

Question referred

Can an E101 certificate issued under Article 11(1) of Regulation (EEC) No 574/72⁽¹⁾ of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as applicable before its repeal by Article 96(1) of Regulation (EC) No 987/2009⁽²⁾ laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, be annulled or disregarded by a court other than that of the sending Member State if the facts which are submitted to its scrutiny support the conclusion that the certificate was obtained or invoked fraudulently?

⁽¹⁾ (OJ 1972 L 74, p. 1).

⁽²⁾ Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ 2009 L 284, p. 1).

**Request for a preliminary ruling from the Conseil d'Etat (France) lodged on 4 July 2016 —
Association française des entreprises privées (AFEP) and Others v Ministre des finances et des
comptes publics**

(Case C-365/16)

(2016/C 335/53)

Language of the case: French

Referring court

Conseil d'Etat

Parties to the main proceedings

Applicants: Association française des entreprises privées (AFEP), Axa, Compagnie générale des établissements Michelin, Danone, ENGIE, formerly GDF Suez, Eutelsat Communications, LVMH Moët Hennessy-Louis Vuitton SA, Orange SA, Sanofi SA, Suez Environnement Company, Technip, Total SA, Vivendi, Eurazeo, Safran, Scor SE, Unibail-Rodamco SE, Zodiac Aerospace

Defendant: Ministre des finances et des comptes publics

Questions referred

1. Does Article 4 of Council Directive 2011/96/EU of 30 November 2011,⁽¹⁾ and in particular paragraph 1(a) thereof, preclude a levy such as that provided for in Article 235^{ter} ZCA of the General Tax Code, which is payable on the distribution of profits by parent companies that are liable to corporation tax in France and is assessed on the basis of the sums distributed?
2. In the event that the first question is answered in the negative, is a levy such as that provided for in Article 235^{ter} ZCA of the General Tax Code to be regarded as a 'withholding tax' from which, pursuant to Article 5 of the directive, profits distributed by a subsidiary must be exempt?

⁽¹⁾ Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ 2011 L 345, p. 8).