

### Questions referred

1. If the national legislation of a Member State uses in domestic law the option offered by Article 1(2) of Directive 90/435/EEC of 23 July 1990,<sup>(1)</sup> is there scope for review of the measures or agreements adopted in order to give effect to that option under EU primary law?
2. Must the provisions of Article 1(2) of that Directive, which confer upon Member States broad discretion to determine which provisions are '*required for the prevention of fraud or abuse*', be interpreted as precluding a Member State from adopting a mechanism aimed at excluding from the benefit of the exemption the dividends distributed to a legal person controlled directly or indirectly by one or more residents of States that are not members of the Union, unless that legal person provides proof that the principal purpose or one of the principal purposes of the chain of interests is not to benefit from the exemption?
3. (a) If the compatibility with EU law of the 'anti-abuse' mechanism mentioned above should have to be assessed having regard to the provisions of the Treaty too, must it be examined, having regard to the purpose of the legislation at issue, in the light of the provisions of Article 43 of the Treaty establishing the European Community, now Article 49 of the Treaty on the Functioning of the European Union, even though the company receiving the dividend distribution is controlled directly or indirectly, as a result of a chain of interests which has among its principal purposes the benefit of the exemption, by one or more residents of third States that may not avail themselves of freedom of establishment?  
  
(b) If the answer to the preceding question is not affirmative, must that compatibility be examined in the light of the provisions of Article 56 of the Treaty establishing the European Community, now Article 63 of the Treaty on the Functioning of the European Union?
4. Must the provisions cited above be interpreted as precluding national legislation from excluding from the exemption from withholding tax the dividends paid by a company in one Member State to a company established in another Member State, if those dividends are received by a legal person controlled directly or indirectly by one or more residents of States that are not members of the European Union, unless that legal person establishes that the principal purpose or one of the principal purposes of that chain of interests is not to benefit from the exemption?

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<sup>(1)</sup> 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).

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**Request for a preliminary ruling from the Conseil d'État (France) lodged on 11 January 2016 — Euro Park Service, having assumed the rights and obligations of Cairnbulg Nanteuil v Ministre des finances et des comptes publics**

(Case C-14/16)

(2016/C 106/27)

Language of the case: French

### Referring court

Conseil d'État

### Parties to the main proceedings

*Appellant:* Euro Park Service, having assumed the rights and obligations of Cairnbulg Nanteuil

*Respondent:* Ministre des finances et des comptes publics

### Questions referred

1. When national legislation of a Member State makes use, in domestic law, of the option under Article 11(1) of Council Directive 90/434/EEC of 23 July 1990, as amended, on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States, <sup>(1)</sup> is there scope for the measures adopted for the implementation of that option to be reviewed in the light of primary EU law?
2. If so, must the provisions of Article 43 of the Treaty establishing the European Union, now Article 49 of the Treaty on the Functioning of the European Union, be interpreted as precluding national legislation, aimed at preventing tax evasion or avoidance, from imposing a condition that the use of the common system of taxation applicable to mergers and transactions treated as such is to be subject to a process of prior approval only as regards transfers made to foreign legal persons, but not transfers made to legal persons incorporated under national law?

<sup>(1)</sup> OJ 1990 L 225, p. 1.

**Appeal brought on 13 January 2016 by Al-Bashir Mohammed Al-Faqih, Ghunia Abdrabbah, Taher Nasuf, Sanabel Relief Agency Ltd against the judgment of the General Court (Seventh Chamber) delivered on 28 October 2015 in Case T-134/11: Al-Bashir Mohammed Al-Faqih, Ghunia Abdrabbah, Taher Nasuf, Sanabel Relief Agency Ltd v European Commission**

**(Case C-19/16 P)**

(2016/C 106/28)

*Language of the case: English*

### Parties

*Appellants:* Al-Bashir Mohammed Al-Faqih, Ghunia Abdrabbah, Taher Nasuf, Sanabel Relief Agency Ltd (represented by: N. Garcia-Lora, Solicitor, E. Grieves, Barrister)

*Other parties to the proceedings:* European Commission, Council of the European Union, United Kingdom of Great Britain and Northern Ireland

### Form of order sought

The appellants claim that the Court should:

- set aside the contested decision of 28 October 2015
- substitute its own decision and annul the contested measures
- order the Commission, the Council and the United Kingdom to pay the costs in the General Court and in the Court of Justice proceedings.

### Pleas in law and main arguments

This appeal advances 4 pleas in law.

Ground 1 disputes the Court's decision that the challenges to the substantive decision to list the first three applicants were not properly raised before the Court. The Court failed to properly characterise pleading IV as a challenge to the Commission's assessment of the facts. The Court failed to take into account the applicants' observations, which ought to have been considered because a) the Court had requested them, b) they had been served prior to the defendant lodging its defence and c) the applicants had always indicated that they wished to challenge the assessment of facts. The Court's approach was inconsistent with *Ayadi v Commission T-527/09* (14.4.15)