is situated at global level (and not at European level). However, it remains useful to make a reference in this regard as most member states of the EU are also member states of the OECD.

In the Joint Luxembourg Cases (C-245/19 and C-246/19), the CJEU pointed out that the expression 'foreseeably relevant' must be considered in light of the general principle of EU law that protects natural and legal persons from arbitrary or disproportionate interference by public authorities in their private activities (*État luxembourgeois*, 2020, §111). Such an arbitrary or disproportionate interference would be met if the requesting authority engaged in a fishing expedition (Haslehner & Pantazatou, 2021, p. 150; *État luxembourgeois*, 2020, §113). The CJEU refers further to '[a fishing expedition] *as referred to in recital 9 of Directive 2011/16*' [DAC1, *supra*] (*État luxembourgeois*, 2020, p. §113), which could indicate that the CJEU interprets a fishing expedition as 'to request information that is unlikely to be relevant to the tax affairs of a given taxpayer' (see Figure 1, no. 13) since this is the only interpretation of fishing expeditions that could be derived from recital 9 DAC1. Additionally, the CJEU argues that '*information requested for the purposes of such a 'fishing expedition' could not, in any event, be considered to be 'foreseeably relevant*" (*État luxembourgeois*, 2020, §114). The interpretation of the CJEU is less extensive (and less thorough) than the explanation that AG Kokott provides in the accompanying Opinion to the Joint Cases, in which she explicitly interprets fishing expeditions as '*a request for information amounting to a shot in the dark*' (*Opinion of Advocate-General Kokott in État luxembourgeois (Joint Cases C-245/19 and C-246/19)*, 2020, §127, §132) (see Figure 1, no. 2) and '*investigations on a speculative basis, without having any concrete suspicions*' (see Figure 1, no. 4) (*Opinion of Advocate-General Kokott in État luxembourgeois (Joint Cases C-245/19 and C-246/19)*, 2020, §134. See also another similar interpretation of AG Kokott; *Opinion of Advocate-General Kokott in État luxembourgeois (C-437/19)*, 2021, §53: 'In contrast to that, it follows from the concept of "foreseeable relevance" that the Member States may not engage in simple fishing expeditions. Thus, there must be a certain connection to a specific case. The request may not be speculative' (see Figure 1, no. 14).) Fishing expeditions are however intertwined with the standard of foreseeable relevance and, according to AG Kokott, this standard has two objectives (*Opinion of Advocate-General Kokott in État luxembourgeois (Joint Cases C-245/19 and C-246/19)*, 2020, §127). The first one is the *material aspect* of the standard, that is to say the material relevance of the requested information to the tax assessment. It is required that the requesting authority motivates the purpose of the requested information in the context of the tax procedure (*Opinion of Advocate-General Kokott in État luxembourgeois (Joint Cases C-245/19 and C-246/19)*, 2020, §§128-131). On the other hand, the *formal aspect* must ensure that fishing expeditions do not occur. This means that it must be clear which suspicions are intended to be verified through the requested information (*Opinion of Advocate-General Kokott in État luxembourgeois (Joint Cases C-245/19 and C-246/19)*, 2020, §§132-145). In order to comply with the former, the requesting authority must include in the request for information the facts which it wishes to investigate, or at least concrete suspicions surrounding those facts (and their relevance for tax purposes) (*Opinion of Advocate-General Kokott in État luxembourgeois (Joint Cases C-245/19 and C-246/19)*, 2020, §135-138). These concrete suspicions must always be linked to a certain taxpayer.[6] A request for assistance lacks foreseeable relevance if it is made with a view to obtaining evidence on a speculative basis, without having any concrete connection to ongoing tax proceedings (*Opinion of Advocate-General Kokott in État luxembourgeois (Joint Cases C-245/19 and C-246/19)*, 2020, §§138-139). AG Kokott argues in that regard that '[*i*]*n the absence of such concrete evidence, a request for information seeking to identify all the taxpayer's accounts held with a bank and all unspecified accounts of third parties which are in some way connected with the taxpayer is not permissible under Directive 2011/16, but constitutes an impermissible 'fishing expedition*" (*Opinion of Advocate-General Kokott in État luxembourgeois (Joint Cases C-245/19 and C-246/19)*, 2020, §143). AG Kokott thus gives two explicit interpretations of a fishing expedition that clearly confirm the speculative aspect (see Figure 1, nos. 2 and 4). She also clarifies that fishing expeditions are a crucial component of the standard of foreseeable relevance.

The former paragraphs make it clear that the prohibition of fishing expeditions offers the requested state an opportunity to decline requests that cannot be seen as relevant for tax purposes (Debelva & Diepvens, 2016, p. 302). The request should therefore include all relevant facts to determine its foreseeable relevance, so that the competent authority receiving the request does not consider it a fishing expedition (Pankiv, 2013, p. 11).

The link between the standard of foreseeable relevance and the speculative feature of fishing expeditions is also found in legal scholarship. Debelva argues that when a state has insufficient elements to send a request for information exchange to the other state, the investigation is a fishing expedition (Debelva, 2015, p. 15). As a result, fishing expeditions are not permitted – a rule directed at situations '*where a foreign authority does not have any idea whether the Comptroller*[7] *has anything to say or provide, and cannot provide the Comptroller with any reasonable basis for believing that the person subject to any tax investigation will have any useful information. If a request constitutes a*

[6] It follows from article 20.2 (a) DAC1 that a request for information should always identify the taxpayer concerned. However, it is not required that the taxpayer is named. A description that makes it possible to identify the taxpayer under examination or investigation, *i.e.* not only the name and other personal information but also distinctive qualities or characteristics enabling the identification, is sufficient.

[7] A comptroller is a job title, in which the person concerned supervises financial operations. See: https://dictionary.cambridge.org/dictionary/english/comptroller.

fishing expedition, the Comptroller may decline to provide the information requested' (Dessain et al., 2010, p. 7). Oberson refers to the interpretation of fishing expeditions given in the OECD documents (*supra*) and argues that the *purpose* of its prohibition is '*to avoid extensive and sometimes unnecessary investigations by the requested State, as long as the requesting State does not know what it is looking for*' (Oberson, 2018, p. 22). After all, the request cannot be described as foreseeably relevant for the requesting state in this scenario (Oberson, 2018, p. 22).

Following from article 20.2 (a) EU Directive 2011/16 and the interpretation of article 26 OECD Model Tax Convention, the identity of the taxpayer must be sufficiently described in order to relate the person to the request (*supra*), otherwise the request may be refused because it constitutes a fishing expedition (Oberson, 2018, p. 24) (since it shall be considered speculative). This rule raises questions with regard to **group requests** – also allowed under the standard of 'foreseeable relevance' – where the taxpayers are not individually identifiable. A group request is a type of information exchange that does not include the names of the taxpayers involved, but rather presents a systematic 'pattern of facts' in relation to a specific case of tax avoidance/evasion or linked to a financial or other institution (Oberson, 2018, p. 24; Debelva & Diepvens, 2016, p. 302). It is consequently more difficult to prove that a group request is not a fishing expedition because the asking State cannot point to an ongoing inquiry into the financial affairs of a specific taxpayer, which would, in most situations, dispel the perception that the request is random or speculative (*État luxembourgeois*, 2021, §64; *Opinion of Advocate-General Kokott in État luxembourgeois (C-437/19)*, 2021, §54; Vanistendael, 2013, p. 8; OECD, 2012, p. 4; Pross et al., 2012, p. 186).

However, the standard of 'foreseeable relevance' can nevertheless be met where the group of taxpayers is not individually identified (OECD & ATAF, 2013, p. 15; Dourado, 2013, p. 11; Pross et al., 2012, p. 186). In order for the group request to meet the 'foreseeable relevant' standard and to decrease the chance of a fishing expedition, the group request should '*(i) provide as specific and detailed a description of the group as possible; (ii) explain the tax obligations to which the group of taxpayers is subject in the requesting State and the facts on which the request is based; (iii) show why there is reason to believe that the group has not acted in compliance with the law*' (Article 5a Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation, 2021; See also: *Opinion of Advocate-General Kokott in État luxembourgeois (C-437/19)*, 2021, §62; Oberson, 2018, pp. 24–25; Debelva & Diepvens, 2016, p. 303; OECD & ATAF, 2013, p. 15; OECD, 2012, p. 4; Pross et al., 2012, p. 186). The CJEU emphasises that the requesting authority must '*provide as full and precise a description as possible of the group of taxpayers under examination or investigation, specifying the common set of distinctive qualities or characteristics of the persons who are part of it, in such a way as to enable the requested authority to identify those persons, second, to explain the specific tax obligations of those persons and, third, to state the reasons why those persons are suspected of having committed the infringements or omissions under examination or investigation*' (*État luxembourgeois*, 2021, §67). Thus, more information and a description of the pattern of facts and its relationship to the group is required (Oberson, 2018, p. 24). The aforementioned requirements must be met in order for the group's information request to not amount to a fishing expedition (*État luxembourgeois*, 2021, §§60-64; *Opinion of Advocate-General Kokott in État luxembourgeois (C-437/19)*, 2021, §§51-64) (see Figure 1, nos. 4 and 13).

In order to conclude this section on tax law, it is necessary to make reference to the interpretation provided by the ECtHR in the case of *De Legé v. The Netherlands* in the context of the tax administration's use of coercion to force a taxpayer to provide documents (*De Legé v. The Netherlands*, 2022). The ECtHR had to assess whether the use of documents by the tax administration fell within the scope of the protection of the privilege against self-incrimination (article 6 European Convention on Human Rights (ECHR)), since the taxpayer had been forced to provide these documents or otherwise face penalty payments. The ECtHR concluded that '*the authorities were aware of their* [referring to the documents] *existence*' […], '*it can therefore not be said that the authorities were engaging in a 'fishing expedition'* (*De Legé v. The Netherlands*, 2022, §85). Clearly, the ECtHR argues that when tax administrations are aware of the existence of the requested documents (see Figure 1, no. 8), they are not engaging in a fishing expedition. Knowing that certain documents exist suggests that the tax administration has a solid ground to support their request, and, hence, does not act in a speculative manner. Another source linking the prohibition of fishing expeditions to the right not to produce evidence (and not to tax law in particular), is the Green Paper on the Presumption of Innocence from the European Commission. The European Commission confirms that '[*w*]*here an order has been issued to produce a document or authorising a search and/or seizure of items, the order should specify the subject matter of the item in order to avoid general requests being used to justify 'fishing expeditions' where a vague suspicion only exists*' (European Commission, 2006, p. 9).

COMPETITION LAW. – Searches at the premises of a company by the Commission when there is a (presumed) suspicion of violation of the competition law rules is another field in which the speculative characteristic of a fishing expedition arises. EU law provides procedural

guarantees to protect businesses in such instances from disproportionate or arbitrary intrusion into their premises. In particular, the inspection decision to undertake such a search must be sufficiently reasoned (Article 20, 4) Council Regulation (EC) No 1/2003 of 16 December 2002 on the Implementation of the Rules on Competition Laid down in Articles 81 and 82 of the Treaty, 2003; *Opinion of Advocate-General Kokott in Nexans SA and Nexans France SAS v European Commission (C-37/13)*, 2014, p. §2).

In *Vinci Construction et GTM Génie Civil et Services c. France*, the ECtHR stated that the seizures and inspections carried out at the premises of two companies violated Article 6, §1 ECHR (right to fair trial) and Article 8 ECHR (right to respect for private and family life, for the home and correspondence). The ECtHR gave no interpretation of the concept of fishing expeditions, but Judges Zupancic and De Gaetano argued in their concurring Opinion that there must be reasonable suspicions that justify an interference with the private life *before* the interference into the private life happens in order to not qualify as fishing expedition[8] (see Figure 1, no. 10). The interference into the private sphere can thus not be justified *a posteriori* with the documents that were found during the inspection (*Concurring Opinion of Judge Zupancic and Judge De Gaetano in Vinci Construction et GTM Génie Civil et Services c. France*, 2015). Similarly, the EGC emphasised in *Nexans France* that whether the inspectors went on a 'fishing expedition' at Nexans France's premises depends on whether the Commission had reasonable grounds for interfering in the applicant's private activity[9] at the time of the inspection decision (*Nexans France SAS and Nexans SA v. European Commission (T-135/09)*, 2012, §58) (see Figure 1, no. 12). In order to not conduct a fishing expedition, the inspectors were also in this case required to put forward sufficient reasonable grounds that would justify the whole search they wanted to execute at the company's premises. This requirement of *prior reasonable suspicion* clearly forms a protection against arbitrary interferences with fundamental rights (like the right to privacy), which are tantamount to a fishing expedition.

Similarly, it is in this context argued by AG Kokott that fishing expeditions are '*investigations on a speculative basis, without having any concrete suspicions*' (see also *supra*) (*Opinion of Advocate-General Kokott in État luxembourgeois (Joint Cases C-245/19 and C-246/19)*, 2020, p. §134; *Opinion of Advocate-General Kokott in Nexans France and Nexans v European Commission (C-606/18)*, 2020, §55; *Opinion of Advocate-General Kokott in Nexans SA and Nexans France SAS v European Commission (C-37/13)*, 2014, §43; *Opinion of Advocate-General Kokott in Solvay SA v European Commission (Case-109/10 P)*, 2011, §138) (see Figure 1, no. 4). The Commission is consequently required to clearly indicate the presumed facts (subject-matter) which it intends to investigate (*Opinion of Advocate-General Kokott in Nexans SA and Nexans France SAS v European Commission (C-37/13)*, 2014, §43; *Opinion of Advocate-General Kokott in Solvay SA v European Commission (Case-109/10 P)*, 2011, p. §138). Inspections must therefore meet specified criteria, including the existence of a reasonable suspicion of an infringement by the undertakings in the prior permission of a given investigation (Michalek, 2014, p. 135). In this regard, reference must be made to the Opinion of AG Pitruzzella, in which he notes that the EGC correctly stated that the answer to the question raised by the appellants as to whether the Commission had carried out a 'fishing expedition' depended on whether the Commission had sufficient evidence at its disposal when adopting the contested decisions (*Opinion of Advocate-General Pitruzzella in Les Mousquetaires, ITM Entreprises SAS v. European Commission (C-682/20 P)*, 2022, §104) (see Figure 1, no. 14). The state of Luxembourg also emphasises that '*the lack of a clearly defined suspicion makes the information request an illegal fishing expedition that violates the presumption of innocence*' (Haslehner, 2015a, 2015b). The state of Luxembourg challenges the Commission's investigative powers, claiming that the Commission would not be permitted to conduct 'fishing expeditions' without a solid basis for suspicion (Haslehner, 2015a). Furthermore, Michalek argues that fishing expeditions are described as inspections conducted without a factual or legal basis which are driven merely by an unsubstantiated suspicion of a potential infringement (Michalek, 2014, p. 135, 2015, p. 181).

In his Opinion to the *Deutsche Bahn* case, AG Wahl argues that '[*o*]*ne of the intentions underlying* […] *[article 28 of Regulation No 1/2003] is to prevent the Commission from going on 'fishing expeditions', using as a pretext an ongoing investigation into a possible breach of the competition rules. The Commission cannot search for evidence relating to potential breaches of the EU competition rules other than those relating to the subject-matter of the investigation* '(*Opinion of Advocate-General Wahl in Deutsche Bahn AG (Case C-583/13 P)*, 2015, §64) (see Figure 1, no. 3). Within this context, AG Wahl raises an important point (that he derived from the *Dow Benelux* case law):

[8] Original phrasing: '*Manifestement, les soupçons raisonnables doivent être exposés a priori, c'est-à-dire que les agents de la DGCCRF ne peuvent justifier a posteriori leur intrusion dans la sphère privée de la requérante par ce qu'ils auraient trouvé une fois dans les locaux et en conduisant la perquisition et la saisie des pièces à charge. Autrement, nous parlerions d'une « pêche aux informations » (fishing expedition)*'.
[9] Relating to all the electric cables.

'*the Commission cannot be required to turn a blind eye in the event that it should find, purely by coincidence, documentary evidence which appears to point to another possible infringement of the EU competition rules*' (*Opinion of Advocate-General Wahl in Deutsche Bahn AG (Case C-583/13 P)*, 2015, §65; See also Citron, 2015 on the matter).

Also AG Kokott argues in her Opinion to *Nexans France* 2020 that '*fortuitous discoveries made by the Commission during an inspection which have a different subject matter from that of the inspection concerned may be used only to substantiate initial suspicions and to open a new investigation with a different subject matter*' (*Opinion of Advocate-General Kokott in Nexans France and Nexans v European Commission (C-606/18)*, 2020, §56). Indeed, the Commission is not misusing or evading any procedural requirement if it finds evidence by coincidence during the inspection. A circumstance like this can be compared, *mutatis mutandis*, to an enforcement authority conducting an on-the-spot examination because of suspected tax evasion and discovering information that points to a prospective money laundering case. There is no reason for that authority to dismiss information that was discovered by chance (*Opinion of Advocate-General Wahl in Deutsche Bahn AG (Case C-583/13 P)*, 2015, §65).

OTHER FIELDS OF LAW. – The speculative feature of fishing expeditions was also found in a variety of other fields of law. In the context of access to documents in a criminal prosecution related to market manipulation, fishing expeditions are described by the ECtHR as '*searches in the absence of any specification as to 'what could have been clarified by further searches*" (*Sigurdur Einarsson and others v. Iceland*, 2019, §90) (see Figure 1, no. 15). Judge Pavli confirms this interpretation of fishing expeditions by the ECtHR in his partly dissenting Opinion to the judgment (*Partly Dissenting Opinion of Judge Pavli in Sigurdur Einarsson and Others v. Iceland*, 2019, §8). The concept is employed even outside of the more traditional investigative settings. The former European Commission of Human Rights argued in that way that '*the lack of any concrete elements to justify her detention* […] *gave the incident the appearance of a 'fishing expedition*" (*Akkoc v. Turkey*, 2000, §32). The ECtHR refers to this phrasing of the former Commission by stating that the Commission '*did not […] make any findings concerning the other periods of detention although it noted their somewhat arbitrary nature*' (*Akkoc v. Turkey*, 2000, §123) (see Figure 1, no. 1). If both sentences are read together, it appears that the ECtHR accepts that a fishing expedition is a detention of an arbitrary nature. *In casu*, the arbitrary nature refers to the fact that there were not sufficient concrete elements to justify the specific detention – which gave the incident the appearance of a fishing expedition. This characteristic has also been pointed out by scholars in research on dragnet-controls. In that regard, Potrafke clearly points to the speculative aspect of fishing expeditions by stating that dragnet-controls are '*controls of persons conducted by the police without having any suspicion that the controlled person committed a crime*' (Potrafke, 2019, pp. 2–3).

In the context of freedom of movement of workers,[10] AG Jacobs argues that '[u]*nder Article 22 the authorities of the host Member State may also in the event of justified doubt ask the issuing Member State for confirmation that the training was indeed in accordance with Article 23;* […] *I would stress however that Article 22 applies only exceptionally and in the event of justified doubt - such as might be raised by specific information contained in the application for recognition, for example - rather than mere suspicions derived from, say, the applicant's original nationality; it does not entitle national authorities to indulge in delaying tactics or fishing expeditions, conduct which would run completely counter to the spirit of the Directive'* (*Opinion of Advocate-General Jacobs in Malika Tennah-Durez v. Conseil National de l'Ordre des Médecins (Case C-110/01)*, 2002, §50) (see Figure 1, no. 14).

To conclude, reference must be made to an interpretation provided by the European Data Protection Supervisor (EDPS) that states that fishing expeditions, namely '*where data are randomly compared in order to identify those individuals who fail to comply*', must be avoided (Buttarelli, 2013b, p. 2).

The case law and literature analysis show that concrete suspicions must be distinguished from general suspicions. Concrete suspicions imply the existence of concrete facts or circumstances that can genuinely support the expedition. The different notions used to describe the speculative nature of fishing expeditions (reasonable suspicion, reasonable grounds to justify, concrete elements) are for the purpose of this article clustered under the notion of concrete suspicions. General suspicions, on the other hand, (*e.g.* it is generally known that there are people who commit tax fraud, it is generally known that mobile phones are hidden in prisons, etc.), are not supported by any degree of

[10] The case concerned the question as to what extent a Member State must accord automatic recognition to a medical qualification awarded to a Community national by another Member State on the basis of training undertaken partly outside the Community. It concerned a Belgian national who, after completing six years of medical school in Algeria, was admitted to the seventh year of medical studies at a Belgian university. She received a basic medical diploma at the end of that year and, after completing an additional two years of training, a specific diploma in general medical practice. She wanted to register as a doctor in France, but the French government did not believe that her degree must be recognized in accordance with Council Directive 93/16. See §§1-2 Opinion of Advocate-General Jacobs in Malika Tennah-Durez v. Conseil National de l'Ordre des Médecins (Case C-110/01), 2002).

concrete suspicion. These general suspicions are rather *assumptions*. Such assumptions cannot be the starting point of an expedition without running the risk of conducting a fishing expedition.

3.3.2. Excessive fishing

Excessiveness is the second characteristic of a fishing expedition. Excessive means that an expedition is not sufficiently targeted. The expedition is too broadly conducted, and consequently considered to be a prohibited fishing expedition. Even if there are concrete suspicions for the expedition, fishing expeditions might still occur when the identification of the necessary documents is not precise enough. This characteristic can therefore occur independently from the former characteristic, and vice versa. Similar to the first characteristic, the explanation of this characteristic is divided per field of law.

TAX LAW. – At the level of the ECtHR, Judge Lemmens uses notions that refer to excessiveness while referring to fishing expeditions. In the case of *Erduran v. Turkey*, he states in his Separate Opinion that the search warrant was very general, with no specification of the documents to be seized (*Concurring Opinion of Judge Lemmens in Erduran and EM Export Diş Tic. A.Ş. v. Turkey*, 2018) (see Figure 1, no. 18).

COMPETITION LAW. – The European Commission refers to the aspect of excessiveness of fishing expeditions in the context of competition law in a variety of ways:

> '*frivolous, excessive demands for documents*' (European Commission, 2008a, p. 62);
>
> '*a strategy to elicit in an unfocused manner, through very broad discovery requests, information from another party in the hope that some relevant evidence for a damages claim might be found*' (European Commission, 2008b, footnote 39);
>
> '*overly broad and unfocused disclosure requests ('fishing expeditions')*' (European Commission, 2008b, §129).

Furthermore, also legal scholars discuss the concept of 'fishing expeditions' and its excessiveness; more specifically, they focus on the amount of data being seized (Blanco, 2013, p. 316; Polley, 2013, pp. 13–14). Equally, in his Separate Opinion in *Italmobilaire*, AG Wahl states that the amount and type of information - which was *in casu* vague - reveals that the Commission was on a fishing expedition (*Opinion of Advocate-General Wahl in Italmobilaire SpA v. European Commission (Case C-268/14 P)*, 2015, §80) (see Figure 1, no. 5). Given the volume of the material, the request should have been narrowed down, which would have helped to ensure that the request would not be a fishing expedition.

OTHER FIELDS OF LAW. – In *Striedinger v. Austria* (decision; criminal prosecution and company law), the ECtHR first repeats the argument of the applicants, *i.e.* that the other party carried out investigations and had collected evidence through 'fishing expeditions'. The ECtHR, however, concluded in the decision that the evidence did not show that the other party conducted '*such investigations*' because the mandate was explicitly limited to the case file and the available documents, even though the questions were wide-ranging (*Striedinger v. Austria*, 2021, §65) (see Figure 1, no. 19). As a result, there was no fishing expedition. The latter interpretation provided by the ECtHR is given rather implicitly. Another implicit interpretation of fishing expeditions is given by the EGC in *WT v. Commission.* The EGC argues that the scope of the investigation was, contrary to what the applicant claimed (*i.e.* a fishing expedition), not *unrestrained* and comprehensibly worded (*WT v. Commission (Case T-91/20)*, 2022, §§51, 76. The EGC itself does not refer to the notion fishing expedition) (see Figure 1, no. 17).

In the context of mutual legal assistance in criminal matters, the Council of the European Union and the Council of Europe use the concept of fishing expeditions in a similar way and both refer to the characteristic of excessiveness: '*some refused to undertake investigations, which they considered were too broad in scope and which they described as 'fishing expeditions*'' (Council of the European Union, 2001, p. 18); '*delay can be reduced by focusing the request on transactions above a certain limit, or within a particular and precise time frame (this will also help to ensure that the request is not viewed as a 'fishing expedition*'' (Economic Crime Cooperation Unit, Action Against Crime Department, Directorate General Human Rights and Rule of Law, Council of Europe, 2013, p. 75). Further, the European Commission refers to fishing expeditions in the context of the Anti-Money Laundering Directive and appears to make a link between '*fuzzy searches*' and fishing expeditions (European Commission, 2019, p. 7). In line with this, fishing expeditions are also defined as '*indiscriminate requests for information to reporting entities in the context of the FIU's*[11] *analysis*' (See criterion 29.3 in the FATF methodology for assessing technical compliance with the FATF recommendations and the effectiveness of AML/CFT systems: 'In the context of its analysis function, an FIU should

[11] Financial Intelligence Units.

be able to obtain from any reporting entity additional information relating to a suspicion of ML/TF. This does not include indiscriminate requests for information to reporting entities in the context of the FIU's analysis (e.g., 'fishing expeditions'), mentioned in: European Commission, 2016, footnote 33). AG Kokott, in her Separate Opinion to *Tedesco* (intellectual property law) referred further explicitly to fishing expeditions as '*excessive requests for discovery*' (*Opinion of Advocate-General Kokott in Alessandro Tedesco v Tomasoni Fittings Srl and RWO Marine Equipment Ltd. (Case C-175/06)*, 2007, §71) (see Figure 1, no. 5). To conclude this section, considering specifically the amount of data being seized, the concept of 'fishing expeditions' and its excessiveness are referred to in the field of digital seizures in relation to electronic evidence (Robinson, 2021).

This characteristic indicates that when data is acquired without sufficiently specifying which data is required, the request is tantamount to a prohibited fishing expedition. Viewed from that angle, it amounts to merely searching (supplemental) evidence of which the existence is uncertain. In that regard, legal scholars state that fishing expeditions are *'claims too general and unsupported* [that] *are put forward only to acquire useful evidence or business secrets from another party*' (Siragusa & D'Ostuni, 2007, p. 482). It appears that excessive fishing holds a reference to a 'dragnet' that tries to catch as much information as possible in order to be able to retrieve something out of it. It is exactly this dragnet-way of investigating that is prohibited fishing.

3.3.3. Speculative and excessive fishing

The previous two parts of this article discussed the characteristics separately, however, they also occur in a complementary manner or as an externalisation of one another.

When the two characteristics coexist, they are considered to be complementary in order to interpret the concept of fishing expeditions.

TAX LAW. – Legal scholarship on taxation considers fishing expeditions to be a '*massive and unrestrained request of data* [excessiveness] *on unspecified series of taxpayers* [speculative]' (Greggi, 2017, p. 6). In the country reports from Spain and Belgium on the protection of taxpayer rights in the Yearbook of the International Bureau of Fiscal Documentation (IBFD) from 2020, fishing expeditions are referred to as *'*[…] *indefinite purposes* [speculative] *(i.e., a 'fishing expedition'), without precisely identifying what specific information is to be obtained* [excessive] (IBFD Observatory on the Protection of Taxpayers' Rights, 2021, pp. 13, 82, 162).

COMPETITION LAW. – According to AG Fennelly (in his Separate Opinion to *Imperial Chemical Industries*), a fishing expedition is the opposite of having a very definite understanding of the requested documents [excessiveness] and the purpose for which they are required [speculative](*Joined opinion of Advocate-General Fennelly in Commission of the European Communities v Imperial Chemical Industries plc (ICI) (Case C-286/95 P.) and Commission of the European Communities v Solvay SA. (Joined cases C-287/95 P and C-288/95 P.)*, 1999, §68) (see Figure 1, no. 9). In his Separate Opinion to *Italmobilaire*, AG Wahl states firstly that the Commission did not have sufficient grounds for suspecting an infringement (see Figure 1, no. 11) [speculative], and continues emphasising that the amount and type of information which was *in casu* vague reveals that the Commission was on a fishing expedition (*Opinion of Advocate-General Wahl in Italmobilaire SpA v. European Commission (Case C-268/14 P)*, 2015, §80) (see Figure 1, no. 5). The European Commission (European Commission, 2020, footnote 9) and the CJEU (*AD ea. V. Paccar Inc, DAF Trucks NV, DAF Trucks Deutschland GmbH*, 2022, §63) also make reference to recital 23 of the Damages Directive for infringements of the competition law provisions (Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on Certain Rules Governing Actions for Damages under National Law for Infringements of the Competition Law Provisions of the Member States and of the European Union, 2014) regarding the principle of proportionality and the prevention of fishing expeditions, '*i.e. non-specific or overly broad searches of information* [excessiveness] *that is unlikely to be of relevance* [speculative] *for the parties to the proceedings'* (Recital 23 Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on Certain Rules Governing Actions for Damages under National Law for Infringements of the Competition Law Provisions of the Member States and of the European Union, 2014) (see Figure 1, no. 6).

Further, the determination of the scope of the investigation and the usage of search terms throughout an inspection by the Commission are discussed in particular with regard to the concept of fishing expeditions. Whereas these two requirements first of all exist because they allow the company under inspection to assess the scope of its duty to cooperate and protect its rights to defence, they also define the Commission's investigative powers since they imply that the Commission is not expected to go on a fishing expedition (Polley, 2013, p. 1). From this, it follows that also the search terms employed [excessive] during the inspection must stay within the scope of the investigation [speculative]. Otherwise, the Commission risks being accused of carrying out a fishing expedition (Polley, 2013, pp. 1, 10, 13). To summarise, if the scope

of the inspection decision is not delimited [speculative] and if the search terms are not carefully chosen [excessive], there is a risk of a fishing expedition. This interpretation of the concept of fishing expeditions is also followed by the OECD in a document concerning the investigative powers in practice, more specifically on the unannounced inspections in the digital age. The OECD states that '*the search terms must not be too broad* [excessive] *to ensure that only results within the scope of the inspection decision are produced* [speculative] *[…]. The concern is that inspections can otherwise turn into 'fishing expeditions*' (OECD, 2018, p. 8).

OTHER FIELDS OF LAW. – The European Commission refers to fishing expeditions as '*seeking to obtain such wide categories of documents would have in practice sent the Commission on a vague fishing expedition for a virtually limitless set of documents* [excessiveness]*, without any precise indication of the reasons why they would be exculpatory* [speculative]*. Such an exercise is unjustified and disproportionate, particularly in light of the nature of the investigation that has been carried out*' (Kroes, for the Commission, 2009, pp. 28–29).

In the context of bulk interception of communications, Judge Pinto de Albuquerque also emphasises the presence of both characteristics in his Separate Opinion to the *Big Brother Watch* case (see Figure 1, nos. 7, 16):

> [T]*he Convention does not allow for 'data fishing', or 'exploratory' expeditions, neither in the form of non-targeted surveillance based on non-specific selectors,*[12] *nor in the form of surveillance based on strong selectors*[13] *aimed at communications about the targeted intercept subject* [excessiveness]*. Nor is it admissible to broaden the net of intercept subjects* [excessiveness] *through the deployment of fuzzier search terms.* […] *Thus any target of surveillance must always be identified or identifiable in advance based on reasonable suspicion* [speculative]*. To leave no doubt, bulk interception should be admissible only on the basis of strong selectors* [excessiveness] *aimed at the communications from and to the targeted intercept subject when there is a reasonable suspicion* [speculative] *that he or she is involved in the legally defined categories of serious offences or activities which are harmful to national security without necessarily being criminal* (*Partly Concurring and Partly Dissenting Opinion of Judge Pinto De Albuquerque in Big Brother Watch and Others v. The United Kingdom*, 2021, p. §§22-23).

Within this context, it is essential to point to an important distinction. Bulk interception of metadata in general, according to the findings of this research, cannot be considered a prohibited fishing expedition as long as the interception of the data has no specific purpose yet (*supra*). Judge Pinto de Albuquerque argues in favour of the prohibition of non-targeted bulk interception (*Partly Concurring and Partly Dissenting Opinion of Judge Pinto De Albuquerque in Big Brother Watch and Others v. The United Kingdom*, 2021, §§11, 33), however, he does not state that bulk interception is prohibited because it constitutes a fishing expedition. Non-targeted bulk interception is prohibited based on other grounds.

He does say, however, that the Convention prohibits data fishing or exploratory investigations (*Partly Concurring and Partly Dissenting Opinion of Judge Pinto De Albuquerque in Big Brother Watch and Others v. The United Kingdom*, 2021, §22) which occur when there is no reasonable suspicion prior to the interception of the communications from targeted subject[14] (even if selectors are present). Hence, bulk interception should, according to Judge Pinto de Albuquerque, be admissible only on the basis of strong selectors aimed at the communications from and to the targeted intercept subject [excessiveness] when there is a reasonable suspicion about the targeted subject [speculative] (*Partly Concurring and Partly Dissenting Opinion of Judge Pinto De Albuquerque in Big Brother Watch and Others v. The United Kingdom*, 2021, §23).

Subsequently, some refer to the two characteristics by way of externalisation.

In the context of tax and competition law, AG Kokott has emphasised that to ensure that investigations are not carried out on a speculative basis without having any concrete suspicions [speculativeness] (*Opinion of Advocate-General Kokott in Nexans France and Nexans v European Commission (C-606/18)*, 2020, §55; *Opinion of Advocate-General Kokott in Nexans SA and Nexans France SAS v European Commission (C-37/13)*, 2014, §43; *Opinion of Advocate-General Kokott in Solvay SA v European Commission (Case-109/10 P)*, 2011, §138), the evidence sought [excessiveness] and the matters to which the investigation must relate must be indicated as precisely as possible in order to not

[12] This means non-personal identifiers.
[13] This means personal identifiers, such as an e-mail address.
[14] In the Big Brother Watch case, the ECtHR describes four stages of the bulk interception process: (a) the interception and initial retention of communications and related communications data (that is, the traffic data belonging to the intercepted communications); (b) the application of specific selectors to the retained communications/related communications data; (c) the examination of selected communications/related communications data by analysts; and (d) the subsequent retention of data and use of the 'final product', including the sharing of data with third parties.

conduct a fishing expedition (*Opinion of Advocate-General Kokott in État luxembourgeois (Joint Cases C-245/19 and C-246/19)*, 2020, §§134-135; *Opinion of Advocate-General Kokott in Nexans France and Nexans v European Commission (C-606/18)*, 2020, §55; *Opinion of Advocate-General Kokott in Solvay SA v European Commission (Case-109/10 P)*, 2011, p. §138). Although AG Kokott emphasises the speculative aspect while interpreting the prohibition of fishing expeditions, she also seems to takes into account the excessive character that an inspection might have. Conversely, she confirms in her Separate Opinion to *Tedesco* (intellectual property law) that the only way to prevent excessive gathering of material is to describe with sufficient precision the requested documents [excessiveness] and require that these documents are linked to the subject-matter of the dispute [speculative] (*Opinion of Advocate-General Kokott in Alessandro Tedesco v Tomasoni Fittings Srl and RWO Marine Equipment Ltd. (Case C-175/06)*, 2007, §§71-73).

Within a data protection context, the EDPS mentions the concept of fishing expeditions several times in the context of 'access to data': '*In order to avoid 'fishing expeditions' by Europol and Eurojust, and to make sure they only access data 'necessary for their tasks',* […] [excessiveness], [it is] *suggested to restrict Europol and Eurojust*['s] *access to data about individuals whose name already appear in their files* [speculative]. *This would guarantee that only alerts relevant for them are consulted*' (Hustinx, 2005, p. 9). Similarly, the EDPS confirmed that '*OLAF is also given the explicit power to access information before the opening of the investigation, but in this context the scope of the access is limited to "when it is indispensable in order to assess the basis in fact of allegations"* [speculative]. *Such specification is important as it excludes that OLAF might engage in access requests which have the purpose to 'explore' the institutions´ databases ('fishing expeditions') thereby potentially processing a higher number of personal data without a defined scope'* [excessiveness] (Buttarelli, 2011, p. 2). Moreover, in an opinion on the notification for prior checking from the Data Protection Officer of the European Anti-Fraud Office (OLAF) regarding the Investigative Data Consultation Platform, the EDPS argues that '*a search for a particular name* [excessiveness] *may reveal information concerning several unconnected cases* [speculative] *in different countries, whereas the investigating authority is only interested in one of these cases in one particular country. The risk of irrelevant collection or fishing expeditions would therefore increase when direct access is allowed*' (Buttarelli, 2013a, p. 11).

Lastly, in a Commission working paper on competition law it is stated that 'the '*classes' of documents to be divulged would have to be defined by the court* [excessiveness] *on the basis of the 'fact pleading'* [speculativeness] *by the claimant. This would limit 'fishing expeditions*'' (European Commission, 2008b, footnote 81). It is clear that the documents that could be divulged depend on the suspicions that must be made clear by 'fact pleading'.

3.3.4. Preliminary determination of the legal grounds underpinning the prohibition of fishing expeditions

The above analysis illustrates the interpretation of fishing expeditions in various legal contexts, such as human rights law, tax law, competition law, bulk interception of communication, access to databases, and intellectual property law. As such, the legal ground for the prohibition of fishing expeditions is dependent on the context in which the expedition occurs. Although not exhaustive, several legal grounds for the prohibition of fishing expeditions can be found in various legal instruments, including article 6 ECHR, article 8 ECHR, articles 20 and 28 EU Regulation 1/2003, recital 9 and article 1 of EU Directive 2011/16 (DAC1), article 5a EU Directive 2021/514 (DAC7), article 1(2) EU Regulation 1206/2001, recital 23 of the Damages Directive, and data minimisation in the General Data Protection Regulation. However, a comprehensive examination of the legal grounds that can serve as the legal basis for prohibiting fishing expeditions necessitates further investigation.

4. Conclusion

This article demonstrates that a variety of ways exist to describe a 'fishing expedition'. Identifying its general characteristics and examining what exactly is prohibited is therefore of pivotal importance, especially in the context of big data audits in general and big data audits by the tax administration more specifically as demonstrated in the introduction of this article. This article has used an inductive approach to identify the characteristics of a fishing expedition. In doing so, this article draws three conclusions.

First, there seems to be unanimity on the normative framework: fishing expeditions are prohibited. This article therefore examined what is considered to be prohibited.

Second, fishing always requires an 'expedition' – an intentional investigation with a specific purpose. Gathering information without such a specific purpose seems not to qualify as a fishing expedition, at least not in that stage. However, it can become a fishing expedition in a later stage when the gathered data is being explored with a specific purpose.

Third, this article discovered that speculation and excessiveness are the distinctive conceptual characteristics of a prohibited fishing expedition. An expedition shall be considered prohibited fishing when it is speculative, implying that there are no concrete suspicions that can justify the expedition. In that regard, the presence of general suspicions is insufficient to qualify as a concrete suspicion that justifies an expedition. An expedition shall also be considered prohibited fishing when it is excessive, implying that the expedition was insufficiently targeted. The analysis showed that there is a problem when, metaphorically speaking, fishing is done by using a dragnet. This research further showed that both characteristics can occur separately or at the same time. The presence of one (speculative or excessive) is sufficient to conclude that an expedition is a prohibited fishing expedition.

To summarise, there shall be a prohibited fishing expedition when 1) only general suspicions are used to conduct a targeted expedition; 2) when a 'dragnet' is used to confirm concrete suspicions; 3) or both, when general suspicions are used in combination with an excessive expedition (dragnet) to gather as much information as possible in order to find something that can *in casu* substantiate the general suspicions. Fishing with a metaphorical single (targeted) fishing line when there are concrete suspicions, to confirm those concrete suspicions, shall not be seen as a prohibited fishing expedition.

Based on the former, an answer to the aforementioned research question can be formulated: *a prohibited fishing expedition is a speculative and/or excessive expedition*. Together with the explanation of the characteristics as set out above, this interpretation addresses the current gap in understanding what the prohibition of fishing expeditions implies. It also allows the application thereof to concrete actions of the tax administration. The crucial question that now remains to be answered is whether tax audits involving big data display characteristics of what is considered to be a prohibited fishing expedition.

This article argues that an intentional expedition is required in order for an action to qualify as a fishing expedition. Therefore, big data tax audits that do not involve an intentional expedition cannot be categorised as a prohibited fishing expedition. Examples of information gathering without (at that stage) a specific purpose are the automatic and spontaneous exchange of information, or adding data sets to a datawarehouse. Intentional expeditions do exist in case the data sets that the tax administration gathered in the aforementioned ways are later on intentionally analysed (whether or not assisted by AI) for specific purposes.

Every other intentional way of gathering information by the tax authorities (such as requests for information at taxpayers, third parties or domestic of foreign public authorities and more) must be assessed individually against the prohibition of fishing expeditions in order to draw a definite conclusion on their compatibility. This requires an in-depth analysis of the specific expeditions undertaken in order to assess whether one or both of the identified characteristics of a fishing expedition are present. Further research will be conducted on this.

Tax audits that involve big data will however require specific attention as there seems to be a higher risk of the audit being excessive (not targeted enough) and speculative (no concrete suspicions). Hence, these findings may encourage tax administrations, tax experts and researchers to explore big data audits in light of the prohibition of fishing expeditions. A concrete assessment however will require an interdisciplinary dialogue between practitioners such as legal scholars, tax experts and computer scientists that build the technology. This can ensure that the potential offered by big data can still be fully exploited, while upholding fundamental rights of taxpayers and essential principles – including the prohibition of fishing expeditions.

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