TRIBUNAL DE JUSTICIA DE LAS COMUNIDADES EUROPEAS
SOUDNÍ DVŮR EVROPSKÝCH SPOLEČENSTVÍ
DE EUROPÆISKE FÆLLESSKABERS DOMSTOL
GERICHTSHOF DER EUROPÄISCHEN GEMEINSCHAFTEN
EUROOPA ÜHENDUSTE KOHUS
ΔΙΚΑΣΤΗΡΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ
COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH
CORTE DI GIUSTIZIA DELLE COMUNITÀ EUROPEE
EIROPAS KOPIENU TIESA

CVRIA

LUXEMBOURG

EUROPOS BENDRIJŲ TEISINGUMO TEISMAS
EURÓPAI KÖZÖSSÉGEK BÍRÓSÁGA
IL-QORTI TAL-ĠUSTIZZJA TAL-KOMUNITAJIET EWROPEJ
HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN
TRYBUNAŁ SPRAWIEDLIWOŚCI WSPÓLNOT EUROPEJSKICH
TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPEIAS
SÚDNY DVOR EURÓPSKYCH SPOLOČENSTIEV
SODIŠČE EVROPSKIH SKUPNOSTI
EUROOPAN YHTEISÖJEN TUOMIOISTUIN
EUROPEISKA GEMENSKAPERNAS DOMSTOL

Press and Information

PRESS RELEASE No 96/05

10 November 2005

Advocate General's Opinion in Case C-292/04

Meilicke and Others v Finanzamt Bonn-Innenstadt

ADVOCATE GENERAL TIZZANO PROPOSES THAT THE GERMAN TAX LEGISLATION SHOULD BE DECLARED INCOMPATIBLE WITH COMMUNITY LAW, BUT THAT THE EFFECT OF SUCH INCOMPATIBILITY SHOULD BE LIMITED IN TIME

The conditions for such a limitation are fulfilled in the present case.

The German income tax law provides for a tax credit. It establishes a mechanism enabling taxpayers to deduct a percentage of the dividends paid to them by companies established in Germany from their income-tax debt to the revenue authorities.

That system does not apply to dividends paid out by companies established in other Member States[1].

Between 1995 and 1997, Mr Meilicke, a German citizen residing in Germany and holding shares in Netherlands and Danish companies, received dividends from those companies.

In 2000, the heirs of Mr Meilicke, who had died in the meantime, unsuccessfully applied to the Finanzamt Bonn-Innestadt for the tax credit to be applied to those dividends.

Mr Meilicke's heirs then brought proceedings before the Finanzgericht Koln, which sought a preliminary ruling from the Court of Justice of the European Communities as to whether the Community provisions on the free movement of capital allow a tax system such as the German one.

Compatibility of the German tax legislation with the free movement of capital

[1] The Federal Republic of Germany adopted a Law in 2000, applicable to the 2001 tax year, whereby it abandoned that system.

The Advocate General deals with this question essentially in the light of the judgment in *Manninen*[2], several aspects of which he refers to.

The German tax legislation limiting the tax credit to dividends distributed by companies established in Germany discourages persons who are resident for tax purposes in that State from investing their capital in companies whose registered offices are in other Member States, and it also makes it more difficult for such companies to raise capital in Germany. It therefore restricts the free movement of capital.

In the Advocate General's opinion, that restriction is not justifiable on the basis of requirements in the general interest. **The German tax legislation is** therefore **incompatible with the free movement of capital provided for by the EC Treaty**.

Limitation in time of the effects of the judgment

However, according to the Advocate General, **the conditions are fulfilled for the declaration of incompatibility to be limited in time**.

By virtue of the case-law of the Court of Justice, such a limitation may be imposed, exceptionally, if there is a **risk of serious economic repercussions** and if there is **objective, significant uncertainty as to the scope of the Community provisions**.

In the present case, both those conditions appear to be fulfilled. The amount of the refund to be granted (about EUR 5000 million) in the event of no temporal limitation being imposed could give rise to a risk of serious economic repercussions. Moreover, until the judgment of 6 June 2000 in case C-35/98 *Verkooijen*[3], the scope of the provisions on the free movement of capital in relation to tax mechanisms of the kind at issue in this case was far from clear.

The date from which the effects of the judgment should operate

The case-law of the Court of Justice has laid down that the limitation in time of the effects of a judgment may be allowed only in the actual judgment which provides the interpretation requested.

In this case, the effects of the judgment in this case should therefore be stated to date back to the date of the judgment in *Verkooijen*, which had already interpreted Community provisions in relation to a tax system like the German one.

Accordingly, the right to the tax credit would accrue to persons who had received dividends after that date and to persons who, despite having already received the dividends, had applied for the tax credit before that date. However, the solution would not take account of the time elapsing between the interpretative judgment in *Verkooijen* and the judgment providing for a limitation in time or the judgment to be delivered in the present case, and would be liable to penalise excessively those persons who took action before the latter judgment was delivered.

---

[2] Judgment of 7 September 2004 in case C-319/02. In that case, the Court dealt with Finnish legislation fairly similar to the German provisions and declared it incompatible with the free movement of capital provided for by the EC Treaty.

[3] Case C-35/98 [2000] ECR I-4071.

Furthermore, it is likewise not permissible to use the date of the judgment to be delivered in the present case as a point of reference for claiming entitlement to the tax credit since, having regard to the specificity of the German legislation involved, that would in fact lead to a generalised refund, involving a risk of serious economic repercussions and therefore negation of the purpose of the temporal limitation of the effects of the judgment.

In order to take account of that requirement and at the same time to protect the interests of the persons concerned, the Advocate General proposes that account should be taken of the diligence shown by those persons. In that regard, he considers it reasonable to rely on the date of publication in the *Official Journal of the European Communities* of the notice of the order for reference from the national court, that is to say 11 September 2004. It may be considered in fact that it was from that date that the possibility of retroactive reimbursement became widely known and awakened the attention even of those who for many years had not taken action to claim the tax credits.

On the basis of that criterion, the effects of the judgment can then be limited, without prejudice to the rights not only of those persons who took action before the judgment in *Verkooijen* but also of those who did so subsequently, but not later than 11 September 2004.

The Advocate General therefore concludes that the incompatibility of the German legislation at issue should be effective from the date of the judgment of 6 June 2000 in Case C-35/98 *Verkooijen*. Such incompatibility cannot be relied on in order to secure tax credits in respect of dividends received before that judgment, without prejudice to the rights of those who, before the delivery of that judgment and no later than 11 September 2004, had submitted applications for the grant of such credits or had challenged a decision refusing such credits, provided that their rights are not time-barred under national law.

IMPORTANT: The Advocate General's Opinion is not binding on the Court. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court of Justice are now beginning their deliberations in this case. Judgment will be given at a later date.

For further information, please contact Christopher Fretwell
Tel: (00352) 4303 3355 Fax: (00352) 4303 2731