

**Reference for a preliminary ruling from the Tribunal administratif de Grenoble (France) lodged on 6 August 2012 — Margaretha Bouanich v Direction départementale des finances publiques de la Drôme**

(Case C-375/12)

(2012/C 319/03)

*Language of the case: French*

**Referring court**

Tribunal administratif de Grenoble

**Parties to the main proceedings**

*Applicant:* Margaretha Bouanich

*Defendant:* Direction départementale des finances publiques de la Drôme

**Questions referred**

1. Do Articles 43, 56 and 58 of the Treaty establishing the European Community (now Articles 49, 63 and 65 of the Treaty on the Functioning of the European Union) preclude legislation, such as that at issue in the main proceedings, under which, where a resident of a Member State of the European Union who is a shareholder of a company established in another Member State of the European Union receives dividends taxed in the two Member States and the double taxation is regulated by the imputation in the Member State of residence of a tax credit for the same amount as the tax paid in the State of the distributing company, the tax capping mechanism of up to 60 % or 50 % of income received during a year does not take into account, or takes only partially into account, the tax paid in the other State;
2. If that is the case, may such a restriction be justified by the need to maintain the cohesion of the tax system, by a balanced allocation of taxing powers between the Member States, or by any other overriding reason in the public interest?

**Action brought on 6 August 2012 — European Commission v Council of the European Union**

(Case C-377/12)

(2012/C 319/04)

*Language of the case: English*

**Parties**

*Applicant:* European Commission (represented by: G. Valero Jordana, S. Bartelt, F. Erlbacher, Agents)

*Defendant:* Council of the European Union

**The applicant claims that the Court should:**

- annul the Decision of the Council of 14 May 2012 on the signing, on behalf of the Union, of the Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and the Republic of the Philippines, of the other part (2012/272/EU) <sup>(1)</sup> insofar as the Council has added the legal bases relating to transport (Articles 91 and 100 TFEU), readmission (Article 79(3) TFEU) and environment (Article 191(4) TFEU);
- maintain the effects of the contested decision;
- order Council of the European Union to pay the costs.

**Pleas in law and main arguments**

By way of the present application the Commission seeks the annulment of the Decision of the Council on the signing, on behalf of the Union, of the Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and the Republic of the Philippines, of the other part of 14 May 2012 (2012/272/EU) (hereinafter referred to as 'the contested decision'), insofar as the Council has added the legal bases relating to transport (Articles 91 and 100 TFEU), readmission (Article 79(3) TFEU) and environment (Article 191(4) TFEU).

This application is based on a single plea of law, namely that the Council has violated the rules of the Treaties and the case-law of the Court in relation to the choice of the legal basis for the adoption of a Union measure, including a decision on the signature of an international agreement.

The Commission takes the view that the addition of the above mentioned legal bases was unnecessary and illegal. Indeed, the provisions of the PCA which have triggered the addition of these legal bases by the Council relate to cooperation on specific policy matters which form an integral part of the development cooperation policy of the EU and do not impose extensive obligations distinct from those of development cooperation. Therefore, all these provisions of the PCA are covered by Article 209 TFEU.

<sup>(1)</sup> OJ L 134, p. 3