

The group requests in the courts

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Italy made use of this possibility. A group request of 23 November 2018 concerned Italian residents who had held accounts with a particular bank, had received a letter announcing restrictions for non-compliance with Italian tax obligations and had failed to provide proof of compliance, during the period from 23 February 2015 to 31 December 2016. Italy requested identification data, account numbers and the balances at 28 February 2015 and 31 December 2016.¹ A further request concerned clients of UBS selected by the same criteria.² The affected clients challenged the transmission of their data before the Federal Administrative Court and the Federal Supreme Court. In its judgment 2C_73/2021 of 27 December 2021, the Federal Supreme Court confirmed that the Italian group request met the requirements of Article 27 of the convention, did not constitute a "fishing expedition" and respected the principles of good faith and subsidiarity.³

The Federal Supreme Court had earlier admitted group requests based on the same pattern from the Netherlands, in its judgment 2C_276/2016 of 12 September 2016. By a narrow majority it had also approved the transmission of data concerning some 40,000 UBS clients to France in its judgment 2C_653/2018 of 26 July 2019.⁴ Against this background the Italian requests raised few new questions. The Federal Administrative Court has since applied the Supreme Court's reasoning in a series of individual appeals by clients who fell within the Italian group, holding in each case that the transmission was admissible once the client belonged to the defined group.⁵ For practitioners these judgments mean that the closure of an account after an exit letter does not protect the client, and that Swiss procedural remedies can delay but rarely prevent the transmission.

1 The procedure in Switzerland

A request from the Agenzia delle Entrate reaches the Swiss Federal Tax Administration, which examines whether it meets the conditions of Article 27 and of the Tax Administrative Assistance Act. If it does, the Federal Tax Administration orders the bank to produce the information and asks it to inform the persons concerned who are resident abroad and to invite them to designate a person in Switzerland authorized to receive notifications.⁶ The persons concerned may inspect the file and comment on the intended transmission. At the end of the procedure the Federal Tax Administration issues a final decree (*Schlussverfügung*) for each person concerned. That decree can be appealed to the Federal Administrative Court within thirty days, and the appeal has suspensive effect.⁷ In group requests, where the persons concerned are not known in advance, the Federal Tax Administration notifies them by publication in the Federal Gazette in anonymized form. A client who does not designate a Swiss address for notification learns of the final decree only through that publication.

A further appeal to the Federal Supreme Court is available only if the case raises a legal question of fundamental importance or is otherwise a particularly significant case.⁸ The Supreme Court has accepted that the first Italian group request raised such questions and decided it in 2021. Later appeals by members of the same group have generally ended before the Federal Administrative Court, which applies the Supreme Court's reasoning. For the client the Swiss procedure offers transparency and time. It allows him to know that his data are being transmitted, to verify that he belongs to the group and to correct errors, and it gives him the opportunity to regularize his position in Italy before the information arrives. It does not allow him to prevent a transmission that meets the treaty standard, and the principle of speciality limits the use of the data in Italy to the tax purposes for which they were requested.⁹

2 Notes

1. Federal Administrative Court, judgment A-3534/2022 of 3 January 2024, https://entscheidsuche.ch/docs/CH_BVGer/CH_BVGE_001_A-3534-2022_2024-01-03.pdf. The bank is anonymized in the judgment. ↩
2. Vorpe (above), describing a request concerning "recalcitrant" UBS clients who received closure letters without providing proof of tax compliance in the period from 23 February 2015 to 31 December 2016. ↩

3. Federal Supreme Court, judgment 2C_73/2021 of 27 December 2021, as summarized in Federal Administrative Court A-3534/2022 (above). ↩
4. Vorpe (above) for 2C_276/2016; SUPSI, Centro di competenze tributarie, seminar announcement "Scambio di informazioni fiscali: recenti sviluppi", 21 January 2020, https://www.supsi.ch/documents/d/deass/20200121_scambio-informazioni-fiscali-recenti-sviluppi, for 2C_653/2018 (three votes to two). ↩
5. Federal Administrative Court A-3534/2022 (above) and judgment A-2073/2022 of 28 March 2025, https://entscheidsuche.ch/docs/CH_BVGer/CH_BVGE_001_A-2073-2022_2025-03-28.pdf, which dismissed the appeal of a client who claimed not to have received the bank's letter of 20 February 2015 and concerned the same Italian group request of 23 November 2018 for the period from 23 February 2015 to 31 December 2016. ↩
6. TAAA (above), Arts. 8 to 14, in particular Art. 14 para. 3, under which the Federal Tax Administration asks the holder of the information to invite a person entitled to appeal who is resident abroad to designate a person in Switzerland authorized to receive notifications, and Art. 14a (group requests: identification by the holder of the information and notification in anonymized form in the Federal Gazette), [droit-bilingue.ch](https://www.droit-bilingue.ch), <https://www.droit-bilingue.ch/de-fr/6/65/651.1-14-19.html> and <https://www.droit-bilingue.ch/de-fr/6/65/651.1-14a-20.html>. ↩
7. TAAA (above), Art. 17 para. 1 (final decree for each person entitled to appeal) and Art. 19 para. 3 ("Die Beschwerde hat aufschiebende Wirkung"), [droit-bilingue.ch](https://www.droit-bilingue.ch), <https://www.droit-bilingue.ch/de-fr/6/65/651.1-17-23.html> and <https://www.droit-bilingue.ch/de-fr/6/65/651.1-19-26.html>, in conjunction with Art. 50 para. 1 of the Federal Act of 20 December 1968 on Administrative Procedure, SR 172.021 (appeal within 30 days of notification), <https://www.droit-bilingue.ch/de-en/1/17/172.021-50-63.html>. ↩
8. Federal Supreme Court Act of 17 June 2005, SR 173.110, Art. 84a (appeal admissible only "wenn sich eine Rechtsfrage von grundsätzlicher Bedeutung stellt oder wenn es sich aus anderen Gründen um einen besonders bedeutenden Fall" within the meaning of Art. 84 para. 2), [droit-bilingue.ch](https://www.droit-bilingue.ch), <https://www.droit-bilingue.ch/de-fr/1/17/173.110-84a-90.html>. ↩

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9. Swiss-Italian convention as amended by the Protocol (above), Art. 27 para. 2, on the confidentiality and the permitted use of information received, <https://www.droit-bilingue.ch/de-fr/0.6/0.67/0.672.945.41-27-30.html>. In judgment A-2073/2022 (above) the Federal Administrative Court ordered the Federal Tax Administration to remind Italy that the information could be used only in relation to the appellant. ↩

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