Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

25 November 2021 *

(Reference for a preliminary ruling – Administrative cooperation in the field of taxation – Directive 2011/16/EU – Article 1(1), Article 5 and Article 20(2) – Request for information – Decision ordering that information be provided – Refusal to comply with the order – Penalty – 'Foreseeable relevance' of the requested information – Absence of identification of the taxpayers concerned individually and by name – Concept of 'identity of the person under examination or investigation' – Statement of reasons of the request for information – Scope – Charter of Fundamental Rights of the European Union – Article 47 – Right to an effective remedy against the decision ordering that information be provided – Article 52(1) – Limitation – Respect for the essence of the right)

In Case C-437/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour administrative (Higher Administrative Court, Luxembourg), made by decision of 23 May 2019, received at the Court on 31 May 2019, in the proceedings

État luxembourgeois

v

L,

THE COURT (Third Chamber),

composed of A. Prechal, President of the Second Chamber, acting as President of the Third Chamber, J. Passer, F. Biltgen, L.S. Rossi (Rapporteur) and N. Wahl, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– L, by F. Trevisan and P. Mellina, avocats,

– the Luxembourg Government, by C. Schiltz, T. Uri and A. Germeaux, acting as Agents,

* Language of the case: French.

– Ireland, by M. Browne, G. Hodge, J. Quaney and A. Joyce, acting as Agents, and by S. Horan, BL,

– the Greek Government, by K. Georgiadis, M. Tassopoulou and Z. Chatzipavlou, acting as Agents,

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

– the French Government, initially by A.-L. Desjonquères and C. Mosser, and subsequently by A.-L. Desjonquères, acting as Agents,

– the Italian Government, by G. Palmieri, acting as Agent, and by G. Galluzzo, avvocato dello Stato,

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

– the Finnish Government, by M. Pere, acting as Agent,

– the European Commission, initially by W. Roels and N. Gossement, and subsequently by W. Roels, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 3 June 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') and of Article 1(1), Article 5 and Article 20(2)(a) 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).

2 The request has been made in proceedings between the État luxembourgeois (Luxembourg State) and L, a company established under Luxembourg law, concerning the legality of a financial penalty which was imposed on that company for refusing to provide certain information following a request for exchange of information between Member States in tax matters.

Legal context

European Union law

3 Recitals 1, 2 and 6 to 9 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.

…

(6) … To this end, this new Directive is considered to be the proper instrument in terms of effective administrative cooperation.

(7) This Directive builds on the achievements of [Council] Directive 77/799/EEC [of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation (OJ 1977 L 336, p. 15)] but provides for clearer and more precise rules governing administrative cooperation between Member States where necessary, in order to establish, especially as regards the exchange of information, a wider scope of administrative cooperation between Member States. Clearer rules should also make it possible in particular to cover all legal and natural persons in the Union, taking into account the ever-increasing range of legal arrangements, including not only traditional arrangements such as trusts, foundations and investment funds, but any new instrument which may be set up by taxpayers in the Member States.

(8) … Provision should … be made to bring about more direct contacts between services with a view to making cooperation more efficient and faster. …

(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. While Article 20 of this Directive contains procedural requirements, those provisions need to be interpreted liberally in order not to frustrate the effective exchange of information.'

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 3 of that directive, entitled 'Definitions', states:

'For the purposes of this Directive the following definitions shall apply:

…

11. "person" means:

(a) a natural person;

(b) a legal person;

(c) where the legislation in force so provides, an association of persons recognised as having the capacity to perform legal acts but lacking the status of a legal person; or

(d) any other legal arrangement of whatever nature and form, regardless of whether it has legal personality, owning or managing assets, which, including income derived therefrom, are subject to any of the taxes covered by this Directive;

…'

6 Article 5 of that directive, entitled 'Procedure for the exchange of information on request', provides:

'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.'

7 Article 20 of that directive, entitled 'Standard forms and computerised formats', is worded as follows:

'1. Requests for information and for administrative enquiries pursuant to Article 5 and their replies, acknowledgements, requests for additional background information, inability or refusal pursuant to Article 7 shall, as far as possible, be sent using a standard form adopted by the Commission in accordance with the procedure referred to in Article 26(2).

The standard forms may be accompanied by reports, statements and any other documents, or certified true copies or extracts thereof.

2. The standard form referred to in paragraph 1 shall include at least the following information to be provided by the requesting authority:

(a) the identity of the person under examination or investigation;

(b) the tax purpose for which the information is sought.

The requesting authority may, to the extent known and in line with international developments, provide the name and address of any person believed to be in possession of the requested information as well as any element that may facilitate the collection of information by the requested authority.

…'

Luxembourg law

Law of 29 March 2013

8 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.'

Law of 25 November 2014

9 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 the preceding paragraph.

10 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.

…'

11 Article 3 of that law, in the version applicable to the dispute 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. …

…'

12 Article 5(1) of that law provides:

'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.'

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

'(1) No action may be brought against a request for exchange of information or a decision requiring the requested information to be provided 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 must be brought within one month of notification of the decision to the holder of the information requested. The action shall have suspensive effect. …'

Law of 1 March 2019

14 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.

15 Article 6 of the Law of 25 November 2014, as amended by the Law of 1 March 2019, provides, in paragraphs 1 and 2 thereof:

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

(2) The action against the decision requiring the requested information to be provided referred to in Article 3(3) and the decision referred to in Article 5 must be lodged within one month of notification of the decision to the holder of the requested information. The action shall have suspensive effect. …'

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

16 On 27 April 2017, the French tax authority sent the Luxembourg tax authority, on the basis of, inter alia, Directive 2011/16, a request for information ('the request for information of 27 April 2017').

17 That request indicated F, a property company established under French law, as the legal person concerned in the requesting State and L, a company established under Luxembourg law, as both F's indirect parent company and the legal person concerned in the requested State. As regards the tax purpose of that request, that tax authority stated that F owns immovable property in France and that L also directly owns further immovable property in France. The same request explained, in that regard, that, pursuant to French law, natural persons directly or indirectly owning immovable property situated in France must declare that property, and that the French tax authority wished to know the identity of the shareholders and beneficial owners of L.

18 On 28 February 2018, the directeur de l'administration des contributions directes (Director of the Direct Taxation Administration, Luxembourg) acted upon the request for information of 27 April 2017, sending L a decision requiring it to provide, by 5 April 2018 at the latest, information relating to the period from 1 January 2012 to 31 December 2016 concerning various matters, namely the names and addresses of L's shareholders, its direct and indirect beneficial owners, regardless of the intervening structures, the distribution of the company's share capital and a copy of the company's shareholder registers ('the information order of 28 February 2018'). That order stated that no action could be brought against it, in accordance with Article 6 of the Law of 25 November 2014, in the version applicable to the dispute in the main proceedings.

19 On 5 April 2018, L brought a formal administrative appeal against that order. By decision of 4 June 2018, the Director of the Direct Taxation Administration declared that appeal inadmissible. An action for annulment brought by L against the latter decision is currently pending before the tribunal administratif (Administrative Court, Luxembourg).

20 On 6 August 2018, the Director of the Direct Taxation Administration sent L a decision finding that it had failed to comply with the information order of 28 February 2018 and imposing on it an administrative penalty, in accordance with Article 5 of the Law of 25 November 2014 ('the penalty decision of 6 August 2018').

21 By application lodged at the registry of the tribunal administratif (Administrative Court) on 5 September 2018, L brought an action seeking, principally, that that decision be varied and, in the alternative, that it be annulled.

22 By judgment of 18 December 2018, the tribunal administratif (Administrative Court) annulled that decision on the ground that there was a contradiction between, on the one hand, the identity of the taxpayer as stated in the information order of 28 February 2018 and, on the other, the explanations given in the request for information of 27 April 2017 as regards the purpose for which that information was sought, with the result that doubts remain as to the identity of the taxpayer to whom that request relates. According to the tribunal administratif (Administrative Court), those explanations appear to indicate that the investigation carried out by the French tax authority does not relate to F, which was nevertheless mentioned in the request for information of 27 April 2017 as the person under investigation, but rather to L's beneficial owners, who are natural persons and who are, pursuant to French law, under an obligation to declare ownership

of any immovable properties situated in France. According to that court, that uncertainty as regards the identity of the taxpayer to whom that request relates means that the requested information must be regarded as manifestly devoid of any foreseeable relevance.

23 By application lodged at the registry of the Cour administrative (Higher Administrative Court, Luxembourg) on 21 December 2018, the État luxembourgeois (Luxembourg State) lodged an appeal against that judgment.

24 In its order for reference, the Cour administrative (Higher Administrative Court) considers, in the first place, as regards the foreseeable relevance of the requested information, that, contrary to what the tribunal administratif (Administrative Court) stated, there is no contradiction between the identity of the taxpayer provided in the information order of 28 February 2018 and the tax purpose pursued by the request for information of 27 April 2017.

25 It follows from the overall content of that request that F and L are the legal persons concerned by the tax investigation conducted in the requesting State, as companies owning immovable property situated in France. Having regard to the obligation to declare the natural persons who are shareholders and beneficial owners of such companies under French law, the Cour administrative (Higher Administrative Court) considers that such an investigation may legitimately extend to establishing the identity of those natural persons, bearing in mind that the shareholders and beneficial owners of L are also, in the light of the corporate structure in question, beneficial owners of F. It follows that the requested information is not manifestly devoid of any foreseeable relevance in that regard.

26 The Cour administrative (Higher Administrative Court) observes, however, that the request for information of 27 April 2017 does not identify individually and by name the shareholders and beneficial owners of L, but refers to those persons as a group of persons who are designated as a whole on the basis of common criteria defined by the requesting authority.

27 That court states that, in accordance with the provisions of Directive 2011/16, as interpreted by the Court in the judgment of 16 May 2017, *Berlioz Investment Fund* (C-682/15, EU:C:2017:373), information regarding the identity of the taxpayer under investigation in the requesting State is a matter which the request for information must necessarily contain in order to justify the foreseeable relevance of the requested information, which in turn constitutes a condition for the legality of such a request.

28 According to the Cour administrative (Higher Administrative Court), although that directive does not otherwise specify what is entailed by that obligation to identify the taxpayer who is under investigation in the requesting State, it is not sufficient that the identity of that taxpayer can be determined in order to comply with the identification requirement laid down by that directive. In accordance with the everyday meaning of the words, identifying a person presupposes the provision of sufficient information so as to make it possible for that person to be distinguished individually.

29 Thus, according to that court, the concept of the taxpayer's 'identity', within the meaning of that directive, should be interpreted as meaning that the request for information must itself already contain sufficient information to enable the taxpayer or taxpayers under investigation in the requesting State to be individually identified and that it is not sufficient for that request merely to provide characteristics in common enabling a more or less extended group of unidentified persons to be determined with a view to obtaining precisely the information necessary to identify them.

30 In that court's view, it is true that it is apparent from the judgment of 16 May 2017, *Berlioz Investment Fund* (C-682/15, EU:C:2017:373), that, in order to interpret that concept of 'identity', account must also be taken of Article 26 of the Model Tax Convention on Income and on Capital of the Organisation for Economic Co-operation and Development (OECD) and the commentaries relating thereto. In the version resulting from an update made after the adoption of Directive 2011/16, those commentaries suggest that a request for information relating to a group of taxpayers who are not individually identified may nevertheless meet the standard of foreseeable relevance in the case of a targeted investigation into a limited group, based on the monitoring of compliance with a specific legal obligation, and not simply an investigation by way of general fiscal surveillance.

31 However, even if it is accepted that the successive amendments made to those commentaries are applicable and relevant to the interpretation of that directive, inasmuch as they reflect a change in the interpretation of the general standard of foreseeable relevance of the requested information, the Cour administrative (Higher Administrative Court) is nevertheless uncertain whether that change can lead to disregard for the requirement, laid down in that directive, that the taxpayer concerned be individually identified.

32 As regards, in the second place, the exercise of the right of the holder of the information to a remedy against a decision requiring that information be provided ('the information order' or 'the decision ordering that information be provided') issued against him or her, the Cour administrative (Higher Administrative Court) states that, in the present case, in the absence of direct legal remedies against such an order, L has brought an action against the penalty decision of 6 August 2018, in order to challenge indirectly the legality of the information order of 28 February 2018.

33 In that regard, the Cour administrative (Higher Administrative Court) states that Article 6(2) of the Law of 25 November 2014 grants that action suspensive effect as regards enforcement of the penalty decision of 6 August 2018 until the adoption of a judicial decision definitively ruling on that action. It observes, however, that, if the legality of the information order of 28 February 2018 and the penalty decision of 6 August 2018 are definitively recognised on conclusion of that action, L would be required both to provide the requested information and pay the financial penalty.

34 The Cour administrative (Higher Administrative Court) finds that, in such a situation, the holder of the information would have obtained disclosure of the minimum information concerning, in particular, the tax purpose of the request for information underlying the information order, referred to in Article 20(2) of Directive 2011/16, only in the context of his or her action against the penalty decision for failure to comply with that order. Thus, that person would at no point have had adequate time to decide, in full knowledge of that minimum information, whether or not to comply with the information order.

35 The question therefore arises whether the right to an effective remedy enshrined in Article 47 of the Charter means that, if the legality of the information order and the decision imposing a penalty for failure to comply with that order are definitively recognised, the holder of the information must be given a certain amount of time in order to be able to comply with the information order and that the penalty becomes payable only if that person does not comply with it within that time limit.

36 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 Article 20(2)(a) of Directive 2011/16 be interpreted as meaning that where a request for exchange of information formulated by an authority of a requesting Member State designates the taxpayers to which it relates simply by reference to their status as shareholders and beneficial owners of a company, without those taxpayers having been identified by the requesting authority in advance, individually and by name, the request satisfies the identification requirements laid down by that provision?

(2) If the answer to the first question is in the affirmative, must Article 1(1) and Article 5 of that directive be interpreted as meaning that the standard of foreseeable relevance may be met, if the requesting Member State, in order to establish that it is not engaged in a fishing expedition, despite the fact that it has not individually identified the taxpayers concerned, provides a clear and sufficient explanation evidencing that it is conducting a targeted investigation into a limited group of persons, and not simply an investigation by way of general fiscal surveillance, and that its investigation is justified by reasonable suspicions of non-compliance with a specific legal obligation?

(3) Must Article 47 of the Charter of Fundamental Rights of the European Union be interpreted as meaning that, where

– a person who has had imposed upon him [or her] by the competent authority of a Member State an administrative financial penalty for non-compliance with an administrative decision, requiring him [or her] to provide information in connection with an exchange of information between national tax authorities pursuant to Directive 2011/16, where the national law of the requested Member State does not make provision for an action to be brought against the latter decision, and where the person concerned has challenged the legality of that decision within an action brought against the financial penalty, and

– has only obtained disclosure of the minimal information referred to in Article 20(2) of Directive 2011/16 in the course of the judicial procedure set in motion by the bringing of that action,

that person is entitled, in the event of a definitive incidental finding upholding the validity of the decision requiring the requested information and of the decision imposing a fine on him [or her], to a period of grace for the payment of that fine, so that he [or she] has an opportunity, having thus been given disclosure of the material supporting the contention – definitively accepted by the competent court – that the test of foreseeable relevance is met, to comply with the decision requiring the requested information?’

Procedure before the Court

37 By decision of the President of the Court of 15 January 2020, the proceedings were stayed in the present case, pursuant to Article 55(1)(b) of the Rules of Procedure of the Court of Justice, pending delivery of the judgment in Joined Cases C-245/19 and C-246/19, *État luxembourgeois (Right to bring an action against a request for information in tax matters)*.

38 The judgment of 6 October 2020, *État luxembourgeois (Right to bring an action against a request for information in tax matters)* (C-245/19 and C-246/19, EU:C:2020:795), was sent to the referring court in the present proceedings in order to determine whether that court wished to pursue its request for a preliminary ruling. By letter of 16 November 2020, received at the Court Registry on 17 November 2020, that court informed the Court of Justice that it wished to pursue that request. By decision of the President of the Court of 19 November 2020, the resumption of the present proceedings was therefore decided.

39 On 2 February 2021, the parties to the main proceedings and the other interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union were invited to answer certain questions in writing, pursuant to Article 61(1) of the Rules of Procedure. The defendant in the main proceedings, the Luxembourg Government, Ireland, the Greek, Spanish, French, Italian, Polish and Finnish Governments and the European Commission answered those questions.

Consideration of the questions referred

The first and second questions

40 By its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 1(1), Article 5 and Article 20(2) of Directive 2011/16 must be interpreted as meaning that a request for information must be regarded as relating to information which does not appear to be manifestly devoid of any foreseeable relevance, where the persons under examination or investigation within the meaning of that latter provision are not identified individually and by name by that request but the requesting authority provides a clear and sufficient explanation that it is conducting a targeted investigation into a limited group of persons, justified by reasonable suspicions of non-compliance with a specific legal obligation.

41 In order to answer those questions, it should, in the first place, be recalled that the Court has previously held that it is apparent from Article 1(1) and Article 5 of Directive 2011/16 that the foreseeable relevance of the information requested by one Member State from another Member State is a condition which any request for information must satisfy in order for the requested Member State to be required to comply with that request, and, at the same time, a condition of the legality of the information order addressed by that Member State to a person holding that information and of the penalty imposed on that person for failure to comply with that order (see, to that effect, judgment of 16 May 2017, *Berlioz Investment Fund*, C-682/15, EU:C:2017:373, paragraph 74).

42 In that regard, it is apparent from recital 9 of Directive 2011/16 that the aim of that standard of foreseeable relevance of the requested information is 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, judgments of 16 May 2017, *Berlioz Investment Fund*, C-682/15, EU:C:2017:373, paragraph 68, and of 6 October 2020, *État luxembourgeois (Right to bring an action against a request for information in tax matters)*, C-245/19 and C-246/19, EU:C:2020:795, paragraph 110).

43 In view of the system of cooperation between tax authorities established by Directive 2011/16, which, as is apparent from recitals 2, 6 and 8 thereof, is founded on rules intended to create confidence between Member States, ensuring that cooperation is efficient and fast, the requested

authority must, in principle, trust the requesting authority and assume that the request for information it has been sent both complies with the domestic law of the requesting authority and is necessary for the purposes of its investigation. In any event, the requested authority cannot substitute its own assessment of the possible usefulness of the information sought for that of the requesting authority (see, to that effect, judgment of 16 May 2017, *Berlioz Investment Fund*, C-682/15, EU:C:2017:373, paragraph 77).

44 Although the requesting authority from which the request for information originates, therefore, 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 6 October 2020, *État luxembourgeois (Right to bring an action against a request for information in tax matters)*, C-245/19 and C-246/19, EU:C:2020:795, paragraph 112 and the case-law cited).

45 Thus, information requested for the purposes of a 'fishing expedition', as referred to in recital 9 of Directive 2011/16, could not, in any event, be considered to be 'foreseeably relevant', within the meaning of Article 1(1) of that directive (see, to that effect, judgment of 6 October 2020, *État luxembourgeois (Right to bring an action against a request for information in tax matters)*, C-245/19 and C-246/19, EU:C:2020:795, paragraphs 113 and 114).

46 The requested authority must therefore review whether the statement of reasons for the request for 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 (judgment of 6 October 2020, *État luxembourgeois (Right to bring an action against a request for information in tax matters)*, C-245/19 and C-246/19, EU:C:2020:795, paragraph 115 and the case-law cited).

47 In that regard, it is apparent from recital 9 of Directive 2011/16 that the matters relevant for the purposes of that review which the requesting authority is required to provide include those referred to in Article 20(2)(a) and (b) of that directive, namely the identity of the person under examination or investigation and the tax purpose for which the information is sought (see, to that effect, judgment of 16 May 2017, *Berlioz Investment Fund*, C-682/15, EU:C:2017:373, paragraph 79).

48 In those circumstances, it must therefore be held that it follows from a combined reading of Article 1(1), Article 5 and Article 20(2)(a) of Directive 2011/16, as interpreted by the case-law of the Court referred to in paragraphs 41 to 47 of the present judgment, that the 'identity of the person under examination or investigation', within the meaning of the latter provision, constitutes one of the matters that the statement of reasons for the request for information must necessarily contain in order to enable the requested authority to establish that the requested information does not appear to be devoid of any foreseeable relevance and, thus, to require the requested Member State to comply with that request.

49 Second, it must be noted that Article 20(2)(a) of Directive 2011/16 does not make any reference to national laws concerning the meaning to be given to the concept of 'identity of the person under examination or investigation'.

50 Thus, that concept must be regarded as an autonomous concept of EU law which must be interpreted in a uniform manner throughout the territory of the European Union, taking into account not only the wording of that provision, but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, to that effect, judgment of 22 June 2021, *Venezuela* v *Council (Whether a third State is affected)*, C-872/19 P, EU:C:2021:507, paragraph 42 and the case-law cited).

51 As regards, at the outset, the wording of Article 20(2)(a) of Directive 2011/16, it should be noted that the term 'identity' designates, in accordance with its everyday meaning, all the characteristics enabling a person to be individually distinguished, without being limited to identifying that person individually by his or her name, as the Advocate General considered, in essence, in points 46 and 47 of her Opinion.

52 As regards, next, the context of that provision, it should be noted, first, that Article 3(11) of that directive defines the term 'person' broadly, inasmuch as it refers not only to natural persons but also to legal persons, associations of persons recognised as having the capacity to perform legal acts, or any other legal arrangement of whatever nature and form, regardless of whether it has legal personality.

53 Therefore, that definition also encompasses a group of legal persons whose identity cannot be established on the basis of personal information such as that relating to a natural person's civil status. For the purpose of verifying the matter of the identity of the person under examination or investigation within the meaning of the case-law cited in paragraphs 46 and 47 above, those persons must accordingly be identifiable by means of a set of distinctive factual and legal characteristics.

54 Second, it must be borne in mind that, in accordance with recital 9 of Directive 2011/16, since the standard of 'foreseeable relevance' of the requested information is intended to provide for exchange of information in tax matters to the widest possible extent, the procedural requirements set out in Article 20 of that directive must be interpreted liberally in order not to frustrate the effective exchange of information.

55 Consequently, the requirement, laid down in Article 20(2)(a) of that directive, to provide, in the request for information, matters in the statement of reasons that relate to the identity of the persons under examination or investigation must also be interpreted liberally, as meaning that it does not necessarily require that those persons be identified individually and by name.

56 As regards, lastly, the aims of Directive 2011/16, the Court has previously held that the objective of combating international tax fraud and tax evasion is given concrete expression in, inter alia, Articles 5 to 7 thereof 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 6 October 2020, *État luxembourgeois (Right to bring an action against a request for information in tax matters)*, C-245/19 and C-246/19, EU:C:2020:795, paragraphs 86 and 89 and the case-law cited).

57 To that end, that directive states, in recital 7, that it builds on the achievements of Directive 77/799 by providing for clearer and more precise rules governing administrative cooperation between Member States where necessary, in order to broaden the scope of such cooperation (see, to that effect, judgment of 16 May 2017, *Berlioz Investment Fund*, C-682/15, EU:C:2017:373,

paragraph 47). In particular, it is apparent from that recital that those rules should make it possible in particular to cover all legal and natural persons in the European Union, taking into account the ever-increasing range of legal arrangements which may be set up by taxpayers in the Member States.

58 As the Advocate General observed, in essence, in point 52 of her Opinion, in view of the increasing complexity of existing financial and legal arrangements, an interpretation of the concept of 'identity of the person under examination or investigation' amounting to a prohibition of any request for information in which the requesting authority does not refer to persons individually and by name would risk depriving the instrument of cooperation that is the request for information of its practical effect and would thus run counter to the objective of combating international tax fraud and tax evasion that that instrument is pursuing.

59 Such an interpretation would amount to a prohibition of any request for information, such as that at issue in the main proceedings, which is aimed, in the context of a tax investigation whose scope is already determined by the requesting authority, at identifying, with the help of a common set of qualities or characteristics that distinguish them, the members of a limited group of persons suspected of having committed the alleged infringement or omission.

60 It should be borne in mind, in that regard, that both the request for information and the information order are made during the preliminary stage of the examination or investigation, the purpose of which is to gather information of which the requesting authority does not, by definition, have full and precise knowledge (judgment of 6 October 2020, *État luxembourgeois (Right to bring an action against a request for information in tax matters)*, C-245/19 and C-246/19, EU:C:2020:795, paragraph 121).

61 It follows, accordingly, from a literal, contextual and teleological interpretation of the concept of 'identity of the person under examination or investigation', within the meaning of Article 20(2)(a) of Directive 2011/16, that that concept covers not only the name and other personal information but also a set of distinctive qualities or characteristics enabling the identification of the person or persons under examination or investigation.

62 It follows that the 'identity of the person under examination or investigation', within the meaning of that provision, as a matter which the statement of reasons for the request for information must necessarily contain in order to enable the requested authority to establish that the requested information does not appear to be devoid of any foreseeable relevance, within the meaning of paragraph 48 of the present judgment, is capable of referring not only to persons identified individually and by name by the requesting authority, but also to a limited group of persons identifiable on the basis of a common set of qualities or characteristics that distinguish them.

63 It should be borne in mind, however, that it is clear from the case-law of the Court cited in paragraphs 44 and 45 above that the requesting authority, while having a discretion to assess the foreseeable relevance of the requested information, cannot ask the requested authority for information for the purposes of a 'fishing expedition', as referred to in recital 9 of Directive 2011/16, since that information cannot be considered to be 'foreseeably relevant', within the meaning of Article 1(1) of that directive.

64 Thus, as regards a request for information which does not concern persons identified individually and by name, it is necessary to specify, in the third place, the matters which the requesting authority must provide to the requested authority in order to enable it to establish that the

information is not requested for the purposes of such a 'fishing expedition' and, therefore, does not appear to be devoid of any foreseeable relevance within the meaning of the case-law cited in paragraph 46 of the present judgment. As the Advocate General noted, in essence, in point 54 of her Opinion, the risk of a 'fishing expedition' is particularly high where the request for information relates to a group of taxpayers who are not identified individually and by name.

65 In that regard, it must, at the outset, be recalled that it is apparent from the case-law cited in paragraph 47 of the present judgment that the matters in the statement of reasons that relate to the 'identity of the person under examination or investigation', within the meaning of Article 20(2)(a) of Directive 2011/16, are in addition to the matter relating to the tax purpose of that request, within the meaning of Article 20(2)(b) of that directive.

66 Next, it follows from a combined reading of recital 9 and Article 20 of Directive 2011/16, as interpreted by the case-law of the Court cited in paragraphs 42 to 45 above, that a requesting authority cannot ask for information which manifestly exceeds the parameters of the tax investigation it is conducting or places an excessive burden on the requested authority.

67 In those circumstances, it must be held, as noted, in essence, by the Advocate General in points 58 to 62 of her Opinion, that the requesting authority is required, first, to 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.

68 In the present case, as the Advocate General noted in point 64 of her Opinion, the statement of reasons for the request for information at issue in the main proceedings, as set out in the account of the facts in the order for reference and summarised in paragraph 17 of the present judgment, appears to satisfy the requirements set out in the preceding paragraph of the present judgment, which is, however, for the referring court to ascertain, in the context of an overall assessment of the content of that request.

69 Lastly, it should be added that that interpretation of the provisions of Directive 2011/16 corresponds to that of the concept of 'foreseeable relevance' of the requested information, used in Article 26(1) of the OECD Model Tax Convention on Income and on Capital, as evidenced by the commentary on that article, approved by the OECD Council on 17 July 2012.

70 The Court has previously noted that the concept of 'foreseeable relevance' of the requested information set out, inter alia, in recital 9 of Directive 2011/16 reflects that used in Article 26(1) of that model convention (see, to that effect, judgment of 16 May 2017, *Berlioz Investment Fund*, C-682/15, EU:C:2017:373, paragraph 67).

71 In that regard, it should be noted that paragraphs 5.1 and 5.2 of the commentary on Article 26 of that model tax convention state that 'a request for information does not constitute a fishing expedition solely because it does not provide the name or address (or both) of the taxpayer under examination or investigation', provided that the requesting State '[includes] other information sufficient to identify the taxpayer'. In addition, those paragraphs state that the standard of foreseeable relevance of the requested information may also be met in 'cases dealing with … several taxpayers (whether identified by name or otherwise)'.

72 In the light of all the foregoing considerations, the answer to the first and second questions is that Article 1(1), Article 5 and Article 20(2) of Directive 2011/16 must be interpreted as meaning that a request for information must be regarded as relating to information which does not appear to be manifestly devoid of any foreseeable relevance, where the persons under examination or investigation within the meaning of that latter provision are not identified individually and by name by that request but the requesting authority provides a clear and sufficient explanation that it is conducting a targeted investigation into a limited group of persons, justified by reasonable suspicions of non-compliance with a specific legal obligation.

The third question

The jurisdiction of the Court

73 The Luxembourg Government implicitly disputes the Court's jurisdiction to rule on the third question. That government submits, in essence, that that question concerns purely domestic aspects, which concern the temporal application of national procedural rules and which, consequently, have no connection with EU law. Since Article 47 of the Charter is applicable to a national dispute only if the latter has a sufficiently close connection with EU law, that question falls outside the jurisdiction of the Court.

74 In that regard, it must be noted that the Law of 25 November 2014, inasmuch as it specifies the details for the procedure for the exchange of information on request established by Directive 2011/16, and in particular those relating to the enforcement and review of the legality of information orders and the penalty decisions for failure to comply with those orders, adopted so as to ensure the smooth operation of that procedure, constitutes an implementation of that directive and therefore comes within the scope of EU law (see, to that effect, judgments of 16 May 2017, *Berlioz Investment Fund*, C-682/15, EU:C:2017:373, paragraphs 34 to 41, and of 6 October 2020, *État luxembourgeois (Right to bring an action against a request for information in tax matters)*, C-245/19 and C-246/19, EU:C:2020:795, paragraphs 45 and 46).

75 It follows that Article 47 of the Charter is applicable, in accordance with Article 51(1) thereof (see, to that effect, judgments of 16 May 2017, *Berlioz Investment Fund*, C-682/15, EU:C:2017:373, paragraphs 42 and 50, and of 6 October 2020, *État luxembourgeois (Right to bring an action against a request for information in tax matters)*, C-245/19 and C-246/19, EU:C:2020:795, paragraph 46) and that the Court has jurisdiction to rule on the third question.

Admissibility

76 The Luxembourg Government also expresses doubts as to the admissibility of the third question. First, it considers that although, under Article 6(1) of the Law of 25 November 2014, in the version applicable to the dispute in the main proceedings, the holder of the information had only a right to bring an action against the penalty decision for failure to comply with the information order, the Law of 1 March 2019 introduced a remedy of annulment for such orders.

77 In its view, since the Law of 1 March 2019 lays down procedural rules, it is intended to apply to situations existing as at the date of its entry into force. Consequently, in so far as that law is applicable to the dispute in the main proceedings, the third question is not relevant to the outcome of that dispute, since the holder of the information is now entitled, under that law, to bring an action for annulment against the information order so as to directly challenge its legality.

78 Second, that government submits that, in the present case, the company holding the information had, even under the Law of 25 November 2014, in the version applicable to the dispute in the main proceedings, an effective remedy enabling it to directly challenge the legality of the information order of 28 February 2018.

79 It states that, as is apparent from paragraph 19 of the present judgment, that company, in parallel with the action against the penalty decision of 6 August 2018, brought an action for annulment against the decision of the Director of the Direct Taxation Administration declaring inadmissible the formal administrative appeal which it had brought against the information order of 28 February 2018. That action for annulment, in respect of which it is common ground that it did not have suspensory effect as regards that order, is currently pending before the tribunal administratif (Administrative Court), which decided to stay the proceedings pending the Court's answer to the questions referred for a preliminary ruling in the present case.

80 In that regard, it must be recalled that it is apparent from the Court's settled case-law that, in the context of the cooperation between the Court and the national courts, provided for in Article 267 TFEU, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle required to give a ruling (judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor Din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 115 and the case-law cited).

81 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor Din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 116 and the case-law cited).

82 In particular, as is apparent from the actual wording of Article 267 TFEU, the question referred for a preliminary ruling must be 'necessary' to enable the referring court to 'give judgment' in the case before it. Thus, the preliminary ruling procedure is based on the premiss, inter alia, that a case is pending before the national courts, in which they are called upon to give a decision which is capable of taking account of the preliminary ruling (judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor Din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 117 and the case-law cited).

83 In the present case, as regards, first, the direct action against information orders established by the Law of 1 March 2019, it must be held that, as the referring court notes in its reply regarding its intention to pursue the present request for a preliminary ruling, that law is not applicable to the dispute in the main proceedings. The present proceedings predate the entry into force of that law and have their origin in an action brought not against an information order but against a subsequent penalty decision for failure to comply with such an order.

84 As regards, second, the action for annulment referred to in paragraph 79 of the present judgment, it is sufficient to note that, as the Luxembourg Government itself states in its reply to the questions that the Court put to it seeking a written reply, that action for annulment, even if it were admissible, would in any event become devoid of purpose if the legality of the information order of 28 February 2018 and the penalty decision of 6 August 2018 are definitively recognised, by way of an incidental finding, on conclusion of the dispute in the main proceedings.

85 In those circumstances, the answer to the third question remains relevant and necessary for the resolution of the dispute before the referring court, for the purposes of the case-law set out in paragraphs 80 to 82 above, with the result that that question is admissible.

Substance

86 By its third question, the referring court asks, in essence, whether Article 47 of the Charter must be interpreted as meaning that a person holding information who:

– has had an administrative financial penalty imposed on him or her for failure to comply with an information order in the context of an exchange between national tax authorities pursuant to Directive 2011/16, where that order is itself not open to challenge under the domestic law of the requested Member State, and

– has contested the legality of that order indirectly in an action against the decision imposing a penalty for failure to comply with that order, having thus obtained disclosure of the minimum information referred to in Article 20(2) of that directive in the course of the judicial proceedings relating to that action,

is entitled, following the definitive recognition of the legality of that order and that decision issued against him or her, to a period of grace for the payment of the penalty in order to be able, having thus been given disclosure of the matters relating to the foreseeable relevance of the requested information, as definitively upheld by the court with jurisdiction, to comply with the information order.

87 In order to answer that question, it must be noted, in the first place, 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. That protection may be relied on by a legal person as a right guaranteed by the EU law, 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 (judgment of 6 October 2020, *État luxembourgeois (Right to bring an action against a request for information in tax matters)*, C-245/19 and C-246/19, EU:C:2020:795, paragraphs 57 and 58 and the case-law cited).

88 It follows that a legal person to whom the competent national authority has addressed such an order or decision, like the defendant in the main proceedings, must be granted the right to an effective remedy guaranteed by Article 47 of the Charter when confronted with that order or decision, the exercise of which may be limited by the Member States only if the conditions laid down in Article 52(1) of the Charter are satisfied (see, to that effect, judgment of 6 October 2020, *État luxembourgeois (Right to bring an action against a request for information in tax matters)*, C-245/19 and C-246/19, EU:C:2020:795, paragraphs 59, 60 and 64).

89 In the second place, it should be recalled that the Court has previously held that the national court hearing an action against the pecuniary administrative penalty imposed on the relevant person for failure to comply with an information order must be able to examine the legality of that information order if it is to satisfy the requirements of Article 47 of the Charter. Consequently, a relevant person on whom a pecuniary penalty has been imposed for failure to comply with an administrative decision directing that person to provide information in the context of an exchange between national tax administrations pursuant to Directive 2011/16 is entitled to challenge the legality of that decision (judgment of 16 May 2017, *Berlioz Investment Fund*, C-682/15, EU:C:2017:373, paragraphs 56 and 59).

90 In that context, first, the Court has held that if the judicial review guaranteed by Article 47 of the Charter is to be effective, the reasons given by the requesting authority must put the national court in a position in which it may carry out the review of the legality of the request for information. In view of the discretion enjoyed by the requesting authority within the meaning of the case-law recalled in paragraphs 42 and 44 above, the limits that apply in respect of the requested authority's review, set out in paragraphs 43 and 46 above, are equally applicable to reviews carried out by the courts. Thus, the courts must merely verify that the information order is based on a sufficiently reasoned request by the requesting authority concerning information that is not – manifestly – devoid of any foreseeable relevance having regard to the matters set out in Article 20(2) of Directive 2011/16 concerning the identity of the person under examination or investigation and the tax purpose for which the information is sought (see, to that effect, judgment of 16 May 2017, *Berlioz Investment Fund*, C-682/15, EU:C:2017:373, paragraphs 84 to 86).

91 Second, the Court has stated that while, if the court of the requested Member State is to be able to conduct its judicial review, it is important that that court should have access to the request for information sent by the requesting Member State to the requested Member State, it is not necessary for the relevant person to have access to the whole of the request for information in order for that person to be given a fair hearing regarding the standard of foreseeable relevance of the requested information. To that end, it is sufficient that that person has access, in the context of the judicial proceedings against the information order and the decision imposing a penalty for failure to comply with that order, to the minimum information referred to in Article 20(2) of Directive 2011/16, namely the identity of the person under examination or investigation and the tax purpose for which the information is sought (see, to that effect, judgment of 16 May 2017, *Berlioz Investment Fund*, C-682/15, EU:C:2017:373, paragraphs 92, 99 and 100).

92 However, it must be borne in mind, in that respect, that if the judicial review guaranteed by Article 47 of the Charter is to be effective, the person concerned must be able to ascertain the reasons upon which the decision taken in relation to him or her is based, either by reading the decision itself or by requesting and obtaining notification of those reasons, without prejudice to the power of the court with jurisdiction to require the authority concerned to provide that information, so as to make it possible for him or her to defend his or her rights in the best possible conditions and to decide, with full knowledge of the relevant facts, whether there is any

point in applying to the court with jurisdiction, and in order to put the latter fully in a position in which it may carry out the review of the lawfulness of the national decision in question (judgment of 24 November 2020, *Minister van Buitenlandse Zaken*, C-225/19 and C-226/19, EU:C:2020:951, paragraph 43 and the case-law cited).

93 Thus, an information order must be not only based on a valid request for information in the light of the case-law referred to in paragraphs 41 to 47 of the present judgment, but also duly reasoned, in order to enable the addressee of that order to understand its scope and to enable him or her to decide whether or not to challenge it by judicial means.

94 Furthermore, the Court has also recalled that it follows from settled case-law 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, without being compelled to infringe a legal rule or obligation or be subject to the penalty attached to that offence (see, to that effect, judgment of 6 October 2020, *État luxembourgeois (Right to bring an action against a request for information in tax matters)*, C-245/19 and C-246/19, EU:C:2020:795, paragraph 66).

95 The Court has previously held, in the light of the same national legislation as that applicable to the dispute in the main proceedings, that, in accordance with that legislation, it is only if the person to whom a decision 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 (judgment of 6 October 2020, *État luxembourgeois (Right to bring an action against a request for information in tax matters)*, C-245/19 and C-246/19, EU:C:2020:795, paragraph 67).

96 Thus, 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 order. Accordingly, that person cannot be regarded as enjoying the benefit of effective judicial protection (judgment of 6 October 2020, *État luxembourgeois (Right to bring an action against a request for information in tax matters)*, C-245/19 and C-246/19, EU:C:2020:795, paragraph 68).

97 Consequently, the Court has held that that national legislation, inasmuch as it 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 (judgment of 6 October 2020, *État luxembourgeois (Right to bring an action against a request for information in tax matters)*, C-245/19 and C-246/19, EU:C:2020:795, paragraph 69).

98 In those circumstances, in order to ensure the effectiveness of the essence of that right in circumstances such as those of the main proceedings, the addressee of the information order must, if the legality of that order is upheld by the court with jurisdiction, be given the opportunity to comply with that order within the time limit initially prescribed for that purpose

by national law, without that entailing the continued application of the penalty which that person had to incur in order to exercise his or her right to an effective remedy. It is only if the addressee does not comply with that order within that time limit that the penalty imposed would legitimately become payable.

99 In the light of all the foregoing considerations, the answer to the third question is that Article 47 of the Charter must be interpreted as meaning that a person holding information who:

– has had an administrative financial penalty imposed on him or her for failure to comply with an information order in the context of an exchange between national tax authorities pursuant to Directive 2011/16, where that order is itself not open to challenge under the domestic law of the requested Member State, and

– has contested the legality of that order indirectly in an action against the decision imposing a penalty for failure to comply with that order, having thus obtained disclosure of the minimum information referred to in Article 20(2) of that directive in the course of the judicial proceedings relating to that action,

must, following the definitive recognition of the legality of that order and that decision issued against him or her, be given the opportunity to comply with the information order within the time limit initially prescribed for that purpose by national law, without that entailing the continued application of the penalty which that person had to incur in order to exercise his or her right to an effective remedy. It is only if that person does not comply with that order within that time limit that the penalty imposed would legitimately become payable.

Costs

100 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Third Chamber) hereby rules:

1. **Article 1(1), Article 5 and Article 20(2) of Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC must be interpreted as meaning that a request for information must be regarded as relating to information which does not appear to be manifestly devoid of any foreseeable relevance, where the persons under examination or investigation within the meaning of that latter provision are not identified individually and by name by that request but the requesting authority provides a clear and sufficient explanation that it is conducting a targeted investigation into a limited group of persons, justified by reasonable suspicions of non-compliance with a specific legal obligation.**

2. **Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that a person holding information who:**

   – **has had an administrative financial penalty imposed on him or her for failure to comply with an information order in the context of an exchange between national tax**

authorities pursuant to Directive 2011/16, where that order is itself not open to challenge under the domestic law of the requested Member State, and

– **has contested the legality of that order indirectly in an action against the decision imposing a penalty for failure to comply with that order, having thus obtained disclosure of the minimum information referred to in Article 20(2) of that directive in the course of the judicial proceedings relating to that action,**

must, following the definitive recognition of the legality of that order and that decision issued against him or her, be given the opportunity to comply with the information order within the time limit initially prescribed for that purpose by national law, without that entailing the continued application of the penalty which that person had to incur in order to exercise his or her right to an effective remedy. It is only if that person does not comply with that order within that time limit that the penalty imposed would legitimately become payable.

[Signatures]