

2. Article 9(2) of the Convention on access to information, public participation in decision making and access to justice in environmental matters, concluded on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005, and Article 10a of Directive 85/337, as amended by Directive 2003/35, must be interpreted as meaning that:

— when a project falling within the scope of those provisions is adopted by a legislative act, the question whether that legislative act satisfies the conditions laid down in Article 1(5) of that directive must be capable of being submitted, under the national procedural rules, to a court of law or an independent and impartial body established by law;

— if no review procedure of the nature and scope set out above were available in respect of such an act, any national court before which an action falling within its jurisdiction is brought would have the task of carrying out the review described in the previous indent and, as the case may be, drawing the necessary conclusions by disapplying that legislative act.

(¹) OJ C 153, 4.7.2009.

Judgment of the Court (First Chamber) of 20 October 2011 — European Commission v Federal Republic of Germany

(Case C-284/09) (¹)

(Failure of a Member State to fulfil obligations — Free movement of capital — Article 56 EC and Article 40 of the Agreement on the European Economic Area — Taxation of dividends — Dividends distributed to companies established in national territory and to companies established in another Member State or a State of the European Economic Area — Different treatment)

(2011/C 362/03)

Language of the case: German

Parties

Applicant: European Commission (represented by: R. Lyal and B.-R. Killmann, acting as Agents)

Defendant: Federal Republic of Germany (represented by: M. Lumma and C. Blaschke, acting as Agents, and Professor A. Kube)

Re:

Failure of a Member State to fulfil its obligations — Infringement of Article 56 EC and Article 40 of the EEA Agreement — National legislation fully exempting from withholding tax the dividends paid by subsidiaries to parent companies established in national territory, whereas, with regard to parent companies established in another Member

State or State of the European Economic Area, that legislation makes that total exemption subject to the condition that the minimum threshold for the parent company's shareholdings in the share capital of the subsidiary set out in Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ 1990 L 225, p. 6) is reached

Operative part of the judgment

The Court:

1. Declares that, by taxing dividends distributed to companies established in other Member States, where the threshold for a parent company's holding in the capital of its subsidiary laid down in Article 3(1)(a) of Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, as amended by Council Directive 2003/123/EC of 22 December 2003, is not reached, more heavily in economic terms than dividends distributed to companies established in its territory, the Federal Republic of Germany has failed to fulfil its obligations under Article 56(1) EC;
2. Declares that, by taxing dividends distributed to companies established in Iceland and Norway more heavily in economic terms than dividends distributed to companies established in its territory, the Federal Republic of Germany has failed to fulfil its obligations under Article 40 of the Agreement on the European Economic Area of 2 May 1992;

3. Orders the Federal Republic of Germany to pay the costs.

(¹) OJ C 256, 24.10.2009.

Judgment of the Court (First Chamber) of 20 October 2011 (reference for a preliminary ruling from the Tribunale ordinario di Bari — Italy) — Interedil Srl, in liquidation v Fallimento Interedil Srl, Intesa Gestione Crediti SpA

(Case C-396/09) (¹)

(Reference for a preliminary ruling — Whether a lower court has the power to refer a question to the Court for a preliminary ruling — Regulation (EC) No 1346/2000 — Insolvency proceedings — International jurisdiction — The centre of a debtor's main interests — Transfer of a registered office to another Member State — Concept of establishment)

(2011/C 362/04)

Language of the case: Italian

Referring court

Tribunale ordinario di Bari