

**Parties to the main proceedings**

*Applicant:* Vereniging Hoekschewaards Landschap

*Defendant:* Staatssecretaris van Economische Zaken

**Question referred**

Is the Commission Implementing Decision of 3 December 2014 adopting an eighth update of the list of sites of Community importance for the Atlantic biogeographical region,<sup>(1)</sup> in so far as the 'Haringvliet' site (NL 1000015) was thereby placed on that list without the inclusion of the Leenheerenpolder, valid?

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<sup>(1)</sup> OJ 2015 L 18, p. 385.

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**Reference for a preliminary ruling from High Court of Justice, Family Division (England and Wales)  
made on 23 May 2016 — M. S. v P. S.**

**(Case C-283/16)**

(2016/C 279/27)

*Language of the case: English*

**Referring court**

High Court of Justice, Family Division (England and Wales)

**Parties to the main proceedings**

*Applicant:* M. S.

*Defendant:* P. S.

**Questions referred**

- i. In circumstances where a maintenance creditor wishes to enforce in one Member State an order which has been obtained in another Member State, does Chapter IV of EU Regulation 4/2009<sup>(1)</sup> (the Maintenance Regulation) confer upon her a right to make an application for enforcement directly to the competent authority of the requested state?
- ii. If the answer to (i) is in the affirmative, should Chapter IV of the Maintenance Regulations be interpreted so as to mean that each member state is obliged to provide a procedure or mechanism such as will enable the right to be recognised?

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<sup>(1)</sup> Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations  
OJ L 7, p. 1

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**Request for a preliminary ruling from the Vestre Landsret (Denmark) lodged on 26 May 2016 — Z  
Denmark ApS v Skatteministeriet**

**(Case C-299/16)**

(2016/C 279/28)

*Language of the case: Danish*

**Referring court**

Vestre Landsret

**Parties to the main proceedings**

*Applicant:* Z Denmark ApS

*Defendant:* Skatteministeriet

**Questions referred**

1. Is Article 1(1) of Directive 2003/49/EC, <sup>(1)</sup> read in conjunction with Article 1(4) thereof, to be interpreted as meaning that a company resident in a Member State that is covered by Article 3 of the Directive and, in circumstances such as those of the present case, receives interest from a subsidiary in another Member State, is the 'beneficial owner' of that interest for the purposes of the Directive?
  - 1.1. Is the concept 'beneficial owner' in Article 1(1) of Directive 2003/49/EC, read in conjunction with Article 1(4) thereof, to be interpreted in accordance with the corresponding concept in Article 11 of the OECD 1977 Model Tax Convention?
  - 1.2. If question 1.1. is answered in the affirmative, should the concept then be interpreted solely in the light of the commentary on Article 11 of the 1977 Model Tax Convention (paragraph 8), or can subsequent commentaries be incorporated into the interpretation, including the additions made in 2003 regarding 'conduit companies' (paragraph 8.1, now paragraph 10.1), and the additions made in 2014 regarding 'contractual or legal obligations' (paragraph 10.2)?
  - 1.3. If the 2003 Commentaries can be incorporated into the interpretation, in that case of what significance is it in the assessment of whether a company can be deemed not to be a 'beneficial owner' for the purposes of Directive 2003/49/EC, if the interest in question is entered on the principal ('rolled up'), if the interest recipient has had a contractual or legal obligation to pass the interest to another person and if most of the persons deemed by the State where the person paying the interest is resident to be the 'beneficial owners' of the interest are resident in other Member States or other States with which Denmark has entered into a double taxation convention, so that under domestic law there would not have been a basis for retaining tax at source had those persons been lenders and thereby received the interest directly?
  - 1.4. What significance does it have for the assessment of the issue whether the interest recipient must be deemed to be a 'beneficial owner' for the purposes of the Directive if the referring court, following an assessment of the facts of the case, concludes that the recipient — without having been contractually or legally bound to pass the interest received to another person — did not have the 'full' right to 'use and enjoy' the interest as referred to in the 2014 Commentaries on the 1977 Model Tax Convention?
2. Does a Member State's reliance on Article 5(1) of the Directive on the application of national provisions for the prevention of fraud or abuse, or of Article 5(2) of the Directive, presuppose that the Member State in question has adopted a specific domestic provision implementing Article 5 of the Directive, or that national law contains general provisions or principles on fraud, abuse and tax evasion that can be interpreted in accordance with Article 5?
  - 2.1. If question 2 is answered in the affirmative, can Paragraph 2(2)(d) of the Law on corporation tax, which provides that the limited tax liability on interest income does not include 'interest which is tax-exempt ... under Directive 2003/49/EC on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States', then be deemed to be a specific domestic provision as referred to in Article 5 of the Directive?
3. Is a provision in a double taxation convention entered into between two Member States and drafted in accordance with OECD's Model Tax Convention, under which taxation of interest is contingent on whether the interest recipient is deemed to be the beneficial owner of the interest, a conventional anti-abuse provision covered by Article 5 of the Directive?

4. Is a Member State that does not wish to recognise that a company in another Member State is the beneficial owner of interest and claims that the company in the other Member State is a so-called artificial conduit company, bound under Directive 2003/49/EC or Article 10 EC to state whom the Member State in that case deems to be the beneficial owner?
5. In a case where an interest payer is resident in one Member State and the interest recipient is resident in another Member State and where the interest recipient is deemed by the first Member State not to be the 'beneficial owner' of the interest in question under Directive 2003/49/EC and is therefore deemed to have limited tax liability on that interest in that Member State, does Article 43 EC, read in conjunction with Article 48 EC, preclude legislation under which the first Member State, in the taxation of the non-resident interest recipient, does not take account of expenses in the form of interest expenses that the interest recipient has had in circumstances such as those of the present case, whilst interest expenses are generally deductible under that Member State's legislation and can therefore be deducted from taxable income by a resident interest recipient?
6. If a company resident in a Member State (parent company) is in fact deemed not to be exempt from tax at source under Directive 2003/49/EC concerning interest received from a company resident in another Member State (subsidiary), and the parent company of the latter Member State is deemed to have limited tax liability on that interest in that Member State, does Article 43 EC, read in conjunction with Article 48 EC, preclude legislation under which the latter Member State requires the company liable for retaining the tax at source (subsidiary) to pay overdue interest in the event of overdue payment of the tax at source claim at a higher rate of interest than the overdue interest rate that the Member State charges on corporation tax claims (including interest income) lodged against a company resident in the same Member State?
7. If a company resident in a Member State (parent company) is in fact deemed not to be exempt from tax at source under Directive 2003/49/EC concerning interest received from a company resident in another Member State (subsidiary), and the parent company of the latter Member State is deemed to be a taxable person with limited tax liability on that interest in that Member State, does Article 43 EC, read in conjunction with Article 48 (in the alternative Article 56 EC), viewed separately or as a whole, preclude legislation under which:
  - 7.1. the latter Member State requires the person paying the interest to retain tax at source on the interest and makes that person liable to the authorities for the non-retained tax at source, where there is no such duty to retain tax at source when the interest recipient is resident in the latter Member State?
  - 7.2. a parent company in the latter Member State would not have been required to make advance payments of corporation tax in the first two fiscal years, but would only have begun to pay corporation tax at a much later time than the due date for tax at source?

The EU Court of Justice is requested to include the answer to question 6 in its answer to this question.

<sup>(1)</sup> Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (OJ 2003 L 157, p. 49).

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**Reference for a preliminary ruling from Dublin Circuit & District Civil Courts Office (Ireland) made on 6 June 2016 — Maria Isabel Harmon v Owen Pardue**

**(Case C-321/16)**

**(2016/C 279/29)**

*Language of the case: English*

**Referring court**

Dublin Circuit & District Civil Courts Office