

Re:

Failure of a Member State to fulfil obligations — Failure to take, within the prescribed time-limit, the measures necessary to comply with Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114)

Operative part of the judgment

The Court:

1. Declares that, in failing to adopt, within the prescribed time-limit, all the laws, regulations and administrative provisions necessary to comply with Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;
2. Orders the Grand Duchy of Luxembourg to pay the costs.

(¹) OJ C 211, 8.9.2007.

Order of the Court (Fourth Chamber) of 23 April 2008 (reference for a preliminary ruling from the Chancery Division of the High Court of Justice of England and Wales (United Kingdom)) — The Test Claimants in the CFC and Dividend Group Litigation v Commissioners of Inland Revenue

(Case C-201/05) (¹)

(First subparagraph of Article 104(3) of the Rules of Procedure — Freedom of establishment — Free movement of capital — Direct taxation — Corporation tax — Share dividends paid to a resident company by a non-resident company — Rules on controlled foreign companies (“CFCs”) — Situation as regards a non-member country — Classification of claims brought against the tax authority — Liability of a Member State for breach of Community law)

(2008/C 209/18)

Language of the case: English

Referring court

Chancery Division of the High Court of Justice of England and Wales

Parties

Applicant: The Test Claimants in the CFC and Dividend Group Litigation

Defendant: Commissioners of Inland Revenue

Re:

Reference for a preliminary ruling — High Court of Justice (Chancery Division) — Interpretation of Articles 43, 49 and 56 EC — National tax legislation — Corporation tax — Exemption — Dividends paid by other companies to a company established in national territory — Situation differing according to the State where the other companies are established

Operative part of the order

1. Article 43 EC is to be interpreted as meaning that it does not preclude legislation of a Member State which exempts from corporation tax dividends which a resident company receives from another resident company, when that State imposes corporation tax on dividends which a resident company receives from a non-resident company in which the resident company has a shareholding enabling it to exercise a definite influence over the decisions of that non-resident company and to determine its activities, while at the same time granting a tax credit for the tax actually paid by the company making the distribution in the Member State in which it is resident, provided that the rate of tax applied to foreign-sourced dividends is no higher than the rate of tax applied to nationally-sourced dividends and that the tax credit is at least equal to the amount paid in the Member State of the company making the distribution, up to the limit of the amount of the tax charged in the Member State of the company receiving the distribution.

Article 56 EC is to be interpreted as meaning that it does not preclude legislation of a Member State which exempts from corporation tax dividends which a resident company receives from another resident company, when that State imposes corporation tax on dividends which a resident company receives from a non-resident company in which the resident company holds at least 10 % of the voting rights, while granting a tax credit for the tax actually paid by the company making the distribution in the Member State in which it is resident, provided that the rate of tax applied to foreign-sourced dividends is no higher than the rate of tax applied to nationally-sourced dividends and that the tax credit is at least equal to the amount paid in the Member State of the company making the distribution, up to the limit of the amount of the tax charged in the Member State of the company receiving the distribution.

Article 56 EC is, furthermore, to be interpreted as meaning that it precludes legislation of a Member State which exempts from corporation tax dividends which a resident company receives from another resident company, where that State levies corporation tax on dividends which a resident company receives from a non-resident company in which it holds less than 10 % of the voting rights, without granting the company receiving the dividends a tax credit for the tax actually paid by the company making the distribution in the State in which the latter is resident.

2. Article 56 EC is to be interpreted as meaning that it precludes legislation of a Member State which allows an exemption from corporation tax for certain dividends received from resident companies by resident insurance companies but excludes such an exemption for similar dividends received from non-resident companies, in so far as it entails less favourable treatment of the latter dividends.
3. Articles 43 EC and 48 EC must be interpreted as precluding the inclusion in the tax base of a resident company established in a Member State of profits made by a controlled foreign company in another Member State, where those profits are subject in that State to a lower level of taxation than that applicable in the first State, unless such inclusion relates only to wholly artificial arrangements intended to escape the national tax normally payable.

Accordingly, such a tax measure must not be applied where it is proven, on the basis of objective factors which are ascertainable by third parties, that despite the existence of tax motives, that controlled foreign company is actually established in the host Member State and carries on genuine economic activities there.

However, Articles 43 EC and 48 EC are to be interpreted as not precluding national tax legislation which imposes certain compliance requirements where the resident company seeks exemption from taxes already paid on the profits of that controlled foreign company in the State in which it is resident, provided that the aim of those requirements is to verify that the controlled foreign company is actually established and that its economic activities are genuine without that entailing undue administrative constraints.

4. Articles 56 EC to 58 EC are to be interpreted as not precluding the legislation of a Member State which grants a corporation tax concession in respect of certain dividends received from resident companies by resident companies but excludes such a concession for dividends received from companies established in a non-member country particularly where the grant of that concession is subject to conditions compliance with which can be verified by the competent authorities of that Member State only by obtaining information from the non-member country where the distributing company is established.
5. In the absence of Community legislation, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from Community law, including the classification of claims brought by injured parties before national courts and tribunals. Those courts and tribunals are, however, obliged to ensure that individuals have an effective legal remedy enabling them to obtain reimbursement of the tax unlawfully levied on them and the amounts paid to that Member State or withheld by it directly against that tax. As regards other loss or damage which a person may have sustained by reason of a breach of Community law for which a Member State is liable, the latter is under a duty to make reparation for the loss or damage caused to individuals under the conditions set out in paragraph 51 of the judgment in *Joined Cases C-46/93 and C-48/93 Brasserie du Pêcheur and Factortame* [1996] ECR I-1029, but that does not preclude the State from being liable under less restrictive conditions, where national law so provides.

Where it is established that the legislation of a Member State constitutes a restriction on freedom of establishment prohibited by Article 43 EC or a restriction on the free movement of capital prohibited by Article 56 EC, the national court may, in order to establish the recoverable losses, determine whether the injured parties have shown reasonable diligence in order to avoid those losses or to limit their extent and whether, in particular, they availed themselves in time of all legal remedies available to them. However, in order to prevent the exercise of the rights which Articles 43 EC and 56 EC confer on individuals from being rendered impossible or excessively difficult, the national court may determine whether the application of that legislation, coupled, where appropriate, with the relevant provisions of Double Taxation Conventions, would, in any event, have led to the failure of the claims brought by the claimants in the main proceedings before the tax authorities of the Member State concerned.

(¹) OJ C 182, 23.7.2005.

Order of the Court (Second Chamber) of 12 June 2008 (references for a preliminary ruling from the Tribunale amministrativo regionale del Lazio (Italy)) — *Confcooperative Friuli Venezia Giulia (C-23/07)*, *Luigi Soini (C-23/07 and C-24/07)*, *Azienda Agricola Vivai Pinato Mario e figlio (C-23/07)*, *Cantina Produttori Cormòns Soc. cons. arl (C-24/07) v Ministero delle Politiche Agricole, alimentari e forestali, Regione Friuli Venezia Giulia*

(Joined Cases C-23/07 and C-24/07) (¹)

(Agriculture — Regulations (EC) Nos 1493/1999, 753/2002 and 1429/2004 — Common organisation of the market in wine — Labelling of wines — Use of names of vine varieties or synonyms thereof — Geographical indication ‘Tokaj’ for wines originating in Hungary — Possible use of vine variety name ‘Tocai friulano’ or ‘Tocai italico’ in addition to the geographical indication of certain wines originating in Italy — Exclusion after a transitional period of thirteen years expiring on 31 March 2007 — Validity — Legal basis — Article 34 EC — Principle of non-discrimination — Principles of international law on treaties — Accession of Hungary to the European Union — Articles 22 to 24 of the TRIPs Agreement)

(2008/C 209/19)

Language of the case: Italian

Referring court

Tribunale amministrativo regionale del Lazio