

**Judgment of the Court (Grand Chamber) of 20 May 2008
(reference for a preliminary ruling from the Hoge Raad der
Nederlanden — Netherlands) — Staatssecretaris van
Financiën v Orange European Smallcap Fund N.V.**

(Case C-194/06) ⁽¹⁾

(Articles 56 EC to 58 EC — Free movement of capital — Taxation of dividends — Concession granted to a fiscal investment enterprise on account of tax deducted at source by another State from dividends received by that enterprise — Restriction of that concession to the amount that a shareholder resident in the Member State of establishment of that enterprise who has made an investment without such an enterprise acting as intermediary could have had credited to income tax on the basis of a convention for the prevention of double taxation — Restriction of that concession by reference to the shares of non-resident shareholders in the capital of that enterprise)

(2008/C 171/05)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Staatssecretaris van Financiën

Defendant: Orange European Smallcap Fund N.V.

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Articles 56 EC, 57(1) EC and 58(1) EC — National legislation granting a tax credit to an investment undertaking in respect of tax on dividends deducted at source by another Member State — Limitation in the case of shareholders not resident in the Netherlands or not subject to Netherlands corporation tax

Operative part of the judgment

- Articles 56 EC and 58 EC do not preclude legislation of a Member State, such as the legislation at issue in the main proceedings, which grants a concession to fiscal investment enterprises established in that Member State on account of tax deducted at source in another Member State from dividends received by those enterprises, and restricts that concession to the amount which a natural person resident in the first Member State could have had credited, on account of similar deductions, on the basis of a double taxation convention concluded with that other Member State.
- Articles 56 EC and 58 EC preclude legislation of a Member State, such as the legislation at issue in the main proceedings, which grants a concession to fiscal investment enterprises established in

that Member State on account of tax deducted at source in another Member State or third country from dividends received by those enterprises, and reduces that concession where and to the extent to which the shareholders of those enterprises are natural or legal persons resident or established in other Member States or in third countries, since such a reduction adversely affects all the shareholders of those enterprises without distinction.

In that respect, whether the foreign shareholders of a fiscal investment enterprise are resident or established in a State with which the Member State of establishment of that enterprise has concluded a convention providing for reciprocal crediting of tax deducted at source from dividends is irrelevant.

- A restriction is covered by Article 57(1) EC as being a restriction on the movement of capital involving direct investment in so far as it relates to investments of any kind undertaken by natural or legal persons and which serve to establish or maintain lasting and direct links between the persons providing the capital and the undertakings to which that capital is made available in order to carry out an economic activity.

⁽¹⁾ OJ C 178, 29.7.2006.

**Judgment of the Court (Fourth Chamber) of 22 May 2008
— Evonik Degussa GmbH, formerly Degussa GmbH v
Commission of the European Communities and Council of
the European Union**

(Case C-266/06 P) ⁽¹⁾

(Appeal — Competition — Cartel — Market in methionine — Fine — Regulation No 17/62 — Article 15(2) — Nulla poena sine lege — Distortion of the facts — Principle of proportionality — Principle of equal treatment)

(2008/C 171/06)

Language of the case: German

Parties

Appellant: Evonik Degussa GmbH, formerly Degussa GmbH (represented by: R. Bechtold, M. Karl and C. Steinle, Rechtsanwälte)

Other parties to the proceedings: Commission of the European Communities (represented by: A. Bouquet, W. Mölls, Agents, and H.-J. Freund, Rechtsanwalt) and Council of the European Union (represented by: S. Marquardt, G. Curmi and M. Simm, Agents)