Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

6 October 2020*

(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 production 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)

In Joined Cases C-245/19 and C-246/19,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Cour administrative (Higher Administrative Court, Luxembourg), made by decisions of 14 March 2019, received at the Court on 20 March 2019, in the proceedings

État luxembourgeois

v

B (C-245/19),

and

État luxembourgeois

v

B,

C,

D,

F.C.,

* Language of the case: French.

intervener:

A (C-246/19),

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot, A. Arabadjiev, E. Regan and S. Rodin, Presidents of Chambers, M. Ilešič, J. Malenovský (Rapporteur), D. Šváby, F. Biltgen, K. Jürimäe, C. Lycourgos, A. Kumin, N. Jääskinen and N. Wahl, Judges,

Advocate General: J. Kokott,

Registrar: M.-A. Gaudissart, Deputy Registrar,

having regard to the written procedure and further to the hearing on 26 May 2020,

after considering the observations submitted on behalf of:

– B, C, D and F.C., by C. Henlé, avocate,

– the Luxembourg Government, initially by D. Holderer and T. Uri, and subsequently by T. Uri, acting as Agents,

– the Belgian Government, by S. Baeyens, P. Cottin and J.-C. Halleux, acting as Agents,

– the Greek Government, by A. Dimitrakopoulou, M. Tassopoulou and G. Konstantinos, acting as Agents,

– the Spanish Government, by S. Jiménez García, acting as Agent,

– the French Government, initially by A. Alidière, E. de Moustier, D. Colas and E. Toutain, and subsequently by A. Alidière, E. de Moustier and E. Toutain, acting as Agents,

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Commission, initially by N. Gossement, H. Kranenborg, W. Roels and P.J.O. Van Nuffel, and subsequently by H. Kranenborg, W. Roels and P.J.O. Van Nuffel, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 2 July 2020,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation, on the one hand, of Articles 7, 8 and 47 and Article 52(1) of the Charter of Fundamental Rights of the European Union ('the Charter') and, on the other, Article 1(1) and Article 5 of Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ 2011 L 64, p. 1), as amended by Council Directive 2014/107/EU of 9 December 2014 (OJ 2014 L 359, p. 1) ('Directive 2011/16').

2 The requests have been made in two disputes between État luxembourgeois (Luxembourg State) and Company B, in the first dispute, and F.C. and Companies B, C, and D, in the second, concerning two decisions of the directeur de l'administration des contributions directes (Director of the Direct Taxation Administration, Luxembourg) ordering Company B and Bank A, respectively, to provide him with certain information, following requests for exchanges of information between Member States in tax matters.

Legal context

European Union law

Directive 2011/16

3 Recitals 1, 2, 9 and 27 of Directive 2011/16 state:

'(1) The Member States' need for mutual assistance in the field of taxation is growing rapidly in a globalised era. There is a tremendous development of the mobility of taxpayers, of the number of cross-border transactions and of the internationalisation of financial instruments, which makes it difficult for Member States to assess taxes due properly. This increasing difficulty affects the functioning of taxation systems and entails double taxation, which itself incites tax fraud and tax evasion …

(2) Therefore, a single Member State cannot manage its internal taxation system, especially as regards direct taxation, without receiving information from other Member States. In order to overcome the negative effects of this phenomenon, it is indispensable to develop new administrative cooperation between the Member States' tax administrations. There is a need for instruments likely to create confidence between Member States, by setting up the same rules, obligations and rights for all Member States.

…

(9) Member States should exchange information concerning particular cases where requested by another Member State and should make the necessary enquiries to obtain such information. 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. …

…

(27) All exchange of information referred to in this Directive is subject to the provisions implementing Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [(OJ 1995 L 281, p. 31)] … However, it is appropriate to consider limitations of certain rights and obligations laid down by [Directive 95/46] in order to safeguard the interests referred to in Article 13(1)(e) of that Directive. Such limitations are necessary and proportionate in view of the potential loss of revenue for Member States and the crucial importance of information covered by this Directive for the effectiveness of the fight against fraud.'

4 Article 1 of Directive 2011/16, entitled 'Subject matter', provides, in paragraph 1 thereof:

'This Directive lays down the rules and procedures under which the Member States shall cooperate with each other with a view to exchanging information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Member States concerning the taxes referred to in Article 2.'

5 Article 5 of that directive, entitled 'Procedure for the exchange of information on request', is worded as follows:

'At the request of the requesting authority, the requested authority shall communicate to the requesting authority any information referred to in Article 1(1) that it has in its possession or that it obtains as a result of administrative enquiries.'

6 Article 7 of that directive provides that the information referred to in Article 5 thereof must be provided as quickly as possible and, except in certain special cases, within two months or six months depending on whether the requested authority is or is not already in possession of the requested information.

7 Article 25 of Directive 2011/16, entitled 'Data protection', provides, in paragraph 1 thereof:

'All exchange of information pursuant to this Directive shall be subject to the provisions implementing [Directive 95/46]. However, Member States shall, for the purpose of the correct application of this Directive, restrict the scope of the obligations and rights provided for in Article 10, Article 11(1), Articles 12 and 21 of [Directive 95/46] to the extent required in order to safeguard the interests referred to in Article 13(1)(e) of that Directive.'

Directive 95/46

8 Article 10, Article 11(1) and Articles 12 and 21 of Directive 95/46 lay down, respectively, (i) the detailed arrangements for informing natural persons concerned by a personal data processing operation where those data are obtained from those persons, (ii) the detailed arrangements for informing those natural persons where those data have not been obtained from them, (iii) the right of access of those natural persons to the data in question, and (iv) the publicising of personal data processing operations.

9 Article 13(1)(e) of that directive provides that Member States may adopt legislative measures to restrict the scope of the obligations and rights provided for in, inter alia, Article 10, Article 11(1) and Articles 12 and 21 thereof when such a restriction constitutes a necessary measure to safeguard an important economic or financial interest of a Member State or of the European Union, including monetary, budgetary and taxation matters.

10 Article 22 of that directive states:

'Without prejudice to any administrative remedy for which provision may be made … prior to referral to the judicial authority, Member States shall provide for the right of every person to a judicial remedy for any breach of the rights guaranteed him by the national law applicable to the processing in question.'

Regulation (EU) 2016/679

11 Directive 95/46 was repealed, with effect from 25 May 2018, by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 (General Data Protection Regulation) (OJ 2016 L 119, p. 1; corrigendum OJ 2018 L 127, p. 2), Article 1 of which, entitled 'Subject-matter and objectives', states, inter alia, that it lays down rules relating to the protection of natural persons with regard to the processing of personal data and that it protects fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data. Furthermore, Article 94(2) of that regulation specifies that references to Directive 95/46 are now to be construed as references to that regulation.

12 Articles 13, 14 and 15 of Regulation 2016/679 reproduce and amend the provisions formerly set out in Article 10, Article 11(1) and Article 12 of Directive 95/46, respectively.

13 Article 23(1)(e) of that regulation, which reproduces and amends the provision formerly set out in Article 13(1)(e) of that directive, states that Union or Member State law may restrict by way of a legislative measure the scope of the obligations and rights provided for in, inter alia, Articles 13 to 15 thereof when such a restriction respects the essence of the fundamental rights and freedoms and is a necessary and proportionate measure in a democratic society to safeguard certain important objectives of general public interest, in particular an important economic or financial interest of the Union or of a Member State, including monetary, budgetary and taxation matters, public health and social security.

14 Article 79(1) of Regulation 2016/679, which reproduces and amends Article 22 of Directive 95/46, provides that, without prejudice to any available administrative or non-judicial remedy, each natural person concerned by a personal data processing operation has the right to an effective judicial remedy where he or she considers that his or her rights under that regulation have been infringed as a result of the processing of those data in breach of that regulation.

Luxembourg law

The Law of 29 March 2013

15 Article 6 of the loi du 29 mars 2013 portant transposition de la directive 2011/16 et portant 1) modification de la loi générale des impôts, 2) abrogation de la loi modifiée du 15 mars 1979 concernant l'assistance administrative internationale en matière d'impôts directs (Law of 29 March 2013 transposing Directive 2011/16 and (1) amending the General Tax Law and (2) repealing the amended Law of 15 March 1979 on international administrative assistance in the field of direct taxation) (*Mémorial* A 2013, p. 756), provides:

'At the request of the requesting authority, the Luxembourg requested authority shall communicate to it the information that is foreseeably relevant for the administration and application of the domestic legislation of the requesting Member State relating to the taxes … that it has in its possession or that it obtains as a result of administrative enquiries.'

The Law of 25 November 2014

16 The loi du 25 novembre 2014 prévoyant la procédure applicable à l'échange de renseignements sur demande en matière fiscale et modifiant la loi du 31 mars 2010 portant approbation des conventions fiscales et prévoyant la procédure y applicable en matière d'échange de renseignements sur demande (Law of 25 November 2014 laying down the procedure applicable to the exchange of information on request in tax matters and amending the Law of 31 March 2010 approving the tax Conventions and

laying down the procedure applicable thereto in relation to the exchange of information on request) (*Mémorial* A 2014, p. 4170) ('the Law of 25 November 2014') is applicable, in particular, to the requests for exchange of information referred to in Article 6 of the Law of 29 March 2013 cited in paragraph 15 above.

17 Under Article 2 of the Law of 25 November 2014:

'(1) Tax administrations shall be authorised to request information of any kind required in order to implement the exchange of information provided for by Conventions and laws from the holder of that information.

(2) The holder of the information shall be obliged to provide the requested information in its entirety, accurately and without alteration, within one month of notification of the decision requiring the requested information to be provided. That obligation shall extend to the transmission of unaltered documents on which the information is based.

…'

18 Article 3 of that law, in the version applicable to the disputes in the main proceedings, provided:

'(1) The competent tax administration shall verify that the request for exchange of information is in order. A request for exchange of information shall be considered to be in order if it states the legal basis, identifies the competent authority making the request and contains the other information prescribed by Conventions and laws.

…

(3) If the competent tax administration is not in possession of the requested information, the director of the competent tax administration or his or her authorised representative shall notify the holder of the information by registered letter of his or her decision requiring the requested information to be provided. Notification of that decision to the holder of the requested information shall constitute notification to any other person referred to therein.

…'

19 Article 5(1) of that law states:

'If the requested information is not provided within one month of notification of the decision requiring the requested information to be provided, the holder of the information may be subject to an administrative fine of a maximum of EUR 250 000. The amount of the fine shall be fixed by the director of the competent tax administration or his or her authorised representative.'

20 Article 6 of that law, in the version applicable to the disputes in the main proceedings, was worded as follows:

'(1) No action may be brought against a request for exchange of information or an information order as referred to in Article 3(1) and (3).

(2) The holder of the information may apply to the tribunal administratif (Administrative Court) for a decision referred to in Article 5 to be varied. … The action shall have suspensive effect. …

…'

The Law of 1 March 2019

21 The loi du 1er mars 2019 portant modification de la loi du 25 novembre 2014 prévoyant la procédure applicable à l'échange de renseignements sur demande en matière fiscale (Law of 1 March 2019 amending the Law of 25 November 2014 laying down the procedure applicable to the exchange of information on request in tax matters) (*Mémorial* A 2019, p. 112) ('the Law of 1 March 2019') entered into force on 9 March 2019.

22 Article 3(1) of the Law of 25 November 2014, as amended by the Law of 1 March 2019, provides:

'The competent tax administration shall verify that the request for exchange of information is in order. A request for exchange of information shall be considered to be in order if it states the legal basis, identifies the competent authority making the request and contains the other information prescribed by Conventions and laws. The competent tax administration shall ensure that the requested information is not devoid of any foreseeable relevance in view of the identity of the person concerned by the request for exchange of information, the identity of the holder of the information, and the requirements of the tax procedure in question.'

23 Article 6(1) of the Law of 25 November 2014, as amended by the Law of 1 March 2019, states:

'An action before the tribunal administratif (Administrative Court) for annulment of the information order referred to in Article 3(3) shall be available to the holder of the information. …'

The disputes in the main proceedings and the questions referred for a preliminary ruling

24 Each of the disputes in the main proceedings has arisen as a result of a request for exchange of information made by the tax administration of the Kingdom of Spain to the tax administration of the Grand Duchy of Luxembourg in order to obtain information concerning F.C., a natural person residing in Spain, where she is the subject, as a taxpayer, of an investigation to determine her situation vis-à-vis the national tax legislation.

Case C-245/19

25 On 18 October 2016, the Spanish tax administration sent the Luxembourg tax administration an initial request for exchange of information concerning F.C.

26 On 16 June 2017, the Director of the Direct Taxation Administration followed up on that request by addressing a decision to Company B ordering it to provide information relating to the period from 1 January 2011 to 31 December 2014 concerning the following items:

– the contracts concluded by Company B with Companies E and F in relation to the rights of F.C.;

– any other contract concluded, either during the period in question, or before or after that period but taking effect during that period in relation to F.C.;

– all invoices issued or received in connection with those contracts, and the method of their collection and payment; and

– details of the bank accounts and financial institutions in which the cash shown on the balance sheet is deposited.

27 That decision also specified that no action could be brought against it, in accordance with Article 6 of the Law of 25 November 2014.

28 By application lodged at the registry of the tribunal administratif (Administrative Court, Luxembourg) on 17 July 2017, Company B brought an action seeking, primarily, variation of that decision and, in the alternative, annulment of that decision.

29 By judgment of 26 June 2018, the tribunal administratif (Administrative Court) declared that it had jurisdiction to hear that action inasmuch as it sought annulment of the decision of 16 June 2017, and annulled that decision in part. Regarding its jurisdiction, that court considered that Article 6(1) of the Law of 25 November 2014 was not consistent with Article 47 of the Charter inasmuch as it excluded a direct action against a decision ordering that information be provided to the tax administration, with the result that the provision had to be disapplied. As to the substance, it held that some of the information requested by the Director of the Direct Taxation Administration was not foreseeably relevant for the purposes of the investigation conducted by the Spanish tax administration, and that, consequently, the decision of 16 June 2017 had to be annulled in so far as it ordered Company B to provide that information.

30 By application lodged at the registry of the Cour administrative (Higher Administrative Court, Luxembourg) on 24 July 2018, the Luxembourg State brought an appeal against that judgment.

31 In the context of that appeal, it argues that Article 6(1) of the Law of 25 November 2014 does not infringe Article 47 of the Charter because it does not preclude the person to whom a decision ordering that information be provided to the tax administration is addressed and who holds the information sought from contesting that decision indirectly, where that person has not complied with that decision and a penalty has been imposed on that person on that ground, in the context of the action for variation which such a person may bring against such a penalty under Article 6(2) of that law. Consequently, the tribunal administratif (Administrative Court) was wrong to disregard Article 6(1) of that law and declare that it had jurisdiction to hear the action for annulment that had been brought before it. In addition, that court was wrong to hold that some of the information referred to in the decision of 16 June 2017 was not foreseeably relevant for the purposes of Directive 2011/16.

32 In its order for reference, the Cour administrative (Higher Administrative Court) questions, in the first place, whether Articles 7, 8, 47 and 52 of the Charter require that the person to whom a decision, ordering that the information held by that person be provided to the tax administration, is addressed be granted the right to bring a direct action against that decision in addition to having the possibility of challenging that decision indirectly in the event that the person does not comply with that decision and subsequently receives a penalty on that ground, pursuant to the Law of 25 November 2014, as interpreted in the light of the judgment of 16 May 2017, *Berlioz Investment Fund* (C-682/15, EU:C:2017:373).

33 In the second place, the referring court is uncertain, if that first question is answered in the affirmative, as to the scope of the review which the court may be asked to carry out, in the context of such a direct action, regarding the foreseeable relevance of the information in question, in the light of Articles 1 and 5 of Directive 2011/16.

34 In those circumstances the Cour administrative (Higher Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must Articles 7 [and] 8 and [Article] 52(1) of [the Charter], whether or not read in conjunction with Article 47 [thereof], be interpreted as precluding … legislation of a Member State which, in the context of the procedure for the exchange of information on request established in particular with a view to the implementation of [Directive 2011/16], excludes [recourse to] any remedy, in

particular a judicial [action], on the part of a third party holding information, to challenge a decision by which the competent authority of that Member State requires that third party to communicate information to it for the purposes of implementing a request for exchange of information received from another Member State?

(2) If the answer to the first question is in the affirmative, must Article 1(1) and Article 5 of Directive 2011/16 be interpreted, if necessary taking account of the evolving nature of the interpretation of Article 26 of [the Organisation for Economic Cooperation and Development (OECD) Model Tax Convention on Income and on Capital], as meaning that a request for exchange of information, and a consequent information order from the competent authority of the requested Member State, satisfy the condition that there is not a manifest lack of foreseeable relevance where the requesting Member State states the identity of the taxpayer concerned, the period covered by the investigation in the requesting Member State and the identity of the holder of the information in question, [although] seeking information concerning contracts and the associated invoices and payments which are unspecified, but which are defined by criteria concerning, first, the fact that the contracts were concluded by the identified holder of the information, secondly, their applicability to the tax years covered by the investigation by the authorities in the requesting State and, thirdly, their [connection] with the identified taxpayer concerned?'

Case C-246/19

35 On 16 March 2017, the Spanish tax administration sent the Luxembourg tax administration a second request for exchange of information concerning F.C.

36 On 29 May 2017, the Director of the Direct Taxation Administration followed up on that request by addressing a decision to Bank A ordering it to provide information relating to the period from 1 January 2011 to 31 December 2014 concerning the following documents and information:

– the name(s) of the current holder(s) of a given bank account;

– the name(s) of the person(s) authorised to carry out transactions with regard to that account;

– the name(s) of the person(s) who had opened that account;

– the statements for that account during the period in question;

– the actual beneficial owner(s) of the account in question;

– whether another bank account had been opened with Bank A after 31 December 2014 and whether the funds paid into that account originated from an account previously opened with that bank;

– the statements of any financial assets held by F.C. in Company B, in Company D or in any other company controlled by F.C. during the period in question; and

– the statements of financial assets where F.C. appears as the actual beneficial owner during that period.

37 That decision also specified that no action could be brought against it, in accordance with Article 6(1) of the Law of 25 November 2014.

38 By application lodged at the registry of the tribunal administratif (Administrative Court) on 17 July 2017, F.C. and Companies B, C, and D brought an action seeking, primarily, variation of that decision and, in the alternative, annulment of that decision.

39 By judgment of 26 June 2018, the tribunal administratif (Administrative Court) declared that it had jurisdiction to hear that action inasmuch as it sought annulment of the decision of 29 May 2017, and annulled that decision in part, relying on grounds similar to those summarised in paragraph 29 above.

40 By application lodged at the registry of the Cour administrative (Higher Administrative Court) on 24 July 2018, the Luxembourg State brought an appeal against that judgment.

41 In its order for reference, the Cour administrative (Higher Administrative Court) raises questions similar to those summarised in paragraphs 32 and 33 above, while highlighting the fact that Case C-246/19 is the result of actions brought not by a person who is the addressee of a decision ordering that person to provide the tax administration of a Member State with information held by that person, as is the situation in Case C-245/19, but by persons acting in other capacities, namely that of the taxpayer concerned by an investigation opened by the tax administration of another Member State, on the one hand, and that of third parties who maintain legal, banking, financial or, more broadly, economic relations with that taxpayer, on the other.

42 In those circumstances the Cour administrative (Higher Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must Articles 7 [and] 8 and [Article] 52(1) of [the Charter], whether or not read in conjunction with Article 47 [thereof], be interpreted as precluding … legislation of a Member State which, in the context of the procedure for the exchange of information on request established in particular with a view to the implementation of [Directive 2011/16], excludes [recourse to] any remedy, in particular a judicial [action], on the part of the taxpayer concerned by [an] investigation in [another Member State] and [an affected] third party, to challenge a decision by which the competent authority of [the first] Member State requires a holder of information to communicate information to it for the purposes of implementing a request for exchange of information received from [that other] Member State?

(2) If the answer to the first question is in the affirmative, must Article 1(1) and Article 5 of Directive 2011/16 be interpreted, if necessary taking account of the evolving nature of the interpretation of Article 26 of the OECD Model Tax Convention [on Income and on Capital], as meaning that a request for exchange of information, and a consequent information order from the competent authority of the requested Member State, satisfy the condition that there is not a manifest lack of foreseeable relevance where the requesting Member State states the identity of the taxpayer concerned, the period covered by the investigation in the requesting Member State and the identity of the holder of the information in question, [although] seeking information concerning bank accounts and financial assets which are unspecified, but which are defined by criteria concerning, first, the fact that they are owned by an identified holder of information, secondly, their applicability to the tax years covered by the investigation by the authorities in the requesting State and, thirdly, their [connection] with the identified taxpayer concerned?’

43 By decision of the President of the Court of 3 May 2019, Cases C-245/19 and C-246/19 were joined for the purposes of the written and oral procedure and the judgment.

Consideration of the questions referred

The first questions referred in Cases C-245/19 and C-246/19

Preliminary observations

44 By its first questions in Cases C-245/19 and C-246/19 the referring court asks, in essence, whether Article 47 of the Charter, read in conjunction with Articles 7 and 8 and Article 52(1) thereof, is to be interpreted as precluding legislation of a Member State implementing the procedure for the exchange of information on request established by Directive 2011/16 from excluding the possibility of a decision, whereby the competent authority of that Member State obliges 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, being the subject of actions brought by (i) such a person, (ii) the taxpayer concerned, in that other Member State, by the investigation giving rise to that request, and (iii) third parties concerned by the information in question.

45 As is apparent from Article 51(1) of the Charter, the provisions thereof are addressed to the Member States only when they are implementing Union law.

46 The adoption, by a Member State, of legislation specifying the details of the procedure for the exchange of information on request established by Directive 2011/16 constitutes such an implementation of EU law, meaning that the Charter is applicable (see, to that effect, judgment of 16 May 2017, *Berlioz Investment Fund*, C-682/15, EU:C:2017:373, paragraphs 34 to 37), in particular where that legislation provides for the possibility, for the competent authority, of taking a decision that obliges a person holding information to provide it with that information.

47 Article 47 of the Charter states, in the first paragraph thereof, that everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy in compliance with the conditions laid down in that article. The obligation imposed on the Member States, in the second subparagraph of Article 19(1) TEU, to provide remedies sufficient to ensure effective legal protection in the fields covered by Union law corresponds to that right.

48 Articles 7 and 8 of the Charter enshrine the right to respect for private life and the right to the protection of personal data, respectively.

49 None of those three fundamental rights constitutes an unfettered prerogative, as each of them must be considered in relation to its function in society (see, regarding the right to an effective remedy, judgment of 18 March 2010, *Alassini and Others*, C-317/08 to C-320/08, EU:C:2010:146, paragraph 63 and the case-law cited, and, concerning the rights to respect for private life and the protection of personal data, judgment of 16 July 2020, *Facebook Ireland and Schrems*, C-311/18, EU:C:2020:559, paragraph 172 and the case-law cited).

50 Thus, in a situation where several rights guaranteed by the Charter are involved in a given case and are liable to be at odds with each other, the necessary reconciliation of those rights, in order to ensure that a fair balance is struck between the protection attached to each of them, may lead to limitations being imposed on them (see, to that effect, judgments of 29 January 2008, *Promusicae*, C-275/06, EU:C:2008:54, paragraphs 63 to 65, and of 27 March 2014, *UPC Telekabel Wien*, C-314/12, EU:C:2014:192, paragraph 46).

51 Furthermore, Article 52(1) of the Charter provides that limitations may be placed on the exercise of rights and freedoms guaranteed by the Charter on condition that (i) those limitations are provided for by law, (ii) they respect the essence of the rights and freedoms at issue, and (iii) in compliance with the principle of proportionality, they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

52 In the present instance, however, the three fundamental rights involved are not liable to be at odds with each other but are complementary in their application. The effectiveness of the protection that Article 47 of the Charter is intended to confer on the holder of the right guaranteed thereby cannot be expressed or assessed other than in relation to substantive rights, such as those referred to in Articles 7 and 8 of the Charter.

53 More specifically, it follows from the first questions referred in Cases C-245/19 and C-246/19, read in the light of the reasoning underlying them, that the referring court is asking whether Article 47 of the Charter is to be interpreted as meaning that national legislation may deny a person holding information, a taxpayer concerned by a tax investigation and third parties concerned by that information the possibility of bringing a direct action against a decision ordering that the information in question be provided to the tax administration, a decision which that court considers is of a sort liable to infringe the rights guaranteed to those various persons by Articles 7 and 8 of the Charter.

Right to an effective remedy guaranteed by Article 47 of the Charter

54 As can be seen from the settled case-law of the Court, the right to an effective remedy may be invoked on the basis of Article 47 of the Charter alone, without there being a need for the content thereof to be made more specific by other provisions of EU law or by provisions of the domestic law of the Member States (judgments of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 78, and of 29 July 2019, *Torubarov*, C-556/17, EU:C:2019:626, paragraph 56).

55 That being said, the recognition of that right, in a given case, presupposes, as is apparent from the first paragraph of Article 47 of the Charter, that the person invoking that right is relying on rights or freedoms guaranteed by EU law.

– Right to an effective remedy of the person holding information which it is ordered to provide by a decision of the competent authority

56 As can be seen from the statements made by the referring court and summarised in paragraph 26 above and from the provisions of national legislation reproduced in paragraphs 17 to 19 above, the person holding the information at issue in the main proceedings is a legal person to whom the competent national authority has addressed a decision ordering that the information in question be provided, non-compliance with which is liable to entail a penalty.

57 Regarding, in the first place, the question whether such a person must be granted the right to an effective remedy guaranteed by Article 47 of the Charter when confronted with such a decision, it should be noted at the outset that it follows from the settled case-law of the Court that the protection of persons, both natural and legal, against arbitrary or disproportionate intervention by the public authorities in the sphere of those persons' private activities constitutes a general principle of EU law (judgments of 21 September 1989, *Hoechst* v *Commission*, 46/87 and 227/88, EU:C:1989:337, paragraph 19, and of 13 September 2018, *UBS Europe and Others*, C-358/16, EU:C:2018:715, paragraph 56).

58 That protection may be relied on by a legal person as a right guaranteed by the law of the Union, for the purposes of the first paragraph of Article 47 of the Charter, in order to challenge before a court an act adversely affecting that person, such as an order to provide information or a penalty imposed on the ground of non-compliance with that order (see, to that effect, judgment of 16 May 2017, *Berlioz Investment Fund*, C-682/15, EU:C:2017:373, paragraphs 51 and 52).

59 It follows that a legal person to whom the competent national authority has addressed a decision, of the same sort as those at issue in the main proceedings, ordering that information be provided, must be granted the right to an effective remedy guaranteed by Article 47 of the Charter when confronted with such a decision.

60 Concerning, in the second place, the question whether the exercise of that right may be limited by national legislation, it follows from the case-law of the Court that a limitation may be placed on the exercise of the right to an effective remedy before a tribunal, enshrined in Article 47 of the Charter, by the EU legislature or, where no relevant EU legislation exists, by the Member States, if the conditions laid down in Article 52(1) of the Charter are satisfied (see, to that effect, judgment of 15 September 2016, *Star Storage and Others*, C-439/14 and C-488/14, EU:C:2016:688, paragraphs 46 and 49).

61 In the present instance, it does not follow from any provision of Directive 2011/16, the implementation of which is ensured by the legislation at issue in the main proceedings, that the EU legislature intended to limit the exercise of the right to an effective remedy where a person is confronted with a decision, of the same sort as those at issue in the main proceedings, ordering that information be provided.

62 Furthermore, Directive 2011/16 refers, in Article 25(1) thereof, to the EU legislation on the processing of personal data, providing that all exchanges of information pursuant to that directive are to be subject to the provisions of Directive 95/46, which, as has been recalled in paragraph 11 above, was repealed and replaced with effect from 25 May 2018, that is, after the decisions at issue in the main proceedings were adopted, by Regulation 2016/679, the objective of which is, inter alia, to safeguard and to set out in detail the right to the protection of personal data guaranteed by Article 8 of the Charter.

63 Article 22 of Directive 95/46, the essence of which is reproduced by Article 79 of Regulation 2016/679, emphasises that every person must have the right to a judicial remedy when confronted with a breach of the rights guaranteed to that person by the law applicable to the processing of such data.

64 It follows that the EU legislature did not itself limit the exercise of the right to an effective remedy enshrined in Article 47 of the Charter and that it is open to the Member States to limit that exercise, provided that they meet the requirements laid down in Article 52(1) of the Charter.

65 As has been recalled in paragraph 51 above, that provision requires, inter alia, that any limitation placed on the exercise of the rights and freedoms guaranteed by the Charter must respect the essence of those rights and freedoms.

66 In that regard, it follows from the case-law of the Court that the essence of the right to an effective remedy enshrined in Article 47 of the Charter includes, among other aspects, the possibility, for the person who holds that right, of accessing a court or tribunal with the power to ensure respect for the rights guaranteed to that person by EU law and, to that end, to consider all the issues of fact and of law that are relevant for resolving the case before it (see, to that effect, judgments of 6 November 2012, *Otis and Others*, C-199/11, EU:C:2012:684, paragraph 49, and of 12 December 2019, *Aktiva Finants*, C-433/18, EU:C:2019:1074, paragraph 36). In addition, in order to access such a court or tribunal, that person cannot be compelled to infringe a legal rule or obligation or to be subject to the penalty attached to that offence (see, to that effect, judgments of 1 April 2004, *Commission* v

Jégo-Quéré, C-263/02 P, EU:C:2004:210, paragraph 35; of 13 March 2007, *Unibet*, C-432/05, EU:C:2007:163, paragraph 64; and of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 104).

67 In the present instance, it is apparent from the statements made by the referring court and summarised in paragraph 32 above that, in light of the legislation at issue in the main proceedings, it is only if the person to whom a decision, of the same sort as those at issue in the main proceedings, ordering that information be provided, is addressed (i) does not comply with that decision and (ii) later receives a penalty on that ground that the person has the possibility of challenging that decision indirectly, in the context of an action which that person may bring against such a penalty.

68 It follows that, when confronted with a decision ordering that information be provided which is arbitrary or disproportionate, such a person is unable to access a court without first infringing that decision by refusing to comply with the order it contains and thus being subject to the penalty attached to non-compliance with that decision. Accordingly, that person cannot be regarded as enjoying the benefit of effective judicial protection.

69 In those circumstances, it must be held that national legislation, such as that at issue in the main proceedings, which excludes the possibility for a person holding information, to whom the competent national authority addresses a decision ordering that the information in question be provided, of bringing a direct action against that decision, does not respect the essence of the right to an effective remedy guaranteed by Article 47 of the Charter and, consequently, that Article 52(1) thereof precludes such legislation.

– Right to an effective remedy of the taxpayer concerned by the investigation giving rise to the decision ordering that information be provided

70 As can be seen from the statements made by the referring court and summarised in paragraph 24 above, the taxpayer in question in the main proceedings is a natural person who is resident in a Member State other than the Member State of the authority which adopted the decisions at issue in the main proceedings, ordering that information be provided, and who is concerned, in that Member State, by an investigation seeking to determine her situation vis-à-vis the tax legislation of that Member State.

71 Furthermore, the wording of the decisions at issue in the main proceedings ordering that information be provided, reproduced in paragraphs 26 and 36 above, makes it apparent that the information, which those decisions order must be provided to the authority which adopted them, concerns bank accounts and financial assets of which that person is the holder or the beneficial owner, as well as various legal, banking, financial or, more broadly, economic transactions which may have been carried out by that person or by third parties acting on her behalf or in her interest.

72 Regarding, in the first place, the question whether such a person should be granted the right to an effective remedy enshrined in Article 47 of the Charter when confronted with such decisions, it should be noted that that person is clearly the holder of (i) the right to respect for private life guaranteed by Article 7 of the Charter and (ii) the right to the protection of personal data guaranteed by Article 8(1) thereof, which is closely connected, as regards natural persons, with the right to respect for the private life of those persons (judgments of 9 November 2010, *Volker und Markus Schecke and Eifert*, C-92/09 and C-93/09, EU:C:2010:662, paragraph 47, and of 18 June 2020, *Commission* v *Hungary (Transparency of association)*, C-78/18, EU:C:2020:476, paragraphs 123 and 126).

73 In addition, it follows from the settled case-law of the Court that the disclosure to a third party, including a public authority, of information in relation to an identified or identifiable natural person, and the measure ordering or authorising that disclosure, without prejudice to the potential

justification of such disclosure or such a measure, constitute interferences in that person's right to respect for his or her private life and that person's right to the protection of personal data concerning him or her, regardless of whether that information is sensitive and the way in which it is subsequently used, unless that disclosure takes place pursuant to the provisions of EU law and, where appropriate, the provisions of domestic law laid down for that purpose (see, to that effect, judgments of 18 June 2020, *Commission* v *Hungary (Transparency of association)*, C-78/18, EU:C:2020:476, paragraphs 124 and 126, and of 16 July 2020, *Facebook Ireland and Schrems*, C-311/18, EU:C:2020:559, paragraph 171 and the case-law cited).

74 Thus, the disclosure to the competent national authority of information in relation to an identified or identifiable natural person, such as the information referred to in paragraph 71 above, and the measure which, like the decisions referred to in that same paragraph, orders the disclosure of that information, are liable to infringe the right to respect for the private life of the person in question and that person's right to the protection of personal data concerning him or her.

75 Accordingly, a taxpayer such as the one referred to in paragraph 70 above must be granted the right to an effective remedy guaranteed by Article 47 of the Charter when confronted with a decision, of the same sort as those at issue in the main proceedings, ordering that information be provided.

76 Concerning, in the second place, the question whether the exercise of that right may be limited, pursuant to Article 52(1) of the Charter, by excluding such a person from being able to bring a direct action against that decision, it should be borne in mind that such a limitation must, first, be provided for by law, which means, inter alia, as can be seen from the settled case-law of the Court, that the legal basis of the limitation must clearly and precisely define the scope of that limitation (judgments of 17 December 2015, *WebMindLicenses*, C-419/14, EU:C:2015:832, paragraph 81, and of 8 September 2020, *Recorded Artists Actors Performers*, C-265/19, EU:C:2020:677, paragraph 86).

77 In the present instance, the wording of the national legislation at issue in the main proceedings makes it apparent that that requirement is met.

78 Secondly, the essence of the right to an effective remedy must be respected. That requirement must be assessed, in particular, in the light of the aspects listed in paragraph 66 above.

79 In that regard, it follows from the case-law of the Court that that requirement does not mean, as such, that the holder of that right must have a direct remedy the primary object of which is to call into question a given measure, provided that one or more legal remedies also exist, before the various national courts having jurisdiction, enabling that rightholder to obtain, indirectly, judicial review of that measure ensuring respect for the rights and freedoms guaranteed to that rightholder by EU law, without having to be subject, to that end, to the risk of receiving a penalty in the event of non-compliance with the measure in question (see, to that effect, judgments of 13 March 2007, *Unibet*, C-432/05, EU:C:2007:163, paragraphs 47, 49, 53 to 55, 61 and 64, and of 21 November 2019, *Deutsche Lufthansa*, C-379/18, EU:C:2019:1000, paragraph 61).

80 In the present instance, it must be noted, in that regard, that the situation of the taxpayer concerned by an investigation is different from that of the person holding information concerning that taxpayer. Indeed, as has been stated in paragraph 68 above, the latter person would, if it were not possible for that person to bring a direct action against a decision addressed to that person and imposing a legal obligation on that person to provide the information at issue, be deprived of any effective judicial protection. By contrast, the taxpayer concerned is not the addressee of such a decision and is not made subject to any legal obligation by that decision; nor, therefore, is he or she exposed to the risk of receiving a penalty in the event of non-compliance with that decision. Consequently, such a taxpayer is not compelled to conduct him or herself unlawfully in order to be able to exercise his or her right to an effective remedy, meaning that the case-law cited in the second sentence of paragraph 66 above is not applicable to him or her.

81 Furthermore, a decision, of the same sort as those at issue in the main proceedings, ordering that information be provided is adopted during the preliminary stage of the investigation concerning the taxpayer in question, during which information relating to the tax situation of that taxpayer is gathered and which does not require an exchange of views and arguments. Indeed, only the last stage of that investigation, which begins with the sending of a proposal for correction or adjustment to the taxpayer concerned, (i) is a contentious stage meaning that that taxpayer is able to exercise his or her right to be heard (see, to that effect, judgment of 22 October 2013, *Sabou*, C-276/12, EU:C:2013:678, paragraphs 40 and 44) and (ii) is likely to lead to a correction or adjustment decision, addressed to that taxpayer.

82 A correction or adjustment decision constitutes an act in relation to which the taxpayer concerned must have a right to an effective remedy, which presupposes that the court hearing the dispute has jurisdiction to consider all the issues of fact and of law relevant for resolving that dispute, as alluded to in paragraph 66 above, and, in particular, to verify whether the evidence on which that act is based has been obtained or used in breach of the rights and freedoms guaranteed to the person concerned by EU law (see, by analogy, judgment of 17 December 2015, *WebMindLicenses*, C-419/14, EU:C:2015:832, paragraphs 87 to 89).

83 Accordingly, where a decision, of the same sort as those at issue in the main proceedings, ordering that information be provided, leads the national authority that has requested that information to adopt a correction or adjustment decision which is based, in terms of evidence, on that information, the taxpayer concerned by the investigation has the possibility of challenging, indirectly, the decision ordering that information be provided and the conditions under which the evidence gathered as a result of that investigation was obtained and used, in the context of the action which he or she may bring against the correction or adjustment decision.

84 Consequently, national legislation such as that at issue in the main proceedings must be regarded as not adversely affecting the essence of the right to an effective remedy guaranteed to the taxpayer concerned. Moreover, it does not restrict that taxpayer's access to the remedies provided in accordance with Article 79(1) of Regulation 2016/679, which reproduces and amends Article 22 of Directive 95/46, if that taxpayer considers that the rights conferred on him or her by that regulation have been infringed as a result of the processing of personal data concerning him or her.

85 Thirdly, as stated in paragraph 51 above, such national legislation must, in compliance with the principle of proportionality, be necessary and genuinely meet an objective of general interest recognised by the Union. It is therefore necessary to go on to verify whether it meets an objective of general interest recognised by the Union and, if so, whether it complies with the principle of proportionality (see, to that effect, judgments of 5 July 2017, *Fries*, C-190/16, EU:C:2017:513, paragraph 39, and of 12 July 2018, *Spika and Others*, C-540/16, EU:C:2018:565, paragraph 40).

86 In that regard, the referring court emphasises that the legislation at issue in the main proceedings implements Directive 2011/16, recital 27 of which envisions necessary and proportionate limitations being placed on the protection of natural persons with regard to the processing of personal data concerning them, as guaranteed by Directive 95/46, and recitals 1 and 2 of which state that its objective is to help combat international tax fraud and tax evasion, by enhancing cooperation between the competent national authorities in that area.

87 That objective constitutes an objective of general interest recognised by the Union for the purposes of Article 52(1) of the Charter (see, to that effect, judgments of 22 October 2013, *Sabou*, C-276/12, EU:C:2013:678, paragraph 32; of 17 December 2015, *WebMindLicenses*, C-419/14, EU:C:2015:832, paragraph 76; and of 26 February 2019, *X (Controlled companies established in third countries)*, C-135/17, EU:C:2019:136, paragraphs 74 and 75), capable of enabling a limitation to be placed on the exercise of the rights guaranteed by Articles 7, 8 and 47 thereof, taken individually or in conjunction.

88 It follows that the objective pursued by the national legislation at issue in the main proceedings constitutes an objective of general interest recognised by the Union.

89 That objective of combating international tax fraud and tax evasion is given concrete expression in, inter alia, Articles 5 to 7 of Directive 2011/16 through the introduction of a procedure for the exchange of information on request enabling the competent national authorities to cooperate quickly and efficiently with a view to gathering information in the context of investigations concerning a given individual taxpayer (see, to that effect, judgment of 16 May 2017, *Berlioz Investment Fund*, C-682/15, EU:C:2017:373, paragraphs 46, 47 and 77).

90 The interest attached to the speed and efficiency of that cooperation, which gives concrete expression to the objective of combating international tax fraud and tax evasion underlying Directive 2011/16, requires, in particular, that all the deadlines laid down in Article 7 of that directive are met.

91 In view of that situation, it must be held that national legislation which excludes the taxpayer concerned by the investigation giving rise to the request for exchange of information that led the competent national authority to adopt a decision, of the same sort as those at issue in the main proceedings, ordering that information be provided, from bringing a direct action against that decision is suitable for achieving the objective of combating international tax fraud and tax evasion pursued by Directive 2011/16 and is necessary to achieve that objective.

92 In addition, it does not appear disproportionate given that (i) such a decision does not place the taxpayer concerned under any legal obligation or at any risk of a penalty, and (ii) that taxpayer may challenge that decision indirectly, in the context of an action against a subsequent correction or adjustment decision.

93 In those circumstances, it must be held that Article 47 of the Charter, read in conjunction with Articles 7 and 8 and Article 52(1) thereof, does not preclude national legislation such as that at issue in the main proceedings from ruling out the possibility that a decision, whereby the competent authority of a Member State obliges 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, may be the subject of a direct action brought by the taxpayer concerned, in that other Member State, by the investigation giving rise to that request.

– Right to an effective remedy of the third parties concerned

94 As can be seen from paragraphs 26, 36 and 71 above, the third parties concerned to whom the referring court makes reference are legal persons with whom the taxpayer concerned by the investigation giving rise to the decisions at issue in the main proceedings ordering that information be provided maintains or is likely to maintain legal, banking, financial or, more broadly, economic relations.

95 It is necessary, in the first place, to determine whether such third parties must, in a situation such as that at issue in the main proceedings, be granted the right to an effective remedy enshrined in Article 47 of the Charter.

96 In that regard, it must be observed that, like a legal person holding information to whom the competent national authority addresses a decision, ordering that the information in question be provided, those third parties may rely on the protection that every natural or legal person enjoys, pursuant to the general principle of EU law alluded to in paragraph 57 above, against arbitrary or disproportionate intervention by the public authorities in the sphere of their private activities, even though the disclosure to a public authority of legal, banking, financial or, more broadly, economic information concerning them can in no way be regarded as going to the heart of those activities (see,

to that effect, European Court of Human Rights, 16 June 2015 (decision), *Othymia Investments BV v. The Netherlands*, CE:ECHR:2015:0616DEC007529210, § 37; 7 July 2015, *M.N. and Others v. San Marino*, CE:ECHR:2015:0707JUD002800512, §§ 51 and 54; and 22 December 2015, *G.S.B. v. Switzerland*, CE:ECHR:2015:1222JUD002860111, §§ 51 and 93).

97 Therefore, such third parties must be granted the right to an effective remedy when confronted with a decision ordering that information be provided which could infringe their right to that protection.

98 Concerning, in the second place, the question whether the exercise of the right to an effective remedy guaranteed to the third parties concerned by the information at issue may be limited in such a way that those persons may not bring a direct action when confronted with such a decision, it must be emphasised, first, that the national legislation at issue in the main proceedings defines, clearly and precisely, the limitation which it places on the exercise of that right.

99 Regarding, secondly, the requirement to respect the essence of the right to an effective remedy, it should be noted that the third parties concerned by the information at issue are not, unlike the person holding that information to whom the competent authority of a Member State has addressed a decision ordering that the information be provided, under a legal obligation to provide that information; nor, therefore, are they at risk of receiving a penalty in the event of non-compliance with such a legal obligation. Accordingly, the case-law cited in the second sentence of paragraph 66 above is not applicable to them.

100 Furthermore, it is true that the disclosure of information concerning those third parties to a public authority by the person who is the addressee of a decision ordering that the information in question be provided to that public authority may infringe the right of those third parties to be protected against arbitrary or disproportionate intervention by the public authorities in the sphere of their private activities and, in so doing, may cause them harm.

101 However, it is apparent from the case-law of the Court that the possibility, for a given individual, of bringing proceedings before a court in order to obtain a finding that the rights which are guaranteed to that individual by EU law have been infringed and to obtain compensation for the harm suffered as a result of that infringement ensures that the individual has effective judicial protection, where the court hearing the dispute has the possibility of reviewing the act or measure which has given rise to that infringement and that harm (see, to that effect, judgment of 13 March 2007, *Unibet*, C-432/05, EU:C:2007:163, paragraph 58).

102 It follows, in the present instance, that respect for the essence of the right to an effective remedy does not require individuals such as the third parties who are concerned by the information at issue, without however being under a legal obligation to provide that information or, accordingly, at risk of receiving a penalty in the event of non-compliance with such a legal obligation, to have, in addition, the possibility of bringing a direct action against the decision ordering that the information be provided.

103 Thirdly, it must be borne in mind that the national legislation at issue in the main proceedings pursues an objective of general interest recognised by the Union, as stated in paragraphs 86 to 88 above.

104 As regards the requirement for that legislation to be necessary and proportionate in view of such an objective, it is to be considered, as can be seen from paragraphs 90 to 92 above, as being met, having regard (i) to the deadlines which must be complied with in order to ensure the speed and efficiency of the procedure for the exchange of information which gives concrete expression to the objective of combating international tax fraud and tax evasion underlying Directive 2011/16 and (ii) to the possibility, for the persons concerned, of bringing proceedings before a court for the purpose of obtaining a finding that the rights guaranteed to those persons by EU law have been infringed and obtaining compensation for the harm caused by that infringement.

105 Having regard to all of the foregoing, the answer to the first questions referred in Cases C-245/19 and C-246/19 is that Article 47 of the Charter, 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 Directive 2011/16 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.

The second question referred in Case C-245/19

106 In light of the answers given to the first questions referred in Cases C-245/19 and C-246/19 and the fact that the second questions referred in those cases were raised only in the event of the first questions being answered in the affirmative, it is only necessary to answer the second question referred in Case C-245/19.

107 By that question, the referring court asks, in essence, whether Article 1(1) and Article 5 of Directive 2011/16 are to 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.

108 Article 1(1) of Directive 2011/16 provides that the Member States are to cooperate with a view to exchanging information that is foreseeably relevant to the administration and enforcement of their domestic tax laws.

109 For its part, Article 5 of that directive states that, at the request of the national authority that wishes to be provided with such information, known as the 'requesting authority', the authority to which that request is addressed, known as the 'requested authority', is to communicate that information to the requesting authority, where necessary after obtaining it as a result of enquiries.

110 The expression 'foreseeably relevant' used in Article 1(1) of Directive 2011/16 is intended, as the Court has already noted, to enable the requesting authority to request and obtain any information that it may reasonably consider will prove to be relevant for the purposes of its investigation, without however authorising it manifestly to exceed the parameters of that investigation or to place an excessive burden on the requested authority (see, to that effect, judgment of 16 May 2017, *Berlioz Investment Fund*, C-682/15, EU:C:2017:373, paragraphs 63 and 66 to 68).

111 In addition, that expression must be interpreted in the light of the general principle of EU law consisting in the protection of natural or legal persons against arbitrary or disproportionate intervention by the public authorities in the sphere of their private activities, referred to in paragraph 57 above.

112 In that regard, it should be observed that, although the requesting authority, which is in charge of the investigation giving rise to the request for exchange of information, has a discretion to assess, according to the circumstances of the case, the foreseeable relevance of the requested information, it cannot ask the requested authority for information that is of no relevance to that investigation (see, to that effect, judgment of 16 May 2017, *Berlioz Investment Fund*, C-682/15, EU:C:2017:373, paragraphs 70 and 71).

113 Thus, a decision ordering that information be provided, by which the requested authority followed up on a request for exchange of information from the requesting authority seeking to engage in a 'fishing expedition' as referred to in recital 9 of Directive 2011/16 would be tantamount to an arbitrary or disproportionate intervention by the public authorities.

114 Accordingly, the information requested for the purposes of such a 'fishing expedition' could not, in any event, be considered to be 'foreseeably relevant' for the purposes of Article 1(1) of Directive 2011/16.

115 In that regard, the requested authority must review whether the statement of reasons for the request for exchange of information that has been addressed to it by the requesting authority is sufficient to establish that the information in question is not devoid of any foreseeable relevance, having regard to the identity of the taxpayer concerned by the investigation giving rise to that request, to the requirements of such an investigation and, in a situation where it is necessary to obtain the information in question from a person holding that information, to the identity of that person (see, to that effect, judgment of 16 May 2017, *Berlioz Investment Fund*, C-682/15, EU:C:2017:373, paragraphs 76, 78, 80 and 82).

116 Furthermore, in a situation where that person has brought an action against the decision ordering that information be provided that has been addressed to that person, the court having jurisdiction must review whether the statement of reasons for that decision and for the request on which that decision is based is sufficient to establish that the information in question is not manifestly devoid of any foreseeable relevance, having regard to the identity of the taxpayer concerned, that of the person holding that information, and the requirements of the investigation concerned (see, to that effect, judgment of 16 May 2017, *Berlioz Investment Fund*, C-682/15, EU:C:2017:373, paragraph 86).

117 It is therefore in the light of those factors that it is necessary to determine whether a decision ordering that information be provided, such as that giving rise to the dispute in the main proceedings in Case C-245/19, taken together with the request for exchange of information on which it is based, concerns information which is not manifestly devoid of any foreseeable relevance.

118 In that regard, it should be noted that such a decision, taken together with such a request, clearly concerns information which is not manifestly devoid of any foreseeable relevance inasmuch as it states the identity of the taxpayer concerned by the investigation giving rise to that request, the period covered by that investigation, and the identity of the person who holds information concerning contracts, invoices and payments concluded or carried out during that period and connected with the taxpayer in question.

119 The referring court's doubts stem, however, from the fact that that decision, taken together with that request, concerns contracts, invoices and payments which are not specifically identified.

120 It must be observed, first, that that decision, taken together with that request, indisputably concerns information which is not manifestly devoid of any foreseeable relevance inasmuch as it concerns contracts, invoices and payments that were concluded or carried out, during the period covered by the investigation, by the person holding the information concerning those contracts, invoices and payments, and that are connected with the taxpayer concerned by that investigation.

121 Secondly, it should be borne in mind that both the decision and the request were made, as can be seen from paragraph 81 above, during the preliminary stage of the investigation, the purpose of which is to gather information of which the requesting authority does not, by definition, have full and precise knowledge.

122 In those circumstances, it is foreseeable that some of the information referred to in the decision ordering that information be provided giving rise to the dispute in the main proceedings in Case C-245/19, taken together with the request for exchange of information on which it is based, will ultimately prove, at the end of the investigation conducted by the requesting authority, to be irrelevant in the light of the results of that investigation.

123 However, having regard to the findings set out in paragraphs 118 and 120 above, that fact cannot serve as an indication that the information in question can be regarded, for the purposes of the review referred to in paragraphs 115 and 116 above, as being manifestly devoid of any foreseeable relevance and, accordingly, as not meeting the requirements resulting from Article 1(1) and Article 5 of Directive 2011/16.

124 In the light of all of the foregoing, the answer to the second question referred in Case C-245/19 is that Article 1(1) and Article 5 of Directive 2011/16 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.

Costs

125 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

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.**

[Signatures]