

JUDGMENT OF THE COURT (Second Chamber)

September 26, 2024 ([*](#))

“Reference for a preliminary ruling – Administrative cooperation in the field of taxation – Directive 2011/16/EU – Exchange of information on request – Instruction to a lawyer to provide information – Lawyers’ professional secrecy – Article 7 and Article 52(1) of the Charter of Fundamental Rights of the European Union”

In Case C-432/23,

REFERENCE for a preliminary ruling under Article 267 TFEU, lodged by the Administrative Court (Luxembourg), made by decision of 11 July 2023, received at the Court on 12 July 2023, in the proceedings

F SCS,

Luxembourg Bar Association

against

Direct Contributions Administration,

THE COURT (Second Chamber),

composed of Ms ^{A.} Prechal, President of the Chamber, Mr F. Biltgen, Mr N. Wahl, Mr J. Passer (Rapporteur) and Ms ^{M.} L. Arastey Sahún, judges,

^{J.} Attorney General: Ms Kokott,

clerk: Mr. A. Calot Escobar,

having regard to the written procedure,

considering the observations submitted:

- ^{P.}
- for the Luxembourg Bar Association, by ^{P.} Mellina and A. Steichen, lawyers,
 - for the Luxembourg Government, by Mr A. Germeaux and Mr T. Schell, acting as Agents,
 - for the German Government, by Mr J. Möller, Mr J. Heitz and Mr M. Hellmann, acting as Agents,
 - for the Spanish Government, by M. L. Aguilera Ruiz, acting as Agent,

^{J.}

- for the Austrian Government, by Mr A. Posch and Mrs ^{J.} Schmoll, acting as Agents,

^{K.}

- for the Council of the European Union, by ^{K.} Pavlaki, S. Santoro and A. Sikora-Kalèda, acting as Agents,

– for the European Commission, by A. Ferrand and W. Roels, acting as Agents,
having heard the submissions of the Advocate General at the hearing of 30 May 2024,
makes the present

Stop

1 This request for a preliminary ruling concerns the interpretation of Article 17(1) and (4) and Article 18(1) 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), and of Article 7 of the Charter of Fundamental Rights of the European Union ('the Charter'), and the validity of Directive 2011/16 in the light of Article 7 and Article 52(1) of the Charter.

2 This application was made in the context of a dispute between F SCS, a law firm incorporated as a limited partnership in Luxembourg, and the Luxembourg Bar Association (hereinafter the 'OABL') and the Luxembourg Tax Administration (Luxembourg) concerning an injunction decision addressed by the latter to F so that it provides information and documents, as well as a fine imposed on F for not having complied with this injunction decision.

The legal framework

Union law

Directive 2011/16

3 Directive 2011/16 establishes a system of cooperation between the tax authorities of the Member States and lays down the rules and procedures to be applied when exchanging information between Member States for tax purposes.

4 Article 1 (1) of that directive provides:

"This Directive establishes the rules and procedures by which Member States shall cooperate with each other for the purpose of exchanging information which is foreseeably relevant for the administration and enforcement of the domestic laws of the Member States concerning the taxes referred to in Article 2."

5 Article 3 of the said directive, entitled 'Definitions', provides:

"For the purposes of this Directive, the following definitions shall apply:

[...]

8) "exchange of information on request" means any exchange of information carried out on the basis of a request made by the requesting Member State to the requested Member State in a particular case;

[...] »

6 Article 5 of Directive 2011/16, which is the first provision of Section I, entitled 'Exchange of information on request', of Chapter II of that directive, is worded as follows:

"At the request of the requesting authority, the requested authority shall communicate to the requesting authority the information referred to in Article 1^o paragraph 1, which it has or which it obtains following

administrative inquiries."

7 Under Article 6 of that directive, entitled 'Administrative inquiries':

"1. The requested authority shall carry out any administrative investigation necessary to obtain the information referred to in Article 5.

[...]

3. In order to obtain the requested information or to carry out the requested administrative inquiry, the requested authority shall follow the same procedures as if it were acting on its own initiative or at the request of another authority in its own Member State.

[...] »

8 Article 17, entitled 'Limits', in Chapter IV, entitled 'Conditions governing administrative cooperation', of the same directive, provides:

"1. The requested authority of a Member State shall provide the requesting authority of another Member State with the information referred to in Article 5, provided that the requesting authority has already exploited the usual sources of information which it can use to obtain the information requested without jeopardising the achievement of its objectives.

2. This Directive does not impose on a requested Member State an obligation to carry out investigations or to transmit information where carrying out such investigations or collecting the information in question for the Member State's own purposes would be contrary to its law.

[...]

4. The transmission of information may be refused in cases where it would lead to the disclosure of a commercial, industrial or professional secret or a commercial process, or information the disclosure of which would be contrary to public policy.

[...] »

9 Article 18, entitled 'Obligations', contained in the same Chapter IV of Directive 2011/16, provides:

"1. If information is requested by a Member State in accordance with this Directive, the requested Member State shall use its information-gathering mechanisms to obtain the requested information, even if it does not need the information for its own tax purposes. This obligation is without prejudice to Article 17(2) [...] and (4), the provisions of which shall in no case be construed as authorising a requested Member State to refuse to supply information solely on the ground that it has no interest in the information.

2. Article 17(2) and (4) shall in no case be construed as authorising a requested authority of a Member State to refuse to provide information solely on the ground that the information is held by a bank, other financial institution, nominee or person acting in an agent or fiduciary capacity, or that it relates to a holding in the capital of a person.

[...] »

Directive 2018/822

10 Directive 2011/16 has been amended on several occasions, including by Council 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 (OJ 2018 L 139, p.

1), which introduced a reporting obligation concerning potentially aggressive cross-border tax planning arrangements to the competent authorities.

11 Article 8a ter, entitled ‘Scope and conditions for mandatory automatic exchange of information on reportable cross-border arrangements’, of Directive 2011/16, as amended by Directive 2018/822, states in paragraphs 1 and 5:

"1. Each Member State shall take the necessary measures to ensure that intermediaries are required to transmit to the competent authorities the information within their knowledge, possession or control concerning reportable cross-border arrangements within 30 days [...]

[...]

5. Each Member State may take the necessary measures to grant intermediaries the right to be exempted from the obligation to provide information in respect of a reportable cross-border arrangement where the reporting obligation would be contrary to the professional secrecy applicable under the national law of that Member State. In such cases, each Member State shall take the necessary measures to ensure that intermediaries are required to notify without delay any other intermediary, or, in the absence of such an intermediary, the taxpayer concerned, of their reporting obligations under paragraph 6.

Intermediaries may only be entitled to an exemption under the first paragraph to the extent that they act within the limits of the relevant national legislation defining their professions.

Luxembourg law

The law of March 29, 2013

12 Article 6 of the Law of 29 March 2013 transposing Directive 2011/16 and 1) amending the General Tax Law, 2) repealing the amended Law of 15 March 1979 on international administrative assistance in matters of direct taxes (*Mémorial* A 2013, p. 756, hereinafter the ‘Law of 29 March 2013’), provides:

"At the request of the requesting authority, the Luxembourg requested authority shall provide it with information which is likely to be relevant for the administration and application of the domestic legislation of the requesting Member State relating to the taxes and duties referred to in Article 1 which it has at its disposal or which it obtains following administrative enquiries."

13 Article 7, paragraphs 1 and 3, of the law of 29 March 2013 is worded as follows:

“(1) The requested Luxembourg authority shall carry out any administrative investigation necessary to obtain the information referred to in Article 6.

[...]

(3) To obtain the requested information or to carry out the requested administrative investigation, the requested Luxembourg authority shall follow the same procedures as if it were acting on its own initiative or at the request of another Luxembourg authority.

14 Article 18, paragraphs 2 and 4, of this law provides:

"(2) The Luxembourg requested authority is not obliged to carry out investigations or to transmit information where the carrying out of such investigations or the collection of the information in question for its own purposes is contrary to its legislation.

[...]

(4) The transmission of information may be refused in cases where it would lead to the disclosure of a commercial, industrial or professional secret or a commercial process, or information the disclosure of which would be contrary to public policy.

The law of November 25, 2014

15 The Law of 25 November 2014 providing for the procedure applicable to the exchange of information on request in tax matters and amending the Law of 31 March 2010 approving tax conventions and providing for the procedure applicable thereto in matters of exchange of information on request (*Mémorial* A 2014, p. 4170), as amended by the Law of 1 March 2019 (*Mémorial* A 2019, no 112) (hereinafter ‘the Law of 25 November 2014’), transposed Directive 2011/16 into Luxembourg law as regards the procedural aspects thereof.

16 Article 1 paragraph 1, of this law provides:

"This law shall apply from the date of its entry into force to requests for exchange of information made in tax matters and originating from the competent authority of a requesting Member State pursuant to:

[...]

4. of the [law of March 29, 2013];

[...] »

17 Article 2, paragraphs 1 and 2, of the law of 25 November 2014 provides:

"(1) Tax administrations are authorized to request information of any nature that is required for the application of the exchange of information as provided for by the Conventions and laws from the holder of such information.

(2) The holder of the information is obliged to provide the requested information, in full, accurately and without alteration, within one month from the notification of the decision ordering the provision of the requested information. This obligation includes the transmission of the documents on which the information is based, without alteration.

18 Article 3, paragraphs 3 and 5, of this law is worded as follows:

"(3) If the competent tax administration does not hold the requested information, the director of the competent tax administration or his delegate shall notify the holder of the information by registered letter of his decision ordering the provision of the requested information.

[...]

(5) In addition to the injunction procedure provided for in paragraph 3, the competent tax administration has the same powers of investigation as those implemented in the context of taxation procedures aimed at the determination or control of taxes, duties and charges, with all the guarantees provided for therein.

The AO

19 Article 171 of the General Tax Act of 22 May 1931, known as the ‘Abgabenordnung’ (*Mémorial* A 1931, no 900), as amended (hereinafter the ‘AO’), provides in paragraph 2:

“[The taxable person] must, upon request, present the notes, books and commercial registers as well as the documents relevant to the establishment of the tax (article 207), for consultation and control.”

20 Article 175, paragraphs 1 and 2, of the AO provides:

"(1) Any person who is not subject to tax, with the exception of persons designated as close relatives [...], must also provide the tax control authority with information on facts relevant to the exercise of tax control or in the context of a tax investigation procedure for the purpose of establishing tax claims. [...]

(2) The information must be requested and provided in writing, provided that this is practicable and that exceptions are not necessary for special reasons; the tax audit office may, however, order the appearance of the person required to provide the information.

21 Article 177 of the AO is worded as follows:

"(1) May [...] refuse access:

1. Defenders and lawyers, to the extent that they have acted in criminal matters,

[...]

3. Lawyers, on what is entrusted to them in the exercise of their profession,

4. the employees of the persons referred to in points 1 to 3 above with regard to the facts of which they became aware in their capacity.

(2) This provision does not apply to persons referred to in points 3 and 4 to the extent that these are facts of which they became aware during advice or representation in tax matters, unless these are questions the answer to which in the affirmative or negative would expose their clients to the risk of criminal prosecution.

The main dispute and the questions referred for a preliminary ruling

22 Having received a request for information based on Directive 2011/16 from the Spanish tax authorities, the direct tax authorities, on 28 June 2022, sent F an injunction ordering it to provide all available documents and information concerning the services provided by it to K, a company incorporated under Spanish law, in the context of the acquisition of a business and the acquisition of a majority shareholding in a company, both also incorporated under Spanish law.

23 This decision was worded in the following terms:

" [...]

I would ask you to kindly provide us, for the period from January 1, 2016 to December 31, 2019, with the following information and documents by August 3, 2022 at the latest.

– [...] all available documentation (engagement letter, contracts with the client, reports, memoranda, communications, invoices, etc.) concerning the services provided by (F) to the Spanish company (K) in the context of:

o The acquisition in 2015 of 80% of the interests of (N) by the investment group (O) (invoice no... of 04/03/2016);

- o The acquisition of another Spanish company by the group in 2018 (invoice no... of 13/12/2018);
- [...] a detailed description of the progress of the above-mentioned operations, from the engagement of the services of the company (F) until their completion, as well as an explanation of its involvement in these processes and the identification of its interlocutors (sellers, buyers and third parties) and the invoices;
- [...] a copy of all relevant documents relating to the preceding paragraphs.

I would like to draw your attention to the fact that, in accordance with Article 2[, paragraph 2,] of the [law of 25 November 2014] [...], the holder of the information is obliged to provide the requested information as well as the documents on which this information is based in full, precisely and without alteration.

[...] »

- 24 By email of 8 July 2022, F responded that she had acted as legal advisor to the group to which K belongs and that, as a result and due to the professional secrecy imposed on her, she was unable to communicate information concerning her client.
- 25 By email of 11 July 2022, the direct contributions administration, referring to Article 2, paragraphs 1 and 2, of the law of 25 November 2014, invited F to comply with the injunction decision of 28 June 2022.
- 26 By letter of 8 August 2022, F replied that he did not have any information not covered by the professional secrecy provided for in Article 177, paragraph 1, of the AO, while specifying that his mandate in the context of the case described in this injunction decision had not been of a tax nature, but had only concerned company law.
- 27 By decision of 19 August 2022, the said administration once again ordered F, under penalty of a fine, to provide the information and documents requested, recalling that the communication of these in full, precisely and without alteration was obligatory under Article 2, paragraph 2, of the law of 25 November 2014.
- 28 By decision of 16 September 2022, the same administration imposed a tax fine on F for not having followed up on the injunction decision of 19 August 2022.
- 29 On 18 October 2022, F filed an action before the Administrative Court (Luxembourg) for the reversal of the decision of 16 September 2022, and on 25 November 2022, an action for annulment of the injunction decision of 19 August 2022 (hereinafter the ‘contested injunction’). The OABL requested leave to intervene in support of F in this second action.
- 30 By judgment of 23 February 2023, this court dismissed the action for annulment and, therefore, the application to intervene filed by the OABL as inadmissible *ratione temporis*.
- 31 F and the OABL appealed against this judgment to the Administrative Court (Luxembourg), which is the referring court.
- 32 By judgment of 4 May 2023, this court held that the action for annulment brought by F against the disputed injunction and the application for intervention filed by the OABL were admissible, and decided to hear the case.
- 33 As to the substance, the referring court notes that the applicant and intervener before it structure their arguments relating to the illegality of the injunction at issue around Article 17(2) and (4) of Directive 2011/16 and Article 18(2) and (4) of the Law of 29 March 2013, which transposes it into Luxembourg law, and that they rely, in that context, on the judgment of 8 December 2022, Orde van Vlaamse Balies and

Others (C-694/20, ‘the judgment in *Orde van Vlaamse Balies and Others*’, EU:C:2022:963), as well as on the provisions of the Charter, in particular Article 7 thereof.

34 In that regard, that court considers that, in order to rule on that argument and resolve the dispute before it, it is necessary for the Court to provide various clarifications intended to enable it to assess the conformity of the injunction at issue with EU law, regardless of whether, in the present case, F could, where appropriate, also be exempted from the obligation to provide the information and documents requested or some of them under Article 177 of the AO in so far as the advice given by it was not ‘in tax matters’ within the meaning of paragraph 2 of that article.

35 Thus, the referring court notes, first of all, that the Court considered, in the judgment in *Orde van Vlaamse Balies and Others*, that the obligation established by Article 8a ter of Directive 2011/16, as amended by Directive 2018/822, for a lawyer who designs, markets or organises a cross-border arrangement to disclose to a third party his identity, his assessment of the content of the cross-border arrangement and the fact that he has been consulted, and the disclosure of that information to the tax authorities, entail an interference with the right to respect for communications between a lawyer and his client, guaranteed in Article 7 of the Charter. In the present case, the injunction at issue requires F to provide the direct tax authorities with all the documentation relating to his relations with his client, relating to the establishment of certain corporate investment structures. It would therefore seem logical to infer that this injunction also entails an interference with that right. However, having regard to the difference between the information exchange regimes and the corresponding acts at issue in the judgment in *Orde van Vlaamse Balies* and in the case before it, the referring court considers that confirmation of that analysis is necessary.

36 Next, that court observes, in the event that the protection of Article 7 of the Charter applies and the existence of an interference is found, that the Court recalled, in paragraph 34 of the judgment in *Orde van Vlaamse Balies and Others*, that the rights enshrined in Article 7 do not appear to be absolute prerogatives, but that they must be taken into consideration in relation to their function in society and that, as is clear from Article 52(1) of the Charter, the Charter allows limitations to the exercise of those rights, provided, in particular, that those limitations are provided for by law. It notes, however, that, beyond Article 17(4), Directive 2011/16 does not contain, in relation to the exchange of information on request, any provision which would provide for a special regime containing specific limitations on the obligation for a lawyer to provide information as a third party holder of that information. Consequently, in the absence of provisions providing for such a special regime, the question of the conformity of Directive 2011/16 with Article 7 and Article 52(1) of the Charter would arise.

37 The referring court also considers that, if the Court were to conclude that Directive 2011/16 is consistent with the Charter from the perspective set out in the previous paragraph, the question would arise whether the extent of the duty of cooperation imposed on lawyers in the context of the exchange of information on request governed by that directive, while taking into account the impact of the professional secrecy to which they are subject, can be determined by the provisions of the law of each Member State, in accordance with the reference made by Article 18(1) of that directive. It states that, in that case, Article 177 of the AO should be applied, in this case, as a national provision regulating that duty of cooperation of lawyers as third parties.

38 To that extent, the referring court further observes that, in paragraph 39 of the judgment in *Orde van Vlaamse Balies and Others*, the Court stated that, in order to ensure compliance with the essential content of the confidentiality of communications between a lawyer and his client, only a limited lifting of that confidentiality would be admissible. In the present case, the injunction at issue requires F to provide all the documentation relating to his relations with his client, relating to the establishment of certain corporate investment structures. In those circumstances, it cannot be ruled out that that injunction affects the essential content of the right to respect for communications between a lawyer and his client. However, since that injunction is consistent with Article 177 of the AO, the question would also arise whether both that national provision and that injunction are consistent with Article 7 of the Charter.

39 Finally, the referring court notes that, in the event of non-compliance with the latter provision, such a conclusion would nevertheless not automatically lead to the entire annulment of the injunction since it constitutes a decision divisible according to the information requested. The Luxembourg court could therefore allow the obligation imposed on the lawyer to provide information which would not be considered to affect the essential content of the right to respect for his communications with his client to remain in place.

40 Consequently, the examination by the referring court should not be limited to the finding of a possible interference with the essential content of the confidentiality of communications between a lawyer and his client, but should continue by verifying whether other considerations set out by the Court in the judgment in *Orde van Vlaamse Balies and Others*, in particular concerning the principle of proportionality, are, where appropriate, such as to delimit the information which may be validly required from a lawyer in the context of an exchange of information on request based on Directive 2011/16.

41 It is in these circumstances that the Administrative Court decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

- "1) Does a legal consultation from a lawyer in corporate law – in this case with a view to setting up a corporate investment structure – fall within the scope of the enhanced protection of exchanges between lawyers and their clients granted by Article 7 of the [Charter]?
- 2) If the answer to the first question is in the affirmative, does a decision of the competent authority of a requested Member State, issued in response to a request for exchange [of information] upon request from another Member State on the basis of Directive [2011/16], ordering a lawyer to provide it with broadly all available documentation relating to his relationship with his client, a detailed description of the transactions on which he advised, an explanation of his involvement in those processes and the identification of his interlocutors, constitute an interference with the right to respect for communications between a lawyer and his client, guaranteed by Article 7 of the [Charter]?
- 3) If the answer to the second question is in the affirmative, is Directive 2011/16 consistent with Articles 7 and 52(1) of the Charter in that it does not contain, beyond Article 17(4), any provision formally permitting interference with the confidentiality of exchanges between lawyers and their clients in the context of the regime of exchange [of information] on request and itself defining the scope of the limitation on the exercise of the right concerned?
- 4) If the answer to the third question is in the affirmative, can the regime governing the duty of cooperation of lawyers (or a law firm) as third-party data holders in the context of the application of the mechanism for the exchange [of information] on request established by Directive 2011/16, in particular the specific limitations designed to take account of the impact of their professional secrecy, be governed by the provisions of the domestic law of each Member State governing the duty of cooperation of lawyers, as third parties, in the tax investigation in the context of the application of domestic tax law, in accordance with the reference made by Article 18(1) of that directive?
- 5) If the answer to the fourth question is in the affirmative, in order to comply with Article 7 of the [Charter], must a national legal provision establishing the regime of the duty of collaboration of lawyers as third-party holders, such as that applicable in this case, include specific provisions which:
 - ensure compliance with the essential content of confidentiality of communications between the lawyer and his client; and
 - establish specific conditions to ensure that the obligation of lawyers to cooperate is reduced to what is appropriate and necessary to achieve the objective of Directive 2011/16?
- 6) If the answer to the fifth question is in the affirmative, must the specific conditions aimed at ensuring that the cooperation of lawyers in the tax investigation is limited to what is appropriate and necessary

to achieve the objective of Directive 2011/16 include an obligation for the competent authority of the requested Member State:

- to carry out a reinforced check as to whether the requesting Member State has actually previously exploited the usual sources of information which it can have recourse to in order to obtain the requested information without risking prejudicing the achievement of those objectives, in accordance with Article 17, [paragraph] 1 of Directive 2011/16; and/or
- having previously contacted, in vain, other potential holders of information in order to be able to contact, as a last resort, a lawyer in his capacity as potential holder [of information]; and/or
- to carry out, in each individual case, a balancing between, on the one hand, the objective of general interest and, on the other hand, the rights at stake, in such a way that an injunction decision could validly be issued against a lawyer only if additional conditions, such as the requirement that the financial stakes of the control in progress in the requesting Member State reach or are likely to reach a certain importance or are likely to fall within the scope of criminal law, are met?

On the jurisdiction of the Court

- 42 The Austrian Government expressed doubts about the Court's jurisdiction, arguing, in essence, that, since Directive 2011/16 does not indicate the conditions under which investigations or communications may lawfully take place and, in particular, under what conditions an individual may refuse to provide information by invoking professional secrecy, such questions depend exclusively on national law, so that the dispute in the main proceedings does not fall within the scope of that directive or, therefore, of EU law.
- 43 It should be recalled that Directive 2011/16 organises the exchange of information on request between Member States and, in that context, provides, in Article 18(1), that the requested Member State is to implement its intelligence-gathering arrangements in order to obtain the information requested by the requesting Member State. Thus, where the requested Member State, following a request for exchange of information made under Section I of Chapter II of Directive 2011/16, conducts an investigation in accordance with its national procedures and issues an order to the holder of information to provide that information, it is implementing that directive and, therefore, EU law.
- 44 In that regard, the Court has held that such implementation, entailing, as is apparent from Article 51(1) of the Charter, the applicability of the Charter, constitutes the adoption by a Member State of legislation specifying the arrangements for the procedure for the exchange of information on request established by Directive 2011/16, in particular by providing for the possibility for the competent authority to take a decision requiring a person holding information to provide it with that information (judgment of 6 October 2020, *État luxembourgeois* (Right of appeal against a request for information in tax matters), C-245/19 and C-246/19, EU:C:2020:795, paragraphs 45 and 46 and the case-law cited).
- 45 In those circumstances, it must be concluded that the Court has jurisdiction to examine whether and to what extent the provisions of the Charter preclude the application, by a Member State, of national provisions such as those at issue in the main proceedings in the context of and for the purposes of executing a request for the exchange of information under Section I of Chapter II of Directive 2011/16.

On the first two preliminary questions

- 46 By the first two questions, which should be examined together, the referring court asks, in essence, whether Article 7 of the Charter must be interpreted as meaning that legal advice from a lawyer in matters of company law falls within the scope of the enhanced protection of communications between a lawyer and his client, guaranteed by that article, so that a decision ordering a lawyer to provide the administration

of the requested Member State, for the purposes of an exchange of information on request provided for by Directive 2011/16, with all the documentation and information relating to his relations with his client, relating to such advice, constitutes an interference with the right to respect for communications between a lawyer and his client, guaranteed by that article.

47 It should be recalled that Article 7 of the Charter, which recognises the right of everyone to respect for his private and family life, his home and his communications, corresponds to Article 8(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (hereinafter the 'ECHR') (Orde van de Vlaamse Balies and Others judgment, paragraph 25).

48 In accordance with Article 52(3) of the Charter, which seeks to ensure the necessary consistency between the rights contained in the Charter and the corresponding rights guaranteed by the ECHR without undermining the autonomy of EU law, the Court must take into account, in interpreting the rights guaranteed by Article 7 of the Charter, the corresponding rights guaranteed by Article 8(1) of the ECHR, as interpreted by the European Court of Human Rights, as a minimum threshold of protection (Orde van Vlaamse Balies and Others, paragraph 26).

49 As the Court has already noted, it is clear from the case-law of the European Court of Human Rights that Article 8(1) of the ECHR protects the confidentiality of all correspondence between individuals and grants enhanced protection to exchanges between lawyers and their clients. Like that provision, the protection of which covers not only the activity of defence but also legal advice, Article 7 of the Charter necessarily guarantees the secrecy of that legal advice, both in terms of its content and its existence. Persons who consult a lawyer may reasonably expect that their communications will remain private and confidential. Accordingly, except in exceptional circumstances, those persons must be able to legitimately trust that their lawyer will not disclose to anyone, without their consent, that they are consulting him (Orde van Vlaamse Balies and Others, paragraph 27 and the case-law cited).

50 The specific protection which Article 7 of the Charter and Article 8(1) of the ECHR grant to lawyers' professional secrecy, which translates first and foremost into obligations incumbent on them, is justified by the fact that lawyers are entrusted with a fundamental task in a democratic society, namely the defence of individuals. That fundamental task includes, on the one hand, the requirement, the importance of which is recognised in all the Member States, that every individual must be able to approach his lawyer in complete freedom, whose very profession encompasses, by its very nature, the task of giving independent legal advice to all those who need it, and, on the other hand, the correlative requirement that the lawyer act loyally towards his client (Orde van Vlaamse Balies and Others, paragraph 28 and the case-law cited).

51 It follows from the foregoing considerations that a legal consultation by a lawyer benefits, regardless of the area of law to which it relates, from the enhanced protection guaranteed by Article 7 of the Charter for communications between a lawyer and his client. It follows that an injunction decision such as that at issue in the main proceedings constitutes an interference with the right to respect for communications between a lawyer and his client guaranteed by that article.

52 The answer to the first two questions must therefore be that Article 7 of the Charter must be interpreted as meaning that legal advice from a lawyer in matters of company law falls within the scope of the enhanced protection of exchanges between a lawyer and his client, guaranteed by that article, so that a decision ordering a lawyer to provide the administration of the requested Member State, for the purposes of an exchange of information on request provided for by Directive 2011/16, with all the documentation and information relating to his relations with his client, relating to such advice, constitutes an interference with the right to respect for communications between a lawyer and his client, guaranteed by that article.

On the third and fourth preliminary questions

- 53 By the third and fourth questions, which should be examined together, the referring court asks, in essence, whether Directive 2011/16 is invalid in the light of Article 7 and Article 52(1) of the Charter in that, beyond Article 17(4), that directive does not contain any provision which, on the one hand, expressly permits interference with communications between a lawyer and his client in the context of the regime of exchange of information on request and, on the other hand, itself defines the scope of the limitation on the exercise of the right guaranteed by Article 7 of the Charter, while providing, as follows from Article 18(1) of that directive, that the law of the Member States is called upon to determine to what extent lawyers' professional secrecy may preclude a request for information made by the requested Member State.
- 54 In that regard, it is apparent, in particular, from the request for a preliminary ruling that the referring court has doubts as to whether Directive 2011/16 complies with Article 52(1) of the Charter, in particular in so far as that provision provides that any limitation on the exercise of the rights and freedoms recognised by the Charter must be provided for by law.
- 55 Directive 2011/16 concerns administrative cooperation and the exchange of information between Member States in the field of taxation. Article 1() thereof provides that it 'establishes the rules and procedures under which Member States are to cooperate with each other for the purpose of exchanging information which is foreseeably relevant for the administration and enforcement of the domestic laws of the Member States concerning the taxes and duties referred to in Article 2'.
- 56 In the context of the exchange of information on request, provided for in Section I of Chapter II of that directive, which is at issue in this case, that directive organises the relations between the requesting Member State and the requested Member State and their reciprocal obligations. Article 6(1) and (3) of that directive thus provides that the requested authority is to carry out any administrative enquiry necessary to obtain the information requested and that, in that context, that authority is to follow the same procedures as if it were acting on its own initiative or at the request of another authority in its own Member State. In Chapter IV of Directive 2011/16, concerning the conditions governing administrative cooperation, Article 18(1) of that directive provides that the requested Member State is to implement its intelligence-gathering arrangements in order to obtain the information requested.
- 57 On the other hand, Directive 2011/16 does not determine, under the exchange of information on request and unlike other types of exchange of information which it organises, such as the automatic and mandatory exchange of information provided for in Section II of Chapter II of that directive, as amended by Directive 2018/822, any reporting obligation on the part of persons or operators holding information.
- 58 As for Article 17(4) of Directive 2011/16, although it concerns relations between the requested Member State and the requesting Member State and provides for the right of the former to refuse to transmit certain information to the latter, it does not determine what should be undertaken in the context of national information-gathering procedures. Similarly, Article 17(2) of that directive provides that it does not require the requested Member State to carry out investigations or transmit information where those investigations or the collection of that information, if carried out for that Member State's own purposes, would be contrary to its law. However, it does not determine the requirements to be complied with in the context of national information-gathering procedures.
- 59 It follows from the foregoing considerations that, for the purposes of the exchange of information on request provided for in Directive 2011/16, the EU legislature has only determined the obligations which the Member States have towards each other, while authorising them not to act on a request for information if carrying out the requested investigations or collecting the information in question is contrary to their legislation. Thus, the EU legislature has, in particular, left it to the Member States to ensure that their national procedures, implemented for the collection of information for the purposes of that exchange, comply with the Charter, in particular Article 7 thereof.
- 60 It follows that the fact that the regime for the exchange of information on request provided for in Section I of Chapter II of Directive 2011/16 does not contain provisions relating to the protection of the

confidentiality of communications between a lawyer and his client, in the context of the collection of information which is the responsibility of the requested Member State, does not mean that that directive infringes Article 7 and Article 52(1) of the Charter. It follows from that directive that, in line with Article 51(1) of the Charter, it is for each Member State to ensure, in the context of the national procedures implemented for the purposes of that collection, the enhanced protection of communications between a lawyer and his client, guaranteed by Article 7 of that Charter. Thus, each Member State must, in particular, ensure that any possible limitation on the exercise of the rights guaranteed by Article 7, arising from these national procedures, is "prescribed by law", within the meaning of Article 52, paragraph 1, of the Charter.

61 In those circumstances, the answer to the third and fourth questions is that examination of the aspects to which those questions relate has not revealed any factor capable of affecting the validity of Directive 2011/16 in the light of Article 7 and Article 52(1) of the Charter.

On the fifth and sixth preliminary questions

62 As is apparent from the statements in the order for reference, the contested injunction requires F to produce all the documentation relating to his relations with his client, relating to the establishment of certain corporate investment structures, a detailed description of the transactions which were the subject of his advice, an explanation of his involvement in those processes and the identification of his interlocutors. That injunction, which constitutes the reiteration of a previous injunction with the same object, was decided by the tax authorities after F had objected to the transmission of the information and documents previously required, arguing that such communication would have breached the professional secrecy of lawyers to which F was subject and that, in this case, the consultations concerned had not, moreover, been of a tax nature. In the disputed injunction, the tax authorities informed F, in particular, that it was his responsibility, under penalty of a fine, to transmit in full, accurately and without alteration, the information previously requested without being able to invoke professional secrecy. Finally, since F had still not complied with the said injunction, the tax authorities imposed the fine thus announced.

63 In that regard, the referring court states that, given the extent of the information requested, which relates, in essence, to the content of F's entire file, including in particular the details of the content of all communications between F and his client, the question would arise, first and foremost, whether such an injunction, which would otherwise be consistent with national law, and in particular with Article 177 of the AO, does not undermine the essential content of the right to respect for communications between lawyers and their clients benefiting from enhanced protection under Article 7 of the Charter.

64 As regards the extent of the information requested and the state of national law on the basis of which the injunction at issue and the subsequent fine imposed on F were adopted, the referring court has, at the same time, emphasised that Article 177 of the AO has the consequence that, as the addressee of such an injunction, a lawyer may in principle refuse to provide any information, but that, where he acts as an adviser or representative exclusively in tax matters, he must provide all the information requested, except where the provision of that information risks exposing his client to criminal prosecution.

65 In those circumstances, it must be held that, by the fifth and sixth questions, which should be examined together, the referring court is asking, in essence, whether Article 7 and Article 52(1) of the Charter must be interpreted as precluding an injunction such as that described in paragraph 52 of this judgment, based on national legislation under which advice and representation by a lawyer in tax matters do not benefit, except in the event of a risk of criminal prosecution for the client, from the enhanced protection of communications between a lawyer and his client, guaranteed by Article 7 of the Charter.

66 In this regard, it should be recalled, at the outset, that this enhanced protection of communications between a lawyer and his client is applicable, as is apparent from paragraph 51 of this judgment, regardless of the area of law in which the advice or representation is provided to the client.

- 67 That being said, it is important to recall that the rights enshrined in Article 7 of the Charter do not appear to be absolute prerogatives, but must be taken into consideration in relation to their function in society. Indeed, as is apparent from Article 52(1) of the Charter, the Charter allows limitations on the exercise of those rights, provided that those limitations are provided for by law, respect the essence of those rights and, in accordance with the principle of proportionality, are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others (see, to that effect, judgment of 29 July 2024, *Belgian Association of Tax Lawyers and Others*, C-623/22, EU:C:2024:639, paragraph 134 and the case-law cited).
- 68 In this case, Article 177(2) of the AO prohibits a lawyer, who is the subject of a request for disclosure of information to the administration, from refusing access to what has been entrusted to him in the exercise of his profession insofar as these are facts of which he became aware during the advice or representation he provided in tax matters and unless they are questions the answer to which would expose his client to the risk of criminal prosecution. Such a prohibition thus has the consequence that nothing of the content of the exchanges between a lawyer and his client in tax matters, whether they took place in consultation or in the context of representation in court, other than the content which would expose that client to a risk of criminal prosecution, may be kept secret from the administration.
- 69 For its part, and in line with what is provided for in Article 177 of the AO, the disputed injunction, by having reiterated the requirement, under penalty of a fine, to produce, in full, precisely and without alteration, the information referred to in paragraph 62 of this judgment, after F had indicated that it considered that the professional secrecy to which it is subject prevented such production, also has the consequence that none of the content of the exchanges between F and its client relating to the establishment of the corporate investment structures concerned can be kept secret from the administration which issued that injunction.
- 70 In this regard, it should be recalled that Article 7 of the Charter guarantees the secrecy of legal advice given by a lawyer, as to its existence and content. Thus, persons who consult a lawyer may reasonably expect that their communications will remain private and confidential and, except in exceptional circumstances, have confidence that their lawyer will not disclose to anyone, without their consent, that they are consulting him.
- 71 It is true that the Court has held, in particular, in this regard that it cannot be considered that the notification obligation provided for in Article 8a ter(5) of Directive 2011/16, as amended by Directive 2018/822, undermines the essence of the right to respect for communications between lawyers and their clients, enshrined in Article 7 of the Charter. However, it reached that conclusion after noting that that obligation only resulted in a limited lifting, with respect to an intermediary third party and the tax authorities, of the confidentiality of communications between the intermediary lawyer and his client and, in particular, that that provision did not provide for an obligation, or even an authorisation, for the intermediary lawyer to share, without his client's consent, information relating to the content of those communications (*Orde van de Vlaamse Balies and Others*, paragraphs 39 and 40).

General

- 72 However, in this case, as the Advocate noted in point 50 of her Opinion, Article 177 of the AO, by removing almost entirely from the enhanced protection which lawyers' professional secrecy must benefit from, under Article 7 of the Charter, the content of lawyers' consultations provided in tax matters, namely the entire branch of law in which lawyers are likely to advise their clients, leads to that protection being emptied of its very substance in that branch of law. For its part, the disputed injunction, in that it appears to be based on the presupposition that the inapplicability of lawyers' professional secrecy arising from Article 177 of the AO authorises the tax authorities to demand the entire file held by F, including in particular the details as to the content of all communications between F and his client, even though the consultation provided by F, relating to the establishment of certain corporate investment structures, does not, according to the latter, relate to the tax area, further broadens the scope of the infringement of the substance of the right protected by Article 7 of the Charter.

73 In these circumstances, it must be noted that a national provision such as Article 177 of the AO, as well as its application in this case by means of the disputed injunction, far from being limited to exceptional situations, constitutes, by the very extent of the breach of professional secrecy of the lawyer which it authorises with regard to communications between the latter and his client, an infringement of the essential content of the right guaranteed in Article 7 of the Charter.

74 It follows from all of the foregoing considerations that an injunction such as the contested injunction based on national legislation such as Article 177(2) of the AO entails an infringement of the essential content of the right to respect for communications between a lawyer and his client, and therefore an interference which cannot be justified.

75 In the light of the foregoing, the answer to the fifth and sixth questions is that Article 7 and Article 52(1) of the Charter must be interpreted as precluding an injunction such as that described in paragraph 52 of this judgment, based on national legislation under which advice and representation by a lawyer in tax matters do not benefit, except in the event of a risk of criminal prosecution for the client, from the enhanced protection of communications between a lawyer and his client, guaranteed by Article 7.

On costs

76 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.

For these reasons, the Court (Second Chamber) hereby rules:

1) Article 7 of the Charter of Fundamental Rights of the European Union

should be interpreted as meaning that:

a legal consultation by a lawyer in matters of company law falls within the scope of the enhanced protection of communications between a lawyer and his client, guaranteed by that article, so that a decision ordering a lawyer to provide the administration of the requested Member State, for the purposes of an exchange of information on request provided for by Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, with all the documentation and information relating to his relations with his client, relating to such a consultation, constitutes an interference with the right to respect for communications between a lawyer and his client, guaranteed by that article.

2) Examination of the aspects to which the third and fourth questions relate has not revealed any factor capable of affecting the validity of Directive 2011/16 in the light of Article 7 and Article 52 of the Charter of Fundamental Rights.

3) Article 7 and Article 52(1) of the Charter of Fundamental Rights must be interpreted as precluding an injunction such as that described in point 1 of this operative part, based on national legislation under which advice and representation by a lawyer in tax matters do not benefit, except in the event of a risk of criminal prosecution for the client, from the enhanced protection of communications between a lawyer and his client, guaranteed by that Article 7.

Prechal

Biltgen

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Pass

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Thus delivered in open court in Luxembourg on 26 September 2024.

The Clerk

The President of the Chamber

A. Calot Escobar

A. Prechal

*
_ Procedural language: French.