



Press and Information

Court of Justice of the European Union

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Judgment in Joined Cases C-245/19 Luxembourg State v B  
and C-246/19 Luxembourg State v B and Others

**The right to an effective remedy guaranteed by the Charter of Fundamental Rights of the European Union requires that persons who hold information that is requested by the national administration, in the context of a cooperation procedure between Member States, must be able to bring a direct action against such a request. Nevertheless, Member States may deny the taxpayer subject to the tax investigation and the third parties concerned by the information in question the right to bring such a direct action, provided that there are other remedies enabling them to obtain an incidental review of that request**

*Furthermore, a request for information may relate to categories of information rather than specific information where such categories are defined by criteria establishing their ‘foreseeable relevance’*

In response to two requests for exchange of information made by the Spanish tax administration in the context of an investigation concerning F.C., a natural person resident in Spain, the director of Luxembourg’s direct taxation administration issued to the company B and the bank A decisions ordering them to provide information regarding bank accounts and financial assets held or beneficially owned by F.C. and regarding various legal, banking, financial and economic transactions that may have been carried out by F.C. or by third parties acting on her behalf or in her interest.

Under Luxembourg legislation on the procedure applicable to the exchange of information on request in tax matters, an action could not, at the time of the material facts, be brought against such information orders. Nevertheless, F.C. and the companies B, C and D brought actions before the tribunal administratif du Luxembourg (Administrative Court, Luxembourg) seeking, primarily, variation or, in the alternative, annulment of those orders. The tribunal administratif (Administrative Court) declared that it had jurisdiction to hear those actions on the basis that the Luxembourg legislation was not consistent with Article 47 of the Charter of Fundamental Rights of the European Union (‘the Charter’), which enshrines the right to an effective remedy for everyone whose rights and freedoms guaranteed by EU law have been infringed, and that that legislation should therefore not be applied. As to the substance, that court annulled the information orders in part, on the ground that some of the information requested was not foreseeably relevant.

The Luxembourg State brought appeals against those judgments before the Cour administrative (Higher Administrative Court, Luxembourg), which decided to make references for a preliminary ruling to the Court of Justice concerning, in particular, the interpretation of Article 47 of the Charter. The referring court thus asks whether that article precludes national legislation that excludes a person holding information (such as the company B), a taxpayer subject to a tax investigation (such as F.C.) and third parties concerned by such information (such as the companies C and D) from bringing a direct action against an information order. In addition, the referring court is uncertain as to the scope of the possibility, under Directive 2011/16,<sup>1</sup> for Member States to exchange information provided that it is ‘foreseeably relevant’ to the administration and enforcement of national tax law.

<sup>1</sup> Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ 2011 L 64, p. 1), as amended by Council Directive 2014/107/EU of 9 December 2014 (OJ 2014 L 359, p. 1).

In its judgment of 6 October 2020 in Cases C-245/19 and C-246/19, the Court (Grand Chamber) held, in the first place, that Article 47 of the Charter, read together with Articles 7 and 8 thereof (which enshrine the right to privacy and the right to the protection of personal data, respectively), and Article 52(1) thereof (which allows the exercise of certain fundamental rights to be restricted in certain circumstances):

- precludes legislation of a Member State implementing the procedure for the exchange of information on request established by Directive 2011/16 from preventing a person who holds information from bringing an action against a decision by which the competent authority of that Member State orders that person to provide it with that information, with a view to following up on a request for exchange of information made by the competent authority of another Member State, but

- does not preclude such legislation from preventing the taxpayer subject to the investigation giving rise to that request for information and the third parties concerned by the information in question from bringing an action against that decision.

Having ruled that the Charter was applicable in so far as the national legislation at issue in the main proceedings implemented EU law, the Court noted, first, as regards the right to an effective remedy, that the protection of natural and legal persons against arbitrary or disproportionate intervention by public authorities in their private sphere is a general principle of EU law and may be relied on by a legal person who is the addressee of a decision ordering that information be provided to the tax administration, in order to challenge that decision in court.

Nevertheless, the Court recalled that the exercise of the right to an effective remedy may be restricted, in the absence of relevant EU rules, by national legislation, where the conditions laid down in Article 52(1) of the Charter are satisfied. That provision requires, in particular, that the essence of the rights and freedoms guaranteed by the Charter be respected.

In that regard, the Court clarified that the essence of the right to an effective remedy enshrined in Article 47 of the Charter includes, among other things, the possibility for the holder of that right to have access to a court or tribunal with the jurisdiction to ensure respect of the rights and freedoms guaranteed by EU law and, to that end, to consider any question of law or fact relevant to the outcome of the dispute before it. Furthermore, in order to have access to such a court or tribunal, that person must not be obliged to infringe a legal rule or obligation or be liable to the relevant penalty for such an infringement. The Court found that, **under the national law applicable in the present instance, it is only where the addressee of the information order does not comply with that order and subsequently receives a financial penalty on that ground that that person has the possibility of challenging that order incidentally, in the context of the action brought against such a penalty.** Consequently, **such national legislation does not comply with Article 47 and Article 52(1) of the Charter, read together.**

As regards, secondly, the right to an effective remedy of the taxpayer subject to the investigation giving rise to the information order, the Court held that such a taxpayer is, as a natural person, entitled to the right to privacy guaranteed by Article 7 of the Charter and the right to the protection of personal data guaranteed by Article 8 thereof, and that the communication of information concerning him or her to a public authority is liable to infringe those rights, in which situation it is justified for the person concerned to be granted the benefit of the right to an effective remedy.

The Court added, however, that the requirement that the essence of that right be respected does not mean that the taxpayer must have access to a direct remedy aimed primarily at challenging a particular measure, provided that there are one or more remedies available before the various competent national courts or tribunals enabling him or her to obtain, in an incidental manner, an effective judicial review of that measure without running the risk of being penalised for doing so. Accordingly, where there is no possibility of bringing a direct action against an information order, the taxpayer must have a right of appeal against the correction decision or adjustment decision adopted at the end of the investigation and, in that context, the possibility of challenging, on an incidental basis, the first of those decisions and the conditions in which the evidence gathered on

the basis of that decision was obtained and used. Thus, the Court held that **legislation preventing such a taxpayer from bringing a direct action against an information order does not damage the essence of the right to an effective remedy.**

Furthermore, the Court noted that such legislation meets an objective of general interest that is recognised by the European Union, namely the objective of combating international tax evasion and avoidance by strengthening cooperation between the competent national authorities in that area, and that it complies with the principle of proportionality.

As regards, thirdly, the situation of the third parties concerned by the information in question, the Court held, similarly, that **the exercise of the right to an effective remedy which must be available to such third parties**, where there is an information order that could infringe their right to protection against arbitrary or disproportionate intervention by public authorities in their private sphere, **may be limited by national legislation** excluding the bringing of a direct action against such an order, provided that such third parties have, in addition, a remedy that enables them to obtain effective respect of their fundamental rights, such as an action to establish liability.

In the second place, the Court ruled that **a decision by which the competent authority of a Member State orders a person holding information to provide it with that information, with a view to following up on a request for exchange of information, is to be regarded as relating to information that is 'foreseeably relevant'**, within the meaning of Directive 2011/16, where it states **the identity of the person holding the information in question, that of the taxpayer subject to the investigation giving rise to the request for exchange of information and the period covered by that investigation, and where it relates to contracts, invoices and payments which, although not expressly identified, are defined by personal, temporal and material criteria establishing their links with the investigation and the taxpayer subject to that investigation.** That combination of criteria is sufficient to consider that the information requested is not manifestly devoid of any foreseeable relevance, so that a more precise definition of that information is not necessary.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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