OPINION OF ADVOCATE GENERAL MAZÁK

delivered on 11 September 2007 [1]

1. In the present case, the Bundesfinanzhof (Federal Finance Court) (Germany) seeks an interpretation of the Treaty provisions on the free movement of capital. In particular, what is at issue is the application of German inheritance tax law on property in the form of agricultural land and forestry, which differentiates between domestic property and that held in another Member State.

I — Legal framework

A — *Community law*

2. Article 56(1) EC (formerly Article 73b(1) of the EC Treaty) provides: 'Within the framework of the provisions set out in this Chapter, all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited.'

3. On the other hand, Article 58 EC (formerly Article 73d of the EC Treaty) stipulates: '1. The provisions of Article 56 [EC] shall be without prejudice to the right of Member States: (a) to apply the relevant provisions of their tax law which distinguish between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested ... 3. The measures and procedures referred to in [paragraph 1] shall not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments as defined in Article 56 [EC].'

4. On 7 February 1992, the Conference of the Representatives of the Governments of the Member States adopted, inter alia, a

1 — Original language: English.

declaration on Article 73d EC[2] ('the Declaration') which is worded as follows:

'The Conference affirms that the right of Member States to apply the relevant provisions of their tax law as referred to in Article 73d(1)(a) [EC] will apply only with respect to the relevant provisions which exist at the end of 1993. However, this Declaration shall only apply to capital movements between Member States and payments effected between Member States.'

5. Inheritances and legacies are listed under 'D' of heading XI 'Personal capital movements' of Annex I to Council Directive 88/361/EEC.[3]

B — *National law*

1. Application of inheritance tax to assets situated in another Member State

6. Under the first sentence of the first point of Paragraph 2(1) of the Erbschaftsteuer- und Schenkungsteuergesetz (Law on inheritance and gift tax; 'the ErbStG') in the version applicable in 1998, if a devisor's final place of residence was in Germany, the heir is liable for payment of German inheritance tax in respect of the entire inherited estate (domestic and foreign).

7. Under the first sentence of Paragraph 21(1) in conjunction with point (a) of the first point of Paragraph 2(1) of the ErbStG — in so far as relevant to the present case — in the case of an heir abroad whose assets held in another country have been made subject to a tax equivalent to German inheritance tax, if the place of residence of the devisor, at the time of his death, was in Germany, the foreign tax is to be offset, on application, against the German inheritance tax in so far as the assets held abroad are also made subject to German inheritance tax, provided that a double-taxation agreement is not applicable. Pursuant to the second sentence of Paragraph 21(1) of the ErbStG, if the acquisition consists only partly of assets held abroad, the part-payment of German inheritance tax which is then applicable is to be determined in such a way that the inheritance tax on the total amount of

2 — This was on the occasion of the signature of the Final Act and Declarations of the Intergovernmental Conferences on the European Union (OJ 1992 C 191, p. 99).

3 — Directive 88/361 of 24 June 1988 for the implementation of Article 67 of the Treaty [article repealed by the Treaty of Amsterdam] (OJ 1988 L 178, p. 5).

taxable assets including taxable assets held abroad is divided up proportionally between the taxable assets held abroad and the total amount of taxable assets.

2. Rules for valuation of agricultural assets and forestry

8. In accordance with Paragraph 12(6) of the ErbStG in conjunction with Paragraphs 31 and 9 of the Bewertungsgesetz (Law on valuation; 'the BewG'), assets consisting of agricultural land and forestry held abroad and assets consisting of real estate or business assets held abroad are to be valued according to their fair market value which, under Paragraph 9(2) of the BewG, is determined according to the price achievable in the ordinary course of business for assets in their condition if they were to be sold.

9. In contrast, under Paragraph 12(3) of the ErbStG domestic assets consisting of agricultural land and forestry acquired after 31 December 1995 are to be valued under the special procedure laid down in Paragraphs 140 to 144 of the BewG, the results of which amount on average to merely 10% of the current market value.

3. Rules for calculation of inheritance tax on agricultural land and forestry

10. The ErbStG also provides for tax-free amounts in relation to specific objects. Accordingly, in respect of the acquisition of agricultural land and forestry resulting from death, the first point of Paragraph 13a(1) of the ErbStG in the version applicable in 1998 provides for a tax-free amount of DEM 500 000 (EUR 256 000).

11. Under Paragraph 13a(2) of the ErbStG in the version applicable in 1998, the value of assets consisting of agricultural land and forestry, which is the amount remaining after the (object-specific) tax-free amount under the aforesaid paragraph has been deducted, is to be assessed only at 60%. Finally, Paragraph 13a(4) of that law restricts both abovementioned advantages to specific cases, that is to say that the advantages do not apply, inter alia, to agricultural land and forestry situated abroad.

C — *International law*

12. There is no agreement between Germany and France on the avoidance of a double inheritance tax burden.

II — Factual and procedural background and the question referred for a preliminary ruling

13. Mr Jäger ('the applicant'), who is resident in France, is the sole heir of his mother's estate. His mother died in 1998 and was last living in Landau/Pfalz (Germany). The estate contained land situated in France which was used for agriculture and forestry and, under German income tax law, that land was part of the assets of two agriculture and forestry companies at the time when the land belonged to the deceased.

14. The acquisition of that land in France, valued at FRF 5 444 666 (DEM 1 618 152), was subject to inheritance tax in France of FRF 1 192 148. By decision of 3 January 2000 the Finanzamt (Tax Office) Kusel-Landstuhl (Germany) ('the Finanzamt') set the inheritance tax due from the applicant at DEM 17 405. That decision was based on a net estate of DEM 1 737 167, of which the estate abroad accounted for DEM 1 618 152. The remaining DEM 119 015 was made up of domestic assets.

15. After deduction of the personal tax-free amount of DEM 400 000, the rounded down sum of DEM 1 337 100 remained. Following the applicant's application under Paragraph 21 of the ErbStG, the French inheritance tax of DEM 354 306.38 (FRF 1 192 148 x 0.2972) was credited, in the amount of DEM 236 644, against the DEM 254 049 of tax due.

16. The applicant's objection to the Finanzamt's tax assessment and his appeal before the Finanzgericht (Finance Court) were unsuccessful. He then appealed on points of law against the decision of the Finanzgericht to the Bundesfinanzhof, which takes the view that, at least since the judgment of the Court in *Barbier*,[4] it has become doubtful whether the German provisions,[5] to the extent that they differentiate according to the place in which the estate or a part thereof is located at the time of death of the devisor, are reconcilable with the free movement of capital. By order of 11 April 2006, the Bundesfinanzhof therefore stayed the proceedings and referred the following question to the Court for a preliminary ruling:

'Is it compatible with Article 73b(1) [EC]

4 — Case C-364/01 [2003] ECR I-15013.

5 — Namely the legal consequences of the application of Paragraph 31 of the BewG and the non-applicability of Paragraph 13a of the ErbStG to land held abroad for the taxation of domestic assets.

(now Article 56(1) EC) that for inheritance tax purposes:

(a) assets (held abroad) consisting of agricultural land and forestry situated in another Member State are valued in accordance with their fair market value (current market value), whereas a special valuation procedure exists for domestic assets consisting of agricultural land and forestry, the results of which amount on average to only 10% of their fair market value, and

(b) assessment of the acquisition of domestic assets consisting of agricultural land and forestry is excluded up to a special tax-free amount and the remaining value is assessed merely at 60%,

if, in the case of an heir inheriting an estate made up of both domestic assets and foreign assets consisting of agricultural land and forestry, this results in a situation whereby, as a result of the fact that the assets consisting of agricultural land and forestry are situated abroad, the acquisition of the domestic assets is subject to higher inheritance tax than would be applicable if the assets consisting of agricultural land and forestry were also domestic assets?'

17. Written observations were submitted by the applicant, the Finanzamt, the German Government and the Commission. No hearing has been requested by the parties, and none has been held.

III — Assessment

A — *Main arguments of the parties*

18. The *applicant* essentially submits that owing to the mere partial offsetting of the tax on the assets held abroad the domestic inheritance was more heavily taxed [6] and that this constitutes double taxation in violation of Article 293 EC. He contends that the German inheritance tax on domestic assets is higher than it would be if the land held abroad in question were actually situated in Germany and as a result restricts the free movement of capital. [7] Finally, the applicant argues that the provisions in question may

6 — This would not have been the case if part of the inheritance had comprised neither land held abroad nor corresponding land in Germany.

7 — The referring court explains that, taking the same factual setting of the present case as an example, but substituting France for Germany as the location of the land, the effect of an increased tax burden on domestic assets is apparent.

not be covered by Article 58 EC because they were introduced after 1993 and, at any rate, they would constitute a disguised restriction within the meaning of paragraph 3 of that article. There is no consideration which would justify a comparatively less favourable treatment of agricultural land and forestry held in another Member State.

19. The *Finanzamt* and the *German Government* contend, in essence, that the national provisions in question do not constitute an infringement of the free movement of capital and do not constitute a restriction on the movement of capital. The German Government argues that the impact of the difference in valuation is too indirect to have an effect on the purchase decision. The effect of the provisions in question would in any event be an inevitable consequence of the lawful coexistence of national fiscal regimes. Finally, the German Government contends that the value which was determined by German law for the land situated in France corresponds to that determined by French tax provisions on inheritances.

20. The *Commission* comes to the conclusion that the free movement of capital is restricted in so far as property situated in another Member State is hit with inheritance tax which is higher than that imposed on a property held in the national territory. As regards the existence of a justification, the Commission submits that the derogation provided for by Article 58(1)(a) EC is itself limited by Article 58(3) EC, according to which the national provisions shall not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital.

21. In response to the written question of the Court concerning the precise date of the original acquisition at issue, the applicant confirmed that his father had purchased the first property concerned on 9 August 1988 and the second property concerned on 26 January 1990.

B — *Appraisal*

22. As a preliminary remark, I note that the Bundesfinanzhof's preliminary question does not concern the national provision in Paragraph 21 of the ErbStG concerning the offsetting of the foreign (French) inheritance tax against the national (German) inheritance tax. Therefore, even though the applicant argues that that provision infringes Article 293 EC, in the present case the Court has not been asked to assess whether or not such offsetting of the tax is compatible with Community law.

1. The inheritance at issue as movement of capital

23. It should be noted that, according to well-established case-law, although direct taxation falls within their competence, the Member States must none the less exercise that competence consistently with Community law, [8] including the provisions which lay down the principle of the free movement of capital.

24. It must be borne in mind that Article 73b(1) of the EC Treaty (now Article 56(1) EC) gives effect to the free movement of capital between the Member States and between Member and non-member States. To that end, it provides, in the chapter of the Treaty entitled 'Capital and payments', that all restrictions on the movement of capital between Member States and between Member and non-member States are to be prohibited. [9]

25. As regards the notion of 'capital movements', there is no definition thereof in the Treaty. It is settled case-law that, inasmuch as Article 56 EC essentially reproduces the contents of Article 1 of Directive 88/361, and even though that directive was adopted on the basis of Articles 69 and 70(1) of the EEC Treaty (Articles 67 to 73 of the EEC Treaty have been replaced by Articles 73b to 73g of the EC Treaty (now Articles 56 EC to 60 EC)), the nomenclature in respect of 'movements of capital' annexed to that directive still has the same indicative value for the purposes of defining the notion of capital movements. [10]

26. As I mentioned in point 5 above, inheritances and legacies are listed under 'D' of heading XI 'Personal capital movements' of Annex I to Directive 88/361. In addition, in view of the current case-law of the Court, [11] there is no question as to whether inheritances constitute movements of capital within the meaning of Article 56 EC, except in cases where the constituent elements of the inheritance are confined within a single Member State.

27. It is also clear from the facts of the case in the main proceedings as set out above

8 — See, in particular, Case C-80/94 *Wielockx* [1995] ECR I-2493, paragraph 16; Case C-39/04 *Laboratoires Fournier* [2005] ECR I-2057, paragraph 14; and, more recently, Case C-513/03 *Van Hilten-van der Heijden* [2006] ECR I-1957, paragraph 36.

9 — *Van Hilten-van der Heijden*, paragraph 37.

10 — See to that effect, inter alia, Case C-222/97 *Trummer and Mayer* [1999] ECR I-1661, paragraph 21; Joined Cases C-515/99, C-519/99 to C-524/99 and C-526/99 to C-540/99 *Reisch and Others* [2002] ECR I-2157, paragraph 30; *Van Hilten-van der Heijden*, cited in footnote 8, paragraph 39; and Case C-452/04 *Fidium Finanz* [2006] ECR I-9521, paragraph 41.

11 — *Barbier*, cited in footnote 4, and *Van Hilten-van der Heijden*, cited in footnote 8.

that the inheritance at issue is not confined within a single Member State.[12]

28. As regards the time of acquisition and the argument put forward by the German Government that the property at issue was originally acquired (that is to say, purchased) before the date of implementation of Directive 88/361 (1 July 1990), which would thus prevent the applicant from deriving rights from that directive and the Treaty, to my mind, there are in fact three distinctive acquisitions in the case in the main proceedings. The first is the purchase of the property by the applicant's father; the second is the acquisition of the property by way of inheritance by the applicant's mother, and the third is the discussed acquisition by inheritance by the applicant himself.

29. For the purposes of the Court's analysis, the critical facts of the case, that is to say the death of the devisor of the applicant, therefore occurred in 1998. Hence the decisive time for assessing the inheritance situation in the main proceedings was indeed the date of the acquisition of property, but the acquisition by the applicant himself, which was the day on which his mother died.

12 — See in that context *Barbier*, cited in footnote 4, paragraph 58, and *Van Hilten-van der Heijden,* cited in footnote 8, paragraph 42.

30. The Commission is right to point out that the analysis taking the inheritance by the applicant as the relevant movement of capital is confirmed not only by the grounds in *Barbier* but also by the facts of that case: there the inheritance took place in 1993, after the transposition of Directive 88/361; however, the acquisition transactions that the deceased made in his lifetime took place between 1970 and 1988, that is to say before the implementation of that directive.

31. It follows that the situation at issue must be assessed under the provisions governing the free movement of capital and that the applicant can derive rights from Directive 88/361 and from the Treaty.

2. The national legislation as a restriction on the movement of capital

32. It is necessary to examine whether national legislation such as that at issue in the main proceedings constitutes a restriction on the movement of capital.

33. In that regard, it follows from settled case-law that the measures prohibited by

Article 56(1) EC as being restrictions on the movement of capital include those which are likely to discourage non-residents from making investments in a Member State or to discourage that Member State's residents to do so in other States, or, in the case of inheritances, those whose effect is to reduce the value of the inheritance of a resident of a State other than the Member State in which the assets concerned are situated and which taxes the inheritance of those assets.[13]

34. As Advocate General Mischo pointed out in his Opinion in *Barbier*,[14] even though, naturally, the effects on inheritance tax of exercising the right to free movement of capital are no longer, by definition, of direct interest to the deceased person concerned, the fact remains, however, that those effects are likely to constitute an obstacle to the exercise of the abovementioned right. Those effects are among the considerations that must be taken into account by any interested person when deciding whether or not to exercise the right to free movement of capital.

35. The ErbStG (Law on inheritance and gift tax) in conjunction with the BewG (Law on valuation), as they were applied in the present case, make a distinction with regard to whether the inherited property is situated in the national territory or abroad. The result of such a distinction, which consists primarily in different methods of valuation of the property at issue, is that higher inheritance tax is imposed on the applicant only because a part of the inherited property is situated in another Member State. In addition, the laws in question prevent the applicant from benefiting from the reduced valuation rate in relation to the part of the inheritance located in France. As the national court explained in the reference, the very denial of the advantages of the various German provisions discussed herein, relating to the agricultural land and forestry held in the national territory, leads to higher taxation of property situated in another Member State.

36. In addition, where inheritances situated abroad are concerned, the value of the inherited property in question is reduced, as compared to a situation involving only a domestic inheritance. This is a result of the heavier tax resulting from provisions such as those in question in the main proceedings.[15]

37. It follows from the Treaty provisions on the free movement of capital and from

13 — See, to that effect, *Van Hilten-van der Heijden*, cited in footnote 8, paragraph 44.

14 — Opinion of Advocate General Mischo in *Barbier*, cited in footnote 4, points 30 and 31.

15 — In other words, the applicant would have received by way of inheritance from his mother property of a higher value, had the latter been subject to a lower tax burden — that is to say, were the advantageous provisions that apply to the domestic property also applicable to the property held abroad.

the Court's case-law that what ought to be prevented is the diminution of economic value of those transfers of property by way of inheritance which involve a cross-border element, as compared with transfers confined within one Member State.

38. The provisions at issue have the effect of making investments in property located in another Member State by persons residing in Germany less attractive than investments of a similar character in the national territory.

39. This is the case in respect of the valuation of the property, the application of the object-specific exemption, and the tax-free amount under Paragraph 13a of the ErbStG.

40. It follows that the national provisions at issue in the main proceedings have the effect of restricting the free movement of capital.

3. Justification of the restriction

41. While Article 56 EC contains a general prohibition of restrictions on the movement of capital, Article 58(1)(a) EC makes it clear that that prohibition is without prejudice to the right of the Member States to apply relevant provisions of their tax law which distinguish between taxpayers with regard to their place of residence or with regard to the place where capital is invested. That right is, however, limited in itself by Article 58(3) EC, which specifies that the distinctions that Member States make between taxpayers with regard to their place of residence or the place where their capital is invested may not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital. [16]

42. In order for national tax legislation which distinguishes between taxpayers according to the place in which their capital is invested to be regarded as compatible with the Treaty provisions on the free movement of capital, the difference in treatment must concern situations which are not objectively comparable or be justified by overriding reasons in the general interest, such as the need to safeguard the coherence of the tax system or effective fiscal supervision. [17]

16 — In relation to direct taxation, those principles have been reiterated in, inter alia, Case C-319/02 *Manninen* [2004] ECR I-7477, paragraph 28, and Case C-386/04 *Centro di Musicologia Walter Stauffer* [2006] ECR I-8203, paragraph 31.

17 — See, to that effect, Case C-35/98 *Verkooijen* [2000] ECR I-4071, paragraph 43; *Manninen*, cited in footnote 16, paragraph 29; and *Centro di Musicologia Walter Stauffer*, cited in footnote 16, paragraph 32.

43. Moreover, in order to be justified, the difference in treatment between taxpayers with regard to the place in which their capital is invested must not go beyond what is necessary in order to attain the objective of the legislation in question.[18]

44. As I mentioned in point 4 above, pursuant to the Declaration, Member States may rely on Article 58(1)(a) EC only with regard to relevant provisions which existed at the end of 1993.

45. In the present case, reliance on the exception provided for in Article 58(1)(a) EC is already excluded on the grounds that, as follows from the order for reference, both Paragraph 13a of the ErbStG and Paragraph 31 of the BewG were amended in 1996. With regard to the former, the referring court clearly states that it was not until after 1993 that the tax advantages provided therein were extended to assets consisting of agricultural land and forestry and broadened still further, which means that Article 58(1)(a) EC plays no role.

46. As regards Paragraph 31 of the BewG, the referring court submits that since the valuation of domestic assets consisting of agricultural land and forestry for the purposes of inheritance tax by means of point 36 of Article 1 of the Jahressteuergesetz (Annual Tax Act) 1997[19] is now regulated, with retroactive effect from 1 January 1996, elsewhere, namely in Paragraph 140 et seq. of the BewG, it is doubtful whether Article 58(1)(a) EC may be relied upon. Although the content of the new provision has a partial connection with the previous regulatory provision in Paragraph 36 et seq. of the BewG, that provision should be seen as arising only after 1993.

47. Therefore, in my view, that in itself prevents the provisions at issue from justification under Article 58 EC.

48. In any event, as regards the possibility of justification by overriding reasons in the general interest, first, as mentioned above, it must be established whether the difference in treatment concerns situations which are not objectively comparable or whether that treatment may be objectively justified by any overriding reason in the general interest.

18 — See, to that effect, *Verkooijen*, cited in footnote 17, paragraph 43; *Manninen*, cited in footnote 16, paragraph 29; and *Centro di Musicologia Walter Stauffer*, cited in footnote 16, paragraph 32.

19 — Jahressteuergesetz (Annual Tax Act; JStG) 1997 of 20. 12. 1996 (BGBl. 1996 I, p. 2049).

49. The heirs of a property located in the national territory and the heirs of a property located in another Member State are in a comparable situation. In its submission, the German Government did not appear to contest that view. If a devisor's final place of residence was in Germany, the heir is liable for payment of German inheritance tax in respect of the entire inherited estate (domestic and foreign). It is clear from the preliminary reference that the heirs of a property located in another Member State are more heavily taxed as a result of the different valuation methods than the heirs of property located in Germany.

50. As regards the condition relating to the pursuance of an objective in the general interest, the German Government, and to a certain extent the Finanzamt, essentially submit that the national legislation seeks, first, to compensate for the disadvantages arising directly for the undertaking which is subject to inheritance tax — that is to say, to take into account an heir's reduced financial capacity where he did not inherit liquid funds but property that is linked to an agricultural company and that he should not be forced to sell or give up so as to pay the inheritance tax [20] — and, secondly, to prevent the break-up of agricultural land and forestry companies, which guarantee productivity and jobs and must fulfil their obligations deriving from the national legal order. It appears that that advantage is intended to be reserved for companies which are located in the national territory to the exclusion of those in other Member States.

51. In addition, the German Government and the Finanzamt refer to the same contentions indicated by the national court in the reference as a consideration formulated by the Finanzgericht: on the one hand, 'the abovementioned social responsibility of a business dealing with agricultural land and forestry is not comparable in any other EU Member State' and, on the other, 'the German authorities did not have to take into account, to the same extent, any other comparable public policy considerations which may exist in other Member States'.

52. As regards the contention that the German authorities did not have to take into account any other comparable public policy considerations in other Member States, I share the Commission's view that it is based on the premiss that Member States may, in the framework of provisions concerning the free movement of capital, specifically promote their own economy. To my mind, promoting agricultural land and forestry situated in the national territory is not a justification for a restriction of capital movements. In that connection, the Court held

20 — Even though the preservation of the coherence of the tax system does not appear to be argued per se, the German Government considers it comparable to the general objective of seeking 'to compensate for the disadvantages arising directly for the undertaking which is subject to inheritance tax'.

in *Verkooijen*[21] that, according to settled case-law, aims of a purely economic nature cannot constitute an overriding reason in the general interest justifying a restriction of a fundamental freedom guaranteed by the Treaty. Although preserving jobs, productivity and preventing the break-up of such companies may well serve the general interest, they do not justify a restriction of the movement of capital.

53. In any event, as regards the German Government comparing the aim to compensate for the disadvantages arising directly for the undertaking subject to inheritance tax to the need to preserve the coherence of the tax system, it is not clear from the information provided to the Court how that coherence could be undermined in a situation in which domestic and foreign agricultural land and forestry property are subject to uniform criteria. That would not threaten the cohesion of the German tax system and would constitute a measure less restrictive of the free movement of capital than that laid down by the provisions at issue.[22]

54. The argument that the German national administration does not have available the data concerning property situated in other Member States also fails to convince me. The Court has held that possible difficulties or disadvantages of a purely administrative nature in determining the tax are not sufficient to justify a restriction on the movement of capital.[23] In any event, persons subject to tax are usually obliged to submit relevant information and documents to prove, inter alia, the alleged value, which would seem sufficient prima facie to remedy that difficulty. Moreover, Directive 77/799 on administrative assistance between the tax authorities of the Member States in the field of direct taxation[24] also constitutes an appropriate means of overcoming such difficulties. The Court has held that under this directive the competent authorities of a Member State may always request the competent authorities of another Member State to provide them with all the information enabling them to ascertain, in relation to the legislation which they have to apply, the correct amount of tax payable.[25]

21 — Cited in footnote 17, paragraph 48. See, in this respect also, Case C-288/89 *Collectieve Antennevoorziening Gouda and Others* [1991] ECR I-4007, paragraph 10, and Case C-158/96 *Kohll* [1998] ECR I-1931, paragraph 41.

22 — See, to that effect, *Manninen*, cited in footnote 16, paragraph 46.

23 — See, to that effect, Case C-334/02 *Commission* v *France* [2004] ECR I-2229, paragraph 29; also the Opinion of Advocate General Ruiz-Jarabo Colomer in that case, points 29 and 30; *Manninen*, cited in footnote 16, paragraph 54; and Case C-446/04 *Test Claimants in the FII Group Litigation* [2006] ECR I-11753, paragraph 70.

24 — Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation (OJ 1977 L 336, p. 15), which has been amended on several occasions.

25 — See, inter alia, Case C-250/95 *Futura Participations and Singer* [1997] ECR I-2471, paragraph 41; *Commission* v *France*, cited in footnote 23, paragraph 31; *Centro di Musicologia Walter Stauffer*, cited in footnote 16, paragraph 50; Case C-383/05 *Talotta* [2007] ECR I-2555, paragraph 29; and Case C-522/04 *Commission* v *Belgium* [2007] ECR I-501, paragraph 52.

55. Further, I would add that the German Government has not demonstrated that the provisions at issue are necessary and appropriate to attain overriding reasons in the general interest.

56. It follows from the above considerations that the German Government's arguments in support of a justification of the restriction at issue are not convincing.

IV — Conclusion

57. I am therefore of the opinion that the Court should give the following answer to the question referred by the Bundesfinanzhof:

'In circumstances such as those in the present case, Article 56(1) EC establishing the European Community (formerly Article 73b(1) of the EC Treaty) precludes for inheritance tax purposes national legislation according to which:

(a) assets consisting of agricultural land and forestry situated in another Member State are valued in accordance with their fair market value (current market value), whereas a special valuation procedure exists for domestic assets consisting of agricultural land and forestry, the results of which amount on average to only 10% of their fair market value, and

(b) assessment of the acquisition of domestic assets consisting of agricultural land and forestry is excluded up to a special tax-free amount and the remaining value is assessed merely at 60%.'