

Case C-175/20**Summary of the request for a preliminary ruling under Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

14 April 2020

Referring court:

Administratīvā apgabaltiesa (Regional Administrative Court, Latvia)

Date of the decision to refer:

11 March 2020

Applicant and appellant:

SIA SS

Defendant and other party to the appeal proceedings:

Valsts ieņēmumu dienests (State Tax Administration, Latvia)

Subject matter of the main proceedings

Action for the annulment of a decision adopted by the defendant (the Tax Administration) — dismissing the complaint lodged by the applicant and confirming the request for information sent to the applicant — on the ground that that decision is contrary to the provisions of Regulation (EU) 2016/679 (General Data Protection Regulation; ‘GDPR’ or ‘the Regulation’).

Subject matter and legal basis of the request for a preliminary ruling

On the basis of Article 267 TFEU, the referring court seeks an interpretation of several provisions of the GDPR and asks, first, whether the requirements laid down in that regulation, in particular in Article 5(1) thereof, can be applied to a request for information issued by a tax authority; secondly, whether there is a legitimate objective capable of justifying a request for data in an undefined amount and for an undefined period of time, in the case where that request does not indicate the purpose of the processing of the data and relates to an unspecified

group of data subjects; and, thirdly, what the criteria are for determining whether the tax authority, acting as controller, ensures that the processing of those data complies with the requirements laid down in that regulation, in particular as regards the legitimacy of the data processing, its occasional nature, its objectives, its scope and its form.

Questions referred for a preliminary ruling

1. Must the requirements laid down in the General Data Protection Regulation be interpreted as meaning that a request for information issued by a tax authority, such as the request at issue in this case, which seeks the disclosure of information containing a considerable amount of personal data, must comply with the requirements laid down in the General Data Protection Regulation (in particular Article 5(1) thereof)?
2. Must the requirements laid down in the General Data Protection Regulation be interpreted as meaning that the [Latvian] Tax Administration may depart from the provisions of Article 5(1) of that regulation even though the legislation in force in the Republic of Latvia does not empower it to do so?
3. For the purposes of interpreting the requirements laid down in the General Data Protection Regulation, can there be considered to be a legitimate objective justifying the obligation, imposed by a request for information such as that at issue in this case, to provide all of the data requested in an undefined amount and for an undefined period of time, in the case where there is no prescribed expiry date for the fulfilment of that request for information?
4. For the purposes of interpreting the requirements laid down in the General Data Protection Regulation, can there be considered to be a legitimate objective justifying the obligation, imposed by a request for information such as that at issue in this case, to provide all of the data requested even if the request for information does not (or does not fully) specify the purpose of disclosing that information?
5. For the purposes of interpreting the requirements laid down in the General Data Protection Regulation, can there be considered to be a legitimate objective justifying the obligation, imposed by a request for information such as that at issue in this case, to provide all of the data requested even if that request relates in practice to absolutely all data subjects who have published advertisements in the ‘Motor Vehicles’ section of a portal?
6. What criteria must be used to verify that a tax authority, acting as controller, is duly ensuring that the processing of data (including the collection of information) is compliant with the requirements laid down in the General Data Protection Regulation?

7. What criteria must be used to verify that a request for information such as that at issue in this case is duly reasoned and occasional?
8. What criteria must be used to verify that personal data are being processed to the extent necessary and in a manner compatible with the requirements laid down in the General Data Protection Regulation?
9. What criteria must be used to verify that a tax authority, acting as controller, ensures that data are processed in accordance with the requirements laid down in Article 5(1) of the General Data Protection Regulation (accountability)?

Provisions of EU law relied on

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC: recitals 1 and 31, Article 5 (principles relating to processing of personal data), Article 6 (lawfulness of processing) and paragraph 1(e) of Article 23 (restrictions).

Provisions of national law relied on

Likums ‘Par nodokļiem un nodevām’ (Law on taxes and duties): Article 15(6) (in the version in force at the time when the request for information was issued).

Fizisko personu datu apstrādes likums (Law on the processing of personal data): Article 25(1).

Case-law of the Court of Justice

Judgment of the Court of Justice of the European Union of 16 January 2019, *Deutsche Post* (C-496/17, EU:C:2019:26, paragraph 53).

Brief presentation of the facts and the main proceedings

- 1 On 28 August 2018, the director of the Nodokļu kontroles pārvalde (Tax Inspection Office) of the Valsts ieņēmumu dienests (State Tax Administration; ‘the VID’) sent the applicant a request for information in which, acting on the basis of Article 15(6) of the Law on taxes and duties, it urged the applicant to renew the VID’s access to information on advertisers’ telephone numbers and the chassis numbers of vehicles featured in advertisements published on the www.ss.com portal maintained by the applicant, and, by 3 September 2018 at the latest, to provide information on advertisements published in the ‘Motor Vehicles’ section of the aforementioned portal during the period from 14 July to 31 August

2018. The applicant was asked to send the information electronically, in a format allowing the data to be filtered and selected. It was also asked to include the following information in the data file: link to the advertisement, advertisement text, make of vehicle, model, chassis number, price, vendor's telephone numbers. Should it not be possible to renew access, the applicant was asked to give the reason for this and to provide the aforementioned information on advertisements published in the preceding month no later than on the third of each month.

- 2 The applicant lodged a complaint challenging the aforementioned request for information with the acting director-general of the VID. According to the applicant, the scope of the request for information is not justified by the law (which does not specify the amount of information that must be provided) and is not in accordance with the principle of proportionality or the principle of minimising the processing of personal data as laid down in the GDPR, which the VID, in its capacity as controller, must observe, since the information requested is personal data. The request for information does not specify a particular group of data subjects and does not indicate the purpose or scope of the scheduled processing or for how long the obligation [to provide the information] will last.
- 3 By decision of 30 October 2018 ('the decision'), the VID dismissed the aforementioned complaint and confirmed the request for information.
- 4 In the grounds of that decision, the VID states, in essence, that, in processing the abovementioned data, the Tax Administration performs the functions and exercises the powers conferred on it by law. In particular, the Tax Administration is responsible for collecting and auditing taxes, duties and other levies, and has a statutory duty, in the context of those functions, to monitor the economic and financial activities of natural and legal persons in order to ensure that such dues are paid to the State coffers and to the EU budget. The timely collection of taxes is a matter of public interest. In order to enable them to discharge those functions, the law confers on VID officials the power to gather the documents and information necessary to account for and record taxable events and to audit taxes and duties. In particular, providers of internet advertising services have an obligation under Article 15(6) of the Law on taxes and duties (in the version in force at the time when the request for information was issued) to provide, when requested to do so by the State Tax Administration, any information they may have on taxable persons who have used those services to publish advertisements and on the advertisements published by them. Article 25(1) of the Law on the processing of personal data provides that the processing of such data is to be permitted where at least one of the grounds specified in Article 6(1) of the GDPR is present. The provisions of Article 6(2) and (3) of the Regulation, concerning the processing of data for the purposes of compliance with a legal obligation to which the controller is subject, to perform a task carried out by the controller in the public interest and to enable the controller to exercise the official authority vested in it by law, are set out in the legislative measures relating to the field in question. In addition, confidential information held by the defendant is protected by law, in

particular by the prohibition on disclosure which is imposed on the Tax Administration's employees.

- 5 The applicant brought an action for the annulment of that decision before the Administratīvā rajona tiesa (District Administrative Court), claiming that the statement of grounds in that decision did not indicate either the specific purpose of the data processing or the amount of data necessary for that purpose. The applicant therefore takes the view that that decision infringes the principles of personal data processing that are laid down in Article 5 of the GDPR, which the defendant, in its capacity as controller, had a duty to observe, namely by setting out clearly defined criteria for selecting the information requested in connection with a particular group of identifiable persons.
- 6 By judgment of 21 May 2019, the Administratīvā rajona tiesa dismissed that action on the ground that it considered to be essentially well founded the argument put forward by the defendant to the effect that no restriction can be placed on the amount of information to which the Tax Administration may have access in connection with any person, unless the information in question is considered to be inconsistent with the objectives of the administration of tax matters. That court held that this is not in any doubt, since the information requested is necessary in order to identify undeclared economic activities, and the provisions of the GDPR apply only to the applicant in its capacity as a service provider, but not to the VID.
- 7 The applicant appealed that judgment to the referring court. In its appeal, it reiterated the arguments it had set out both in its original complaint and in the action it had brought at first instance with respect to the defendant's obligation to make known its views on the usefulness of the amount of information requested and to observe the principle of proportionality, since, in its opinion, in the context of that request for information, the defendant must also be regarded as the controller of the data and must therefore comply with the requirements laid down in the Regulation. According to the applicant, the GDPR does not provide for any exceptions whereby a national authority is exempt from the obligation to comply with the requirements it lays down and may process personal data at its own discretion.
- 8 The applicant asked the referring court to make a reference to the Court of Justice of the European Union for a preliminary ruling on the interpretation of the provisions of the GDPR.

Essential arguments of the parties to the main proceedings

- 9 The applicant submits that the GDPR is applicable to the case at issue, given that, for the purposes of the personal data collected by means of the request for information, the defendant must be regarded as the controller within the meaning of that regulation, and must therefore comply with the requirements laid down there. By issuing the request for information, however, the applicant argues, the defendant infringed the principle of proportionality by requiring that it be

provided every month with a considerable amount of data relating to an undefined number of advertisements without indicating the specific taxable persons against whom tax inspections have been initiated. The applicant states that the request for information does not indicate for how long the applicant will be subject to the obligation to provide the defendant with the information identified in that request. It therefore takes the view that the defendant infringed the principles governing the processing of personal data which are laid down in Article 5 of the GDPR (lawfulness, fairness and transparency). It contends that neither the request for information nor the statement of grounds for the contested decision specifies the particular framework (purpose) within which the processing of the information prescribed by the defendant takes place, or the volume of information necessary (data minimisation). It submits that, in the request for information, the administrative authority must include clearly defined criteria for selecting the information required by that authority in connection with a particular group of identifiable persons.

- 10 The defendant states, on the basis of the reasoning set out in paragraph 4 of this summary, that the requirements laid down in the EU legislation can have no bearing on the content of the contested decision.

Brief presentation of the grounds for the request for a preliminary ruling

- 11 The dispute is concerned with the provisions applicable and the interpretation thereof, as well as with whether the legal reasoning set out in the request for information from the VID and in the statement of grounds for the contested decision justify the obligation imposed on the applicant by the administrative measure at issue.
- 12 On 23 November 2016, amendments were made to Article 15 of the Law on taxes and duties which entered into force on 1 January 2017 and added a paragraph 6 to that article.
- 13 The administrative measure at issue is based on Article 15(6) of the Law on taxes and duties (in the version in force at the time when the request for information was issued), which provided that providers of internet advertising services had an obligation to provide, when requested to do so by the State Tax Administration, any information they might have on taxable persons who had used those services to publish advertisements and on the advertisements published by them.
- 14 The explanatory memorandum to the legislative amendment supports the inference that considerations of proportionality were taken into account in the context of, inter alia, the rules on data protection. The explanatory memorandum states that, in order for the VID to be able to identify undeclared economic activities on the internet, it is necessary to require providers of advertising services, among others, to provide the Tax Administration with any data they may have or keep on the economic activities of other taxable persons. The legislation which empowers the VID to request such information is also proportionate from

the point of view of the legislative provisions on data protection. The fundamental rights and freedoms of natural persons, in particular the right to respect for privacy, are protected, in the context of the processing of personal data, by the Fizisko personu datu aizsardzības likums (Law on the protection of personal data of natural persons). That right derives from Article 96 of the Latvijas Republikas Satversme (Constitution of the Republic of Latvia), which provides that every person is to have the right to respect for his or her private life, home and correspondence. Article 116 of the Constitution provides for its part that that right may be limited in all cases provided for by law in order to protect the rights of third parties, the democratic structure of the State and public safety, and public welfare and morality. The legislation contained in the draft law pursues a legitimate objective, which is to promote social welfare. The fight against tax evasion increases revenue to the public exchequer and improves the business environment. Moreover, in requesting information from the entities specified in the draft law, the VID may obtain information which, in general, account being taken of the principles of the digital economy (for example, some entities store information in digital form on the internet trading activities of other taxable persons and on the amounts received from the sale of goods or provision of services in the digital environment), cannot be obtained via other less restrictive means. Furthermore, the amount of information collected by the VID must not be greater than that necessary in order to attain a legitimate objective. The information collected from ... providers of internet advertising services must be confined to that which is necessary to identify the economic operator and ... must contain data relating to the economic activities of taxable persons, but not to their private lives. In the light of the foregoing, the benefit to society will outweigh any restriction of the rights of individuals, and the rules contained in the draft law are therefore proportionate.

- 15 [In its current version, applicable] at the time when the order for reference was made, Article 15(6) of the aforementioned Law provides that providers of internet advertising services have an obligation to provide, when requested to do so by the State Tax Administration, any information they may have on the advertisements published and on the persons who have published them (advertisers). Any challenge to, or action brought against, the request for information from the State Tax Administration is not to have suspensive effect.
- 16 At present, therefore, that provision no longer identifies a particular group of persons, which is to say that it does not provide that providers of internet advertising services must provide information on *taxable persons* who have used those services to publish advertisements and on the advertisements published by them.
- 17 In this case, it is common ground that implementation of the request for information from the VID is inextricably linked to the processing of personal data.
- 18 It is also common ground that the VID has the power to collect data in the possession of internet advertising services which are necessary in order to carry

out certain tax administration measures. The applicant agrees to provide the information needed by the Tax Administration provided that the request is made in accordance with the requirements laid down by the GDPR.

- 19 The issue, therefore, is to what extent the VID can request information and whether the amount of information requested can be unlimited. Moreover, the request for information at issue in this case makes it clear that all information must be provided no later than on the third of every month, but does not specify an end date for that obligation.
- 20 The dispute is also concerned with the type of information that must be included in the request for information, given that any practice by the authorities that involves the processing of personal data within the meaning of Article 4(2) of the GDPR must respect the EU legislation on the protection of such data (see the judgment of the Court of Justice of 16 January 2019 *Deutsche Post*, C-496/17, EU:C:2019:26, paragraph 53).
- 21 Article 15(6) of the Law on taxes and duties does not prescribe the content of a request for information. The VID argues that it needs all information relating to data subjects. In essence, the Tax Administration wishes to carry out ongoing and exhaustive checks in order to determine whether any covert transactions have been performed, whether any undeclared business activity has taken place and whether any specific tax administration measures need to be adopted.
- 22 It may be concluded from the explanatory memorandum to the aforementioned legislative amendment that proportionality has already been taken into account in the context of the rules relating to data protection; there are, however, contradictions in evidence as regards the requirements imposed by the GDPR.
- 23 The questions on how the provisions of the GDPR are to be interpreted in the context of this dispute have not been extensively analysed. There is no doubt that the processing of the information to which the request for information refers may affect the fundamental rights of a large group of persons (given that the request for information does not identify the persons in question), and the data in question cannot therefore be processed without complying with the requirements laid down in the GDPR. So far as concerns the request for information at issue in this case, it should be noted that the reasons given for it are inadequate, although this is to some extent offset by the statement of grounds in the contested decision. It cannot be unequivocally concluded that such a request for information is capable of being regarded as duly reasoned and occasional and that it does not relate to all of the information included under the ‘Motor Vehicle’ heading, given that the Tax Administration wishes in essence to carry out ongoing and exhaustive checks.
- 24 The referring court has doubts about whether the processing of personal data prescribed by the VID can be regarded as compliant with the data-protection rules applicable depending on the purpose of the processing within the meaning of recital 31 of the GDPR.

- 25 In the context of the examination of this administrative-law case, it is necessary to determine whether the personal data in question are processed in a manner that is transparent to the data subjects, whether the information contained in the request for information was requested for particular, explicit and legitimate purposes, and whether the personal data are processed only to the extent strictly necessary to enable the VID to perform its functions (data minimisation) within the meaning of Article 5(1) of the GDPR.
- 26 In order to clarify the issues raised, it is necessary to adopt a correct interpretation of the requirements laid down in the GDPR in the light of the circumstances at issue. The legislative measures do not contain specific criteria for assessing whether the controller duly ensures compliance with the provisions of Article 5(1) of the GDPR (accountability). The Latvian legislation does not contain any more specific rules on the issue of the application of the provisions of the GDPR to a processing of personal data such as that at issue in this case. It is therefore necessary to determine the criteria for assessing whether the request for information made by the VID respects the essence of the fundamental rights and freedoms and whether the request for information in question may be considered necessary and proportionate in a democratic society in order to safeguard important objectives of public interest of the Union and of Latvia in the taxation and budgetary fields.
- 27 It must be borne in mind that the request for information at issue does not make reference to any ‘particular inquiry’ carried out by the VID within the meaning of the provisions of the Regulation.
- 28 The aforementioned request for information does not ask for information on specific persons, but on all data subjects who have published advertisements in the ‘Motor Vehicles’ section of the portal; it also asks that that information be provided no later than on the third of each month (meaning that the applicant must provide the VID with all information on advertisements published in the previous month).
- 29 In the light of the foregoing, the referring court is uncertain whether such a practice on the part of a national authority may be regarded as being consistent with the requirements laid down in the GDPR.
- 30 In deciding whether to make a reference for a preliminary ruling to the Court of Justice of the European Union, the referring court took into account the following factors:
1. the uncertainty as to the correct interpretation of the GDPR;
 2. the importance of a correct interpretation of European Union legislation to the uniform application of the rules in place in the Member States;

3. the lack of any specifically defined criteria for assessing whether the controller duly ensured that the processing of data (including the acquisition of information) complied with the requirements laid down in the Regulation;
4. the decisive importance of the interpretation given by the Court of Justice of the European Union to the correct and fair resolution of the administrative-law dispute pending before it.

WORKING DOCUMENT