

Case C-437/19**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

31 May 2019

Referring court:

Cour administrative (Luxembourg)

Date of the decision to refer:

23 May 2019

Appellant:

État du Grand-duché de Luxembourg

Respondent:

L

I. Subject-matter and facts of the dispute

- 1 By letter of 28 February 2018, the director of Luxembourg's direct taxation administration requested L (a company established in Luxembourg) to provide certain information, in the following terms:

'... The competent French authorities have sent us, dated 27 April 2017, a request for information pursuant to Directive 2011/16 ... and to the tax convention between Luxembourg and France.

...

The legal person to which the request relates is F, a company established [in France].

Please provide us with the following information and documents in relation to the period from 1 January 2012 to 31 December 2016 ...:

- Please disclose the names and addresses of L's shareholders, together with the names and addresses of those beneficially interested, whether directly or

indirectly and regardless of the type of intervening structure, in the company and the distribution of capital;

– Please provide a copy of L’s shareholder registers.

... (‘the decision requiring the requested information’).

- 2 The French authorities indicated that they were conducting an investigation into F, a company established in France and carrying on the activity of leasing a property in the municipality of [...] (France). L was said to be not only the indirect parent company of F (via a company incorporated under Dutch law), but also the direct owner of another property situated in the same French municipality. The French authorities explained that individuals directly or indirectly owning immovable property situated in France are required to declare that property, and that they wished to know who were the shareholders and beneficial owners of L.
- 3 By decision of 4 June 2018, the director dismissed an objection from L, which then brought an action before the tribunal administratif (Administrative Court, Luxembourg). That action is still pending.
- 4 On 6 August 2018, the director of Luxembourg’s direct taxation administration imposed a fine on L for failure to comply with the decision requiring the requested information.
- 5 On 5 September 2018, L brought an action before the Administrative Court seeking to overturn the decision imposing a fine.
- 6 By judgment of 18 December 2018, the Administrative Court upheld the action and annulled the decision of 6 August 2018 imposing the fine.
- 7 Essentially, the court held the decision requiring the requested information to be invalid on the basis that there was a conflict between the identity of the taxpayer as stated in that document, dated 28 February 2018, and the explanation given by the French authorities as to the purpose for which the information was sought, such that doubts persisted as to the identity of the taxpayer to which the request for information related. More specifically, it pointed out that the explanation in the request for information of 27 April 2017 tended to indicate that the investigation that was under way related not to F, albeit that F was mentioned in the request for exchange of information as the person under investigation in France, or the taxation of F, but to the individual beneficial owners of L, who were said to be under an obligation, under French law, to declare their ownership of a number of properties situated in France.
- 8 By application lodged on 21 December 2018, the State of the Grand Duchy of Luxembourg (‘the State’) appealed against that judgment.

II. Provisions at issue

EU Law

Charter of fundamental rights of the European Union

- 9 Article 47, entitled ‘Right to an effective remedy and to a fair trial’, provides:

‘Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.’

Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC

- 10 Recital 9 reads:

‘... 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.’

- 11 Article 1, entitled ‘Subject matter’, provides:

‘1. 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. ...’

- 12 Article 5, 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.’

- 13 Article 20, entitled ‘Standard forms and computerised formats’, provides:

‘1. ...

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. ...'

III. Appellant's position

- 14 The State denies that the requested information is manifestly devoid of any foreseeable relevance with regard to the taxpayer concerned, the third parties who might be informed, and the tax purpose pursued. More particularly, it disputes the court's finding that doubts persist as to the identity of the taxpayers to which the request related. It maintains that the explanation contained in the French authorities' request makes it possible to identify the persons to which it relates, in that the request concerns the taxation of the individual beneficial owners of L who, under French law, are subject to an obligation to declare immovable property directly or indirectly owned in France.
- 15 While accepting that, in the present case, neither the request for exchange of information from the French authorities nor the order for information stated the names of the individuals to which the request related, but only that of the French company F — it being an examination of F's tax affairs which had led to the investigation into the beneficial owners, individuals directly or indirectly linked to that company — the State submits that the purpose of the request was precisely to establish the names of those individuals, who are said to be required to declare all immovable property directly or indirectly held by them in France. It adds that, in view of the lack of cooperation on the part of the French company, there is good reason to believe that those individuals have not complied with their tax obligations, and that the French authorities are attempting, by their request, to obtain disclosure of information relating to taxpayers who may not have been identified by name, but who have nevertheless been designated precisely. Moreover, in view of the fact that L owns a building in France, and in view of the apparent links between that company and F, the French authorities have, the State submits, clearly established a link with the tax investigation in France.
- 16 The State concludes that the French authorities can legitimately approach the competent Luxembourg authority to obtain information as to the identity of the owners of the Luxembourg company. It submits that that request cannot be described as manifestly devoid of any foreseeable relevance.

- 17 The State stresses that the test is ‘foreseeable relevance’. It points out that F is a fiscally transparent *société civile immobilière* which is wholly owned by N, a public limited company incorporated under Dutch law, which in turn is wholly owned by L. In so far as French legislation specifically requires individuals to declare income from immovable property directly or indirectly owned in France, the State submits that the information required is foreseeably relevant. It adds that it is unthinkable that a *société civile immobilière* could, through the use of a simple structure in which a corporate front is positioned in a second country, and another company formed in a third, escape a tax obligation to declare the ownership of a building situated in the first country.
- 18 In support of its submission that the information requested by the French authorities is foreseeably relevant, the State refers to the commentary on Article 26 of the OECD Model Tax Convention on Income and on Capital, which states, first of all, 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*’, but that in such a case the requesting State must ‘*include other information sufficient to identify the taxpayer*’. In the second place, it submits, the commentary confirms that that an investigation into a particular group of taxpayers complies with the requirements of Article 26(1) of the Model Tax Convention provided that it meets the standard of foreseeable relevance, but that it is necessary that ‘*the requesting State provide a detailed description of the group and the specific facts and circumstances that have led to the request, an explanation of the applicable law and why there is reason to believe that the taxpayers in the group for whom information is requested have been non-compliant with that law*’.
- 19 As regards Article 20(2)(a) of Directive 2011/16, the State submits that the directive does not distinguish between cases of individual identification by name and cases of ascertainable identity. Accordingly, there is nothing in the directive to prevent the second approach, on which it is sufficient for the identity of person concerned to be ascertainable. Furthermore, the State submits, the fact that the individuals have to be traced through three companies, which have been situated in three different countries in order to conceal the true beneficiary of the building owned in France, cannot prevent the requested information from being foreseeably relevant.
- 20 Finally, the State submits that it would be premature to refer the matter to the Court of Justice at this stage, referring to the transposition of Directive 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering ..., which, amongst other things, introduced a national mechanism in each Member State for identifying the beneficial owners, and of Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements, which will come into force on 1 July 2020, supplementing directive 2011/16 by extending it to beneficial owners. Accordingly, disclosure of the beneficial owners, and more broadly of

information connected with the identification of intermediaries and relevant taxpayers, including their name, date and place of birth (in the case of an individual), residence for tax purposes and, where appropriate, the persons that are associated enterprises to the relevant taxpayer, will henceforth be effected through channels of communication between tax administrations, in an automatic and regular fashion where appropriate.

IV. Respondent's position

- 21 The respondent points out that the decision requiring the requested information of 28 February 2018 states that the taxpayer to which the French authorities' request relates is the French company F. It submits that there is a flagrant contradiction between the explanation of the tax purpose given by the French tax authorities and the taxpayer identified in the decision requiring the requested information as the subject of that decision. In reality, it submits, the request for information did not seek to clarify the tax position of F, but rather to identify one or more individuals, as yet unknown, who ought to have declared their ownership, via one or more companies operating primarily in the immovable property sector, of a building situated in France, but who, it was suggested, had failed to comply with that legal obligation. According to the respondent, this '*flagrant contradiction*' indicates that the request is a fishing expedition on the part of the French tax authorities which has been endorsed in this instance by the director.
- 22 In other words the requested information, namely the identities of the shareholders and beneficial owners of the respondent, concerns the very individuals who were supposed to be identified by the French authorities in their request, or at least be identifiable from that request.
- 23 The respondent concludes that the decision requiring the requested information of 28 February 2018 does not meet the test of foreseeable relevance, with the result that the contested decision to impose a fine should be annulled as having been made on an unlawful basis.
- 24 Finally, the respondent describes the information it says was available to it at the time of bringing the action, and is available to it now, for the purposes of assessing whether the French authorities' request meets the test of foreseeable relevance. It stresses that information has been provided to it piecemeal in the course of correspondence and discussions with the State, and that, not having had disclosure of the original request from the French tax authorities, it is not in a position to satisfy itself as to the actual content of that request, and has nothing to rely on but the terse and inconsistent explanation provided by the State.
- 25 It asks for a reference to be made in this regard for a preliminary ruling on Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'). According to the respondent, the right to an effective remedy guaranteed by Article 47 of the Charter requires that the addressee of an administrative act based on EU law must be able to refer that act to an impartial

tribunal, without being at risk, in the event of the exercise of that right leading to an outcome adverse to him, of having an administrative fine imposed or upheld, where such a fine has been decided upon without his having had disclosure of the minimum information necessary to determine whether that which the decision requiring the requested information required him to produce was of foreseeable relevance.

V. The assessment of the Cour administrative (Higher Administrative Court, Luxembourg)

- 26 The Higher Administrative Court does not share the view of the Administrative Court that doubts persist as to the identity of the taxpayer to whom the request for information relates, such as to deprive the requested information of any foreseeable relevance.
- 27 It acknowledges that F is the only taxpayer identified in the decision requiring the requested information of 28 February 2018 as being subject to the French authorities' investigation. Furthermore, both F and L figure in the French authorities' request as legal persons subject to the investigation in France on the basis that they are companies owning immovable property in France, or shareholdings in companies owning such property. It is thus apparent from the overall content of the request of 27 April 2017 that F and L are the legal persons subject to the investigation being conducted by the French authorities. There is a particularity about that investigation arising from the fact that, under French law, the direct ownership of immovable property situated in France, or the holding of shares in a company owning immovable property situated in France, gives rise to an obligation, on the part of the individuals who are the shareholders and beneficial owners of such companies, to declare their indirect ownership of immovable property.
- 28 It follows, contrary to the Administrative Court's finding and to the respondent's submissions, that the request for exchange of information of 27 April 2017 is not defective by reason of a contradiction between the persons actually subject to the investigation being conducted by the French authorities and the tax purpose stated in the request, and accordingly that the requested information is not manifestly devoid of any foreseeable relevance with regard to the taxpayer concerned, the third parties who might be informed, and the tax purpose pursued.
- 29 However, it must be borne in mind that, in the request for information, the French authorities did not provide any information on the individuals to which their investigation related, merely stating that 'the French tax authorities wish to know who are the shareholders and beneficial owners of L'.
- 30 In the judgment of 16 May 2017, *Berlioz Investment Fund* (C-682/15, EU:C:2017:373, paragraphs 63 and 64), the Court of Justice interpreted Article 1(1) and Article 5 of Directive 2011/16 as meaning that 'the words "foreseeably relevant" describe a necessary characteristic of the requested

information. The obligation imposed on the requested authority under Article 5 of Directive 2011/16 to cooperate with the requesting authority does not extend to the communication of information that is considered not to have that characteristic', such that 'characterisation of the requested information as being of "foreseeable relevance" is a condition of the request relating to that information'.

- 31 The Court of Justice held that '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', but that it 'must nevertheless verify whether the information sought is not devoid of any foreseeable relevance to the investigation being carried out by the requesting authority'. It went on to state that it was necessary to refer to Article 20(2) of Directive 2011/16, which mentions matters which are relevant for the purposes of that review and which 'include, on the one hand, information which must be provided by the requesting authority: the identity of the person under examination or investigation and the tax purpose for which the information is sought; and, on the other hand, the contact details of any person believed to be in possession of the requested information and anything that may facilitate the collection of information by the requested authority'. (Judgment of 16 May 2017, *Berlioz Investment Fund*, C-682/15, EU:C:2017:373, paragraphs 77, 78 and 79).
- 32 It should be added that Article 20(2) of Directive 2011/16 defines the minimum information 'to be provided by the requesting authority' as including '(a) the identity of the person under examination or investigation'.
- 33 The Higher Administrative Court accordingly concludes, from the relevant provisions of Directive 2011/16 and the *Berlioz* judgment, that the identity of the taxpayer under investigation in the requesting Member State is information that the competent authority of that State is required to provide to the requested State by way of evidence that the requested information is of foreseeable relevance, having regard to the tax in question and the stated tax purpose. It is only where that condition is met that the requesting Member State's request for exchange of information satisfies the test of 'foreseeable relevance' and Article 20(2) of Directive 2011/16, and gives rise to an obligation to cooperate on the part of the requested Member State.
- 34 In the present case, the request from the French authorities does not identify the shareholders and beneficial owners of L individually by name, but refers to them as a group of people designated collectively by virtue of meeting the same criteria, as set out by the competent authority of the requesting State.
- 35 The Higher Administrative Court reiterates that Article 20(2) of Directive 2011/16 defines the minimum information 'to be provided by the requesting authority' as including '(a) the identity of the person under examination or investigation'. It adds that, although Directive 2011/16 contains no further detail as to the content of the obligation to identify the taxpayer under investigation in the requesting

State, it cannot accept the appellant's submission that it is sufficient for the identity of the taxpayer to be ascertainable.

- 36 Thus, identifying a person necessarily involves providing sufficient information to designate that person individually, without any risk of confusion with another person.
- 37 That ordinary understanding of the concept of identity dictates that Article 20(2)(a) of Directive 2011/16 is to be interpreted as meaning that the request for exchange of information must itself contain sufficient information to enable the taxpayer or taxpayers under investigation in the requesting State to be identified individually, and that it is not sufficient for the application merely to state common features designating a group consisting of an indeterminate number of unidentified persons, the object being precisely for the requesting State to obtain further information enabling it, potentially, to assemble all the details needed to identify the taxpayers in question.
- 38 As presently advised, the Higher Administrative Court might thus conclude, on the basis of the specific requirement arising from Article 20(2)(a) of Directive 2011/16, that it is a condition of the lawfulness of a request for exchange of information that the requesting State identify the taxpayers actually under investigation by its national administration individually, and that a request which merely sets out common features making it possible to define the boundaries of the group of persons sharing those characteristics, but not to identify them individually, does not comply with that provision.
- 39 As regards Article 26 of the OECD Model Tax Convention on Income and on Capital, and the commentary to that article, the Higher Administrative Court points out, first of all, that the Court of Justice held in *Berlioz* that 'this concept of foreseeable relevance reflects that used in Article 26 of the OECD Model Tax Convention, both because of the similarity between the concepts used and given the reference to OECD conventions in the explanatory memorandum to the proposal for a Council Directive COM(2009) 29 final of 2 February 2009 on administrative cooperation in the field of taxation, which led to the adoption of Directive 2011/16' (judgment of 16 May 2017, *Berlioz Investment Fund*, C-682/15, EU:C:2017:373, paragraph 67).
- 40 However, the Higher Administrative Court notes that, in the version which was adopted in 2005 and was current throughout the period between 2009 and 2011, when Directive 2011/16 was in the course of preparation, paragraph 5 of the commentary stated that '*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 Contracting 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*'. That paragraph of the commentary thus refers to a '*given taxpayer*', as does recital 9 of Directive 2011/16. That symmetry justifies the conclusion that, during the period when Directive 2011/16

was in the course of preparation, the Model Tax Convention was also based on the principle that the requesting State was required to identify the taxpayer to which the exchange of information between the two States related.

- 41 It was only through the update to Article 26 of the Model Tax Convention and its commentary, adopted by the OECD Council on 17 July 2012 and integrated into the Model Tax Convention in July 2014, that a paragraph 5.1 was added to the commentary, stating 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. ... However, in cases in which the requesting State does not provide the name or address (or both) of the taxpayer under examination or investigation, the requesting State must include other information sufficient to identify the taxpayer’*. Similarly, that same update inserted a new paragraph 5.2 into the commentary, clarifying that *‘where the request relates to a group of taxpayers not individually identified ... it is therefore necessary that the requesting State provide a detailed description of the group and the specific facts and circumstances that have led to the request, an explanation of the applicable law and why there is reason to believe that the taxpayers in the group for whom information is requested have been non-compliant with that law supported by a clear factual basis’*.
- 42 However, the Higher Administrative Court very much doubts that the 2012/2014 updated commentary to the Model Tax Convention can simply be taken as it stands, so as to apply Directive 2011/16, as regards the identification of the taxpayers under investigation in the requesting State, in the light of the subsequently applicable commentary. This doubt stems, in particular, from the fact that the requirement to state the identity of the taxpayer under examination in the requesting State is a specific requirement of Article 20(2)(a) of Directive 2011/16, which is not reflected in the wording of Article 26 of the Model Tax Convention.
- 43 More fundamentally, to take changes in the Model Tax Convention and its commentary into account would be to extend the obligations of the Member States as laid down by the Council, through the adoption of Directive 2011/16, in that the obligation to comply with a request for exchange of information would arise where the request related to a group of taxpayers not individually identified, rather than only arising where the request stated the identity of the taxpayer concerned. In other words, the same standard of foreseeable relevance appearing in the original text of Directive 2011/16 — which is to be regarded as a condition of the lawfulness of a request for information on which the holder of the requested information is always entitled to rely — would henceforth be considered to be satisfied in situations which could not previously have been regarded as meeting the test, despite the fact that there has been no change in the wording of Article 20(2) of Directive 2011/16.
- 44 The Higher Administrative Court considers that there is doubt as to the interpretation of Article 5(1) and Article 20(2) of Directive 2011/16, in relation to

the requirement to state the identity of the taxpayer under investigation in the requesting State, as laid down in Article 20(2)(a) of Directive 2011/16, in the context of determining whether information which has been requested of one Member State by another meets the test of foreseeable relevance.

- 45 The Higher Administrative Court adds that it cannot accept the State's submission that a reference for a preliminary ruling is premature. Its task is to examine the lawfulness of the decision requiring the requested information by reference to the legal position as it stood on 28 February 2018, and the State itself acknowledges that Directive 2015/849 was transposed by the Law of 13 January 2019 establishing a register of actual beneficiaries, and that Directive 2018/822 is to come into force on 1 July 2020. Accordingly, it does not assist the State to rely on the provisions of those two directives, which had no effect on the respondent on the respective dates of the two decisions at issue in the present action.
- 46 It is therefore appropriate to refer to the Court of Justice a first question, as to the content of the requirement to identify the taxpayer under investigation in the requesting State, under Directive 2011/16.
- 47 In the event that the Court of Justice upheld the validity of a request for exchange of information relating to a group of taxpayers not individually identified, the question would then arise, having regard to paragraph 5.2 of the commentary to Article 26 of the OECD Model Tax Convention, of whether the need to meet the standard of foreseeable relevance means that 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, must demonstrate that it is conducting a targeted investigation into a restricted group of persons, not simply an investigation by way of general fiscal surveillance, and that its investigation is seeking to establish whether or not a specific legal obligation has been complied with. In other words, to adopt the wording of paragraph 5.2 of the commentary to Article 26 of the OECD Model Tax Convention, the second question is whether, as regards a request relating to a group of persons, the test of foreseeable relevance requires *'that the requesting State provide a detailed description of the group and the specific facts and circumstances that have led to the request, an explanation of the applicable law and why there is reason to believe that the taxpayers in the group for whom information is requested have been non-compliant with that law supported by a clear factual basis'*.
- 48 Finally, the respondent suggests a third question relating to compliance with Article 47 of the Charter. The present action is essentially the same as that which gave rise to the judgment in *Berlioz*, in which it was held that where a decision to impose a fine has been taken following an decision requiring the requested information, and where national law makes no provision for an action to be brought directly against an decision requiring the requested information, the administrative court hearing an action against the decision to impose the fine must examine the validity of the decision requiring the requested information as an incidental matter. The respondent brought the present action against the decision

of 6 August 2018 imposing a fine, and challenges, as an incidental matter within the action, the validity of the decision requiring the requested information of 28 February 2018.

- 49 The respondent only received the minimum information regarding the French authorities' request for exchange of information in the course of the proceedings, and thus it was only at that late stage that it was able to give informed consideration to the validity of the decision requiring the requested information. However, on the basis that the judicial decision rejecting its action had become final, the respondent would be obliged to pay the fine imposed by the decision of 6 August 2018. It can thus legitimately complain that it was never given a reasonable opportunity to decide, in full knowledge of the minimum information, whether to comply with the decision requiring the requested information of 28 February 2018 by providing the director with the information requested. The respondent raises the pertinent question of whether the right to an effective remedy enshrined in Article 47 of the Charter requires that, in circumstances such as those of the present case and in the event of the validity of the decision requiring the requested information and the decision imposing a fine being definitively upheld, the holder of the information must be given a certain period to comply with the decision requiring the requested information, with the fine not to become payable unless the holder does not comply within that period.

VI. Questions referred for a preliminary ruling

- 50 The Higher Administrative Court refers 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 by the competent authority of a Member State an administrative financial penalty for non-compliance with an administrative decision, requiring him 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, to a period of grace for the payment of that fine, so that he 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?

WORKING DOCUMENT