

- if the parent company had no or insufficient taxable profits during the taxable period in which the distributed profits were received, it would in a subsequent taxable period be taxed on those distributed profits received,

or that

- the losses of that taxable period would be offset by means of distributed profits, and cannot, in the amount of those distributed profits, be carried forward to a subsequent taxable period.

- (2) Article 4(1), first indent, of Directive 90/435, read in combination with Article 4(2) thereof, must be interpreted as meaning that it does not oblige Member States necessarily to allow profits distributed to a parent company established in that State by its subsidiary with its seat in another Member State to be wholly deductible from the profits of the taxable period of the parent company and that it be possible for the resulting loss to be carried forward to a subsequent taxable period. It is for the Member States to establish, taking account both of the needs of their domestic legal system and the option provided for in Article 4(2), the method by which the result prescribed in Article 4(1), first indent, is achieved.

However, where a Member State has chosen the exemption system provided for in Article 4(1), first indent, of Directive 90/435 and, in principle, the legislation of that Member State allows losses to be carried forward to subsequent taxable periods, that provision precludes legislation of a Member State which has the effect of limiting, to the amount of the dividends received, the losses of the parent company which may be carried forward.

- (3) Where, in regulating purely internal situations, domestic legislation adopts the same solutions as those adopted in Community law, it is for the national court alone, pursuant to the allocation of judicial functions between national courts and the Court of Justice under Article 234 EC, to assess the precise scope of that reference to Community law, consideration of the limits which the national legislature may have placed on the application of Community law to purely internal situations being a matter for the law of the Member State concerned and consequently falling within the exclusive jurisdiction of the courts of that Member State.
- (4) Where, under the national legislation of a Member State, dividends originating from a company established in a non-Member State are entitled to less favourable treatment than those from a company with its seat in that Member State, it is for the national court, taking account both of the purpose of the national legislation and of the facts of the case before it, to ascertain whether Article 56 EC is applicable and, if so, whether it precludes the different treatment.

- (5) Article 43 EC does not preclude the legislation of a Member State which provides that a parent company established in a Member State and receiving profits distributed by its subsidiary with its seat in another Member State may deduct those profits from its taxable income only up to the amount of the profits of the taxable period during which the profits were distributed, whereas a full exemption of the distributed profits would be possible if that company had set up a permanent establishment in that other Member State, on condition that profits from entities set up in another Member State are not treated in a manner that is discriminatory in comparison with the treatment granted to profits from comparable national entities.

⁽¹⁾ OJ C 315, 22.12.2007
OJ C 22, 26.01.2008.

Order of the Court of 26 March 2009 — Efkon AG v European Parliament, Council of the European Union, Commission of the European Communities

(Case C-146/08 P) ⁽¹⁾

(Appeal — Directive 2004/52/EC — Interoperability of electronic road toll systems in the Community — Appeal manifestly inadmissible or manifestly unfounded)

(2009/C 205/25)

Language of the case: German

Parties

Appellant: Efkon AG (represented by: M. Novak, Rechtsanwalt)

Other parties to the proceedings: European Parliament (represented by: U. Rösslein and A. Neergaard, Agents), Council of the European Union (represented by: M. Bauer and E. Karlsson, Agents), Commission of the European Communities (represented by: N. Yerrell and G. Braun, Agent)

Re:

Appeal brought against the order of the Court of First Instance (Fifth Chamber) of 22 January 2008 in Case T-298/04 *Efkon v Parliament and Council*, by which the Court of First Instance dismissed as inadmissible the action seeking annulment of Directive 2004/52/EC of the European Parliament and of the Council of 29 April 2004 on the interoperability of electronic road toll systems in the Community (OJ 2004 L 166, p. 124) — Requirement of being individually concerned by the contested act — Right to be heard before a court — Length of the proceedings before the Court of First Instance

Operative part of the order

The Court:

1. *Dismisses the appeal.*
2. *Orders Efkon AG to pay the costs.*

⁽¹⁾ OJ C 171, 05.07.2008.

Order of the Court of 25 March 2009 — Isabella Scippacercola, Ioannis Terezakis v Commission of the European Communities

(Case C-159/08 P) ⁽¹⁾

(Appeals — Abuse of dominant position — Allegation of excessive charges applied by the operator of Athens International Airport — Rejection of the complaint — No Community interest)

(2009/C 205/26)

Language of the case: English

Parties

Appellants: Isabella Scippacercola, Ioannis Terezakis (represented by: B. Lombart, avocat)

Other party to the proceedings: Commission of the European Communities (represented by: T. Christoforou, V. Di Bucci and F. Ronkes Agerbeek, acting as Agents)

Re:

Appeal brought against the judgment of the Court of First Instance (Fifth Chamber) of 16 January 2008 in Case T-306/05 *Isabella Scippacercola and Ioannis Terezakis v Commission of the European Communities*, dismissing an application seeking to annul the Commission Decision dated 2 May 2005 refusing to take action on the applicants' complaint concerning an alleged abuse by Athens International Airport at Spata of its dominant position and its imposition of excessive charges on users

Operative part of the order

1. *The appeal is dismissed.*
2. *Mrs Scippacercola and Mr Terezakis shall pay the costs.*

⁽¹⁾ OJ C 171, 5.7.2008.

Order of the Court (Seventh Chamber) of 19 May 2009 — (reference for a preliminary ruling from the Amtsgericht Bidingen — Germany) — Criminal proceedings against Guido Weber

(Case C-166/08) ⁽¹⁾

(Article 104(3) of the Rules of Procedure — Directive 89/397/EEC — Official control of foodstuffs — Right of those subject to inspection to obtain a second opinion — Concept of person subject to inspection)

(2009/C 205/27)

Language of the case: German

Referring court

Amtsgericht Bidingen

Criminal proceedings against

Guido Weber

Action

Reference for a preliminary ruling — Amtsgericht Bidingen — Interpretation of the second sentence of Article 7(1) of Council Directive 89/397/EEC of 14 June 1989 on the official control of foodstuffs (OJ 1989 L 186, p. 23) — Right of those subject to inspection to obtain a second opinion when an official control of foodstuffs is being carried out — Question whether a person liable under criminal or administrative law for the condition and labelling of a foodstuff is a person 'subject to inspection'

Operative part of the judgment

The second sentence of Article 7(1) of Council Directive 89/397/EEC of 14 June 1989 on the official control of foodstuffs is to be interpreted as meaning that a company which has imported and then marketed a foodstuff and whose manager, on the basis of the analysis of samples of that product taken in the retail trade, is to be held responsible by the prosecuting authorities for the condition and labelling of that product in proceedings relating to the imposition of criminal penalties or administrative fines, is to be considered a person 'subject to inspection' for the purposes of those provisions.

⁽¹⁾ OJ C 183, 19.07.2008.