Questions referred

1. Does the Second Company Law Directive ([1]) preclude in all circumstances, including the circumstances of this case, the making of a Direction Order pursuant to section 9 of the Credit Institutions (Stabilisation) Act, 2010, on foot of the opinion of the Minister that it is necessary, where such an order has the effect of increasing a company's capital without the consent of the general meeting; allotting new shares without offering them on a pre-emptive basis to existing shareholders, without the consent of the general meeting; lowering the nominal value of the company's shares without the consent of the general meeting and, to that end, altering the company's memorandum and articles of association without the consent of the general meeting?

2. Was the Direction Order made by the High Court pursuant to section 9 of the Credit Institutions (Stabilisation) Act 2010 in relation to Irish Life and Permanent Group Holdings plc and Irish Life and Permanent plc in breach of European Union Law?

([1]) Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent
OJ L 26, p. 1

Request for a preliminary ruling from the Cour d'appel de Bruxelles (Belgium) lodged on 6 February 2015 — The Belgian State — SPF Finances v ING International SA, successor to the rights and obligations of ING Dynamic SA

(Case C-48/15)

(2015/C 138/44)

Language of the case: French

Referring court

Cour d'appel de Bruxelles

Parties to the main proceedings

Applicant: The Belgian State — SPF Finances

Defendant: ING International SA, successor to the rights and obligations of ING Dynamic SA

Questions referred

1) Must Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital ([1]), and more specifically Articles 2, 4, 10 and 11 thereof read together, be interpreted as precluding provisions of national law, such as Articles 161 and 162 of the Belgian Inheritance Tax Code, amended by the Programme-Law of 22 December 2003, concerning the tax on undertakings for collective investment, in so far as that tax is imposed annually on undertakings for collective investment established as companies with share capital in another Member State and marketing their shares in Belgium, on the total amount of their shares subscribed in Belgium reduced by the amount of repurchases or refunds of those subscriptions, with the consequence that the sums collected in Belgium by such undertakings for collective investment are subject to that tax while they remain at the disposal of those undertakings?

2) Must Articles 49 to 55 and 56 to 66 of the EC Treaty, read, if appropriate, in conjunction with Articles 10 and 293, second indent, of the EC Treaty be interpreted as precluding a Member State from modifying unilaterally the criterion on the basis of which a tax is imposed, as provided for by Article 161 et seq. of the Belgian Inheritance Tax Code, in order to replace a personal criterion for taxation, based on the domicile of the taxpayer and laid down in international tax law, with an alleged criterion of actual connection, which is not laid down in international tax law, account being taken of the fact that in order to establish its fiscal sovereignty the Member State adopts a specific penalty, such as that laid down by Article 162(3) of the Belgian Inheritance Tax Code, as regards foreign operators only?

3) Must Articles 49 and 56 of the EC Treaty, read, if appropriate, in conjunction with Articles 10 and 293, second indent, of the EC Treaty, be interpreted as precluding an imposition of tax, such as that described above, which, inasmuch as it takes no account of the tax already imposed in the Member State of origin of the undertakings for collective investment established in another Member State, represents an additional pecuniary burden likely to impede the marketing of their shares in Belgium?

4) Must Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities ([2]) (OJ 1985 L 375, p. 3), read, if appropriate, in conjunction with Articles 10 and 293, second indent, of the EC Treaty, be interpreted as precluding an imposition of tax, as described above, inasmuch as it prejudices the principal aim of the directive of facilitating the marketing of shares of undertakings for collective investment in the European Union?

5) Must Articles 49 and 56 of the EC Treaty be interpreted as precluding administrative charges incurred by the levying of taxation such as that described above on undertakings for collective investment that market their shares in Belgium?

6) Must Articles 49 and 56 of the EC Treaty be interpreted as precluding a provision of national law, such as Article 162(2) of the Belgian Inheritance Tax Code, inasmuch as that provision imposes a specific penalty on undertakings for collective investment established in another Member State that market their shares in Belgium, namely the prohibition, ordered by a court, of making future investments of its shares in Belgium in the event of failure to submit their declarations by 31 March each year or if they fail to pay the tax described above?

([1]) OJ 1969 L 249, p. 25.
([2]) OJ 1985 L 375, p. 3.

Appeal brought on 6 February 2015 by Kurt Hesse against the judgment of the General Court (First Chamber) delivered on 27 November 2014 in Case T-173/11 Kurt Hesse and Lutter & Partner GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-50/15 P)

(2015/C 138/45)

Language of the case: German

Parties

Appellant: Kurt Hesse (represented by: M. Krogmann, Rechtsanwalt)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Lutter & Partner GmbH, Dr. Ing. h. c. F. Porsche AG

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of the European Union of 27 November 2014 (Case T-173/11);

— annul the decision of the Fourth Board of Appeal of 11 January 2011 (Case R 0306/2010-4) and reject the opposition against Community trade mark application No 5723 432 of 16 February 2007.

in the alternative

— refer the case back to the General Court of the European Union for judgment.

The appellant also claims that the Court should:

— order the defendant to pay the costs.