

Judgment of the Court (Grand Chamber) of 6 October 2020 (requests for a preliminary ruling from the Cour administrative — Luxembourg) — État luxembourgeois v B (C-245/19), and État luxembourgeois v B, C, D and F.C. (C-246/19)

(Joined Cases C-245/19 and C-246/19) ⁽¹⁾

(References for a preliminary ruling — Directive 2011/16/EU — Administrative cooperation in the field of taxation — Articles 1 and 5 — Decision ordering that information be provided to the competent authority of a Member State, acting in response to a request for exchange of information from the competent authority of another Member State — Person holding the information the protection of which is ordered by the competent authority of the first Member State — Taxpayer concerned by the investigation giving rise to the request from the competent authority of the second Member State — Third parties with whom that taxpayer maintains legal, banking, financial or, more broadly, economic relations — Judicial protection — Charter of Fundamental Rights of the European Union — Article 47 — Right to an effective remedy — Article 52(1) — Limitation — Legal basis — Respect for the essence of the right to an effective remedy — Existence of a remedy enabling the individuals in question to obtain an effective review of all the relevant issues of fact and of law, as well as effective judicial protection of the rights guaranteed to them by EU law — Objective of general interest recognised by the Union — Combating international tax fraud and tax evasion — Proportionality — Whether the information referred to in the information order is ‘foreseeably relevant’ — Judicial review — Scope — Personal, temporal and material factors to be taken into consideration)

(2020/C 414/06)

Language of the case: French

Referring court

Cour administrative

Parties to the main proceedings

Appellant: État luxembourgeois (C-245/19), (C-246/19)

Respondents: B (C-245/19); B, C, D and F.C. (C-246/19)

Intervener: A (C-246/19)

Operative part of the judgment

1. Article 47 of the Charter of Fundamental Rights of the European Union, read in conjunction with Articles 7 and 8 and Article 52(1) thereof, must be interpreted as:

- precluding legislation of a Member State implementing the procedure for the exchange of information on request established by Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, as amended by Council Directive 2014/107/EU of 9 December 2014, which prevents a person holding information from bringing an action against a decision by which the competent authority of that Member State orders that person to provide it with that information, with a view to following up on a request for exchange of information made by the competent authority of another Member State, and as
- not precluding such legislation from preventing the taxpayer concerned, in that other Member State, by the investigation giving rise to that request for exchange of information and the third parties concerned by the information in question from bringing actions against that decision.

2. Article 1(1) and Article 5 of Directive 2011/16, as amended by Directive 2014/107, must be interpreted as meaning that a decision by which the competent authority of a Member State orders a person holding information to provide it with that information, with a view to following up on a request for exchange of information made by the competent authority of another Member State, is to be considered, taken together with that request, as concerning information which is not manifestly devoid of any foreseeable relevance where it states the identity of the person holding the information in question, that of the taxpayer concerned by the investigation giving rise to the request for exchange of information, and the period covered by that investigation, and where it relates to contracts, invoices and payments which, although not specifically identified, are defined by criteria relating, first, to the fact that they were concluded or carried out by the person holding the information, secondly, to the fact that they took place during the period covered by that investigation and, thirdly, to their connection with the taxpayer concerned.

(¹) OJ C 213, 24.6.2019.

Judgment of the Court (Seventh Chamber) of 8 October 2020 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Staatssecretaris van Financiën v Exter BV

(Case C-330/19) (¹)

(Reference for a preliminary ruling — Customs union — Regulation (EEC) No 2913/92 — Community Customs Code — Article 121(1) — Inward processing procedure — Release for free circulation — Incurrence of a customs debt — Determination of the debt — Concept of ‘taxation elements’ — Taking account of a preferential tariff measure)

(2020/C 414/07)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Staatssecretaris van Financiën

Defendant: Exter BV

Operative part of the judgment

Article 121(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code must be interpreted as precluding the application of a preferential tariff measure leading to a reduced rate of customs duty, which was in force at the time of acceptance of the declaration of placing of goods under the inward processing procedure, but which was suspended at the date of acceptance of the declaration of release of those goods for free circulation.

(¹) OJ C 238, 15.7.2019.