Provisional text

JUDGMENT OF THE COURT (Fifth Chamber)

8 March 2017 (*)

(Reference for a preliminary ruling — Parent companies and subsidiaries established in different Member States — Common system of taxation applicable — Corporation tax — Directive 90/435/EEC — Scope — Article 2(c) — Company subject to tax without the possibility of an option or of being exempt — Taxation at a zero rate)

In Case C?448/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the hof van beroep te Brussel (Court of Appeal, Brussels, Belgium), made by decision of 24 June 2015, received at the Court on 19 August 2015, in the proceedings

Belgische Staat

v

Wereldhave Belgium Comm. VA,

Wereldhave International NV,

Wereldhave NV,

THE COURT (Fifth Chamber),

composed of J.L. da Cruz Vilaça, President of the Chamber, M. Berger, A. Borg Barthet, E. Levits (Rapporteur) and F. Biltgen, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Wereldhave Belgium Comm. VA, Wereldhave International NV, Wereldhave NV, by R. Tournicourt and M. Delanote, advocaten,

– the Belgian Government, by N. Zimmer and J.-C. Halleux, acting as Agents,

– the Czech Government, by T. Müller, M. Smolek and J. Vlá?il, acting as Agents,

– the French Government, by D. Colas and S. Ghiandoni, acting as Agents,

– the Italian Government, by G. Palmieri, acting as Agent, and by S. Fiorentino, avvocato dello Stato,

– the European Commission, by W. Roels, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 26 October 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of 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) and of Articles 43 and 56 EC.

2 The request has been made in proceedings between the Belgische Staat (Belgian State) and Wereldhave Belgium Comm. VA, Wereldhave International NV and Wereldhave NV concerning withholding tax on the dividends paid by Wereldhave Belgium to Wereldhave International and to Wereldhave in respect of the tax years 1999 and 2000.

Legal context

EU law

3 Recital 3 of Directive 90/435 states:

'… the existing tax provisions which govern the relations between parent companies and subsidiaries of different Member States vary appreciably from one Member State to another and are generally less advantageous than those applicable to parent companies and subsidiaries of the same Member State; … cooperation between companies of different Member States is thereby disadvantaged in comparison with cooperation between companies of the same Member State; … it is necessary to eliminate this disadvantage by the introduction of a common system in order to facilitate the grouping together of companies'.

4 Article 1(1) of that directive was drafted as follows:

'Each Member State shall apply this Directive:

– to distributions of profits received by companies of that State which come from their subsidiaries of other Member States,

– to distributions of profits by companies of that State to companies of other Member States of which they are subsidiaries.'

5 Article 2 of Directive 90/435 provided:

'For the purposes of this Directive "company of a Member State" shall mean any company which:

(a) takes one of the forms listed in the Annex hereto;

(b) according to the tax laws of a Member State is considered to be resident in that State for tax purposes and, under the terms of a double taxation agreement concluded with a third State, is not considered to be resident for tax purposes outside the Community;

(c) moreover, is subject to one of the following taxes, without the possibility of an option or of being exempt:

– impôt des sociétés/vennootschapsbelasting in Belgium,

...

– vennootschapsbelasting in the Netherlands,

...

– or to any other tax which may be substituted for any of the above taxes.'

6 Article 3 of Directive 90/435 provided:

'(1) For the purposes of this Directive:

(a) the status of parent company shall be attributed at least to any company of a Member State which fulfils the conditions set out in Article 2 and has a minimum holding of 25% in the capital of a company of another Member State fulfilling the same conditions;

(b) "subsidiary" shall mean that company the capital of which includes the holding referred to in (a).

2. By way of derogation from paragraph 1, Member States shall have the option of:

– replacing, by means of bilateral agreement, the criterion of a holding in the capital by that of a holding of voting rights,

– not applying this Directive to companies of that Member State which do not maintain for an uninterrupted period of at least two years holdings qualifying them as parent companies or to those of their companies in which a company of another Member State does not maintain such a holding for an uninterrupted period of at least two years.'

7 Under Article 5(1) of that directive, the profits which a subsidiary distributes to its parent company are exempt from withholding tax, at least where the latter holds a minimum of 25% of the capital of the subsidiary.

8 The annex to that directive, entitled 'List of companies referred to in Article 2(a)', lists, in points (a) and (j), the following types of companies:

'(a) companies under Belgian law known as "société anonyme" / "naamloze vennootschap", "société en commandite par actions" / "commanditaire vennootschap op aandelen", "société privée à responsabilité limitée" / "besloten vennootschap met beperkte aansprakelijkheid" and those public law bodies that operate under private law;

...

(j) companies under Dutch law known as: "naamloze vennootschap", "besloten vennootschap met beperkte aansprakelijkheid"'.

9 Directive 90/435 was repealed by Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ 2011 L 345, p.8) which entered into force on 18 January 2012.

Nevertheless, considering the date of the facts of the dispute in the main proceedings, Directive 90/435 is the directive applicable *ratione temporis*.

Belgian law

10 Article 266 of the wetboek van de inkomstenbelastingen 1992 (Income Tax Code 1992), in the version applicable to the main proceedings ('the ITC 1992'), provides:

'The King may, under the conditions and within the limits which He shall specify, refrain, totally or partially, from levying advance tax on income from capital and movable property, and miscellaneous income, provided that it is income received by parties whose identity can be established, or by collective investment undertakings governed by foreign law which have jointly owned assets managed by a management company on behalf of the participants where their shares are not the subject of a public issue in Belgium and are not traded in Belgium, or income from bearer securities and dematerialised securities falling into one of the following categories:

1. income which is statutorily exempt from movable property tax or real estate tax or which is taxable at a rate of less than 15%, and which is generated from securities issued before 1 December 1962;

2. income from certificates from Belgian collective investment institutions;

3. issue premiums for bonds, deposit certificates and other loan securities issued on or after 1 December 1962.

In no circumstances may He waive the levying of withholding tax on income from:

1. loan securities for which the interest is capitalised ...

2. securities on which no periodic interest is payable, which are issued ... at a discount equivalent to the capitalised interest up to the maturity of the security ...

...

Paragraph 2 shall not apply to securities derived from the splitting of linear bonds issued by the Belgian State.'

11 Article 106(5) of the Koninklijk besluit tot uitvoering van het Wetboek van de inkomstenbelastingen 1992 (Royal Decree for the implementation of the Income Tax Code 1992) of 27 August 1993 (*Belgisch Staatsblad*, 13 September 1993, p. 20096), in the version applicable in the main proceedings ('the RD/ITC 1992'), provides:

'The levying of advance tax on income from investments shall be waived in full in respect of dividends paid by a Belgian subsidiary to a parent company of another Member State of the European Economic Community.

However, the waiver shall not apply if the shares held by the parent company in respect of which the dividends are being paid do not represent a holding of at least 25% of the capital of the subsidiary and that minimum 25% holding is not, or has not been, held for an uninterrupted period of at least one year.

For the purposes of the application of the first and second paragraphs, "subsidiary" and "parent company" shall mean subsidiaries and parent companies within the meaning of Directive [90/435].'

The dispute in the main proceedings and the questions referred for a preliminary ruling

12 Wereldhave Belgium, is a société en commandite par actions (limited partnership with a share capital) governed by Belgian law, in which Wereldhave International and Wereldhave, public limited companies under Netherlands law and established in the Netherlands, are 35% and 45% shareholders, respectively. Wereldhave has a 100% shareholding in Wereldhave International.

13 Wereldhave Belgium paid to Wereldhave International and Wereldhave dividends in the sum of EUR 10 965 197.63 in 1999 and EUR 11 075 733.50 in 2000.

14 For each tax year, Wereldhave International and Wereldhave applied to be exempt from the advance tax on income from dividends, relying on Directive 90/435 and Article 106(5) of the RD/ITC 1992, transposing that directive into Belgian law, inasmuch as they maintained that they should be regarded as ‘parent companies’ for the purposes of that directive.

15 In the absence of a decision from the Belgian authorities in the six-month period following receipt of those applications, Wereldhave Belgium, Wereldhave International and Wereldhave brought an action before the rechtbank van eerste aanleg te Brussel (Court of First Instance, Brussels, Belgium).

16 By two decisions of 20 November 2012, the rechtbank van eerste aanleg te Brussel (Court of First Instance, Brussels) held that no advance tax on investment income was due on the dividends paid in 1999 and 2000, pursuant to Directive 90/435 and Article 106(5) of the RD/ITC 1992.

17 The Belgian State brought an appeal against those decisions before the referring court, claiming, inter alia, that the recipients of the dividends are Netherlands fiscal investment institutions (‘FIIs’) which are subject to corporation tax in the Netherlands at a zero rate, and are not eligible for the exemption from advance tax on income from investments provided for in Article 106(5) of the RD/ITC 1992 and Article 5 of Directive 90/435, since they do not fulfil the condition of being liable to tax referred to in Article 2(c) of that directive and Article 106(5) of the RD/ITC 1992.

18 The Belgian State submits that the words ‘subject to [tax], without the possibility of an option or of being exempt’, for the purposes of Article 2(c) of Directive 90/435, imply that the reference is to ‘a subjective and an objective’ liability to tax. Thus, companies which are liable to corporation tax at a zero rate do not fall under that directive.

19 Wereldhave Belgium, Wereldhave International and Wereldhave, by contrast, argue that, as a rule, FIIs are taxable in the Netherlands as public limited companies under the Wet op de vennootschapsbelasting 1969 (Corporate Tax Law 1969, ‘the Wet Vpb’), according to Article 1 of the Wet Vpb. That tax liability is sufficient for eligibility for exemption from advance tax on investment income pursuant to Article 266 of the ITC 1992, Article 106(5) of the RD/ITC 1992 and Article 5 of Directive 90/435. It is true that an FII may be entitled to a zero rate of corporation tax, provided that it pays all its profits to its shareholders, in accordance with Article 28 of the Wet Vpb and Article 9 of the besluit houdende vaststelling van het besluit beleggingsinstellingen (Decree establishing the Decree on Investment Institutions) of 29 April 1970. However, the requirement for it to be liable for tax, according to the defendants in the main proceedings, does not necessitate actual payment of the tax, as that liability may simply be subjective.

20 The defendants in the main proceedings rely, in particular, on the order of 12 July 2012, *Tate & Lyle Investments* (C?384/11, not published, EU:C:2012:463), to argue that, in the event that Directive 90/435 does not apply to dividends originating in Belgium and paid to Netherlands

shareholders by a Belgian company, Articles 43 and 56 EC preclude a statutory rule under which dividends paid by a resident company to resident and non-resident companies are subject to withholding tax, irrespective of the rate of taxation, whereas a different mechanism is laid down for resident recipient companies for the mitigation of multiple taxation.

21 In those circumstances, the hof van beroep te Brussel (Court of Appeal, Brussels, Belgium) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is Directive 90/435 to be construed as precluding a national rule that does not waive Belgian advance tax on income from investments in respect of dividend payments made by a Belgian subsidiary to a parent company established in the Netherlands that fulfils the condition of a minimum participating interest and the holding of such an interest, on the ground that the Netherlands parent company is a fiscal investment institution that is required to distribute all its profits to its shareholders and, subject to that proviso, is eligible for the zero rate of corporation tax?

(2) If the answer to the first question is in the negative, are Articles [43 and 56 EC] to be construed as precluding a national rule that does not waive Belgian advance tax on income from investments in respect of dividend payments made by a Belgian subsidiary to a parent company established in the Netherlands that fulfils the condition of a minimum participating interest and the holding of such an interest, on the ground that the Netherlands parent company is a fiscal investment institution that is required to pay all its profits to its shareholders and, subject to that proviso, is eligible for the zero rate of corporation tax?'

Consideration of the questions referred

The first question

22 By its first question, the referring court asks, in essence, whether Directive 90/435 must be construed to the effect that Article 5(1) precludes legislation of a Member State whereby an advance tax on investment income is levied on dividends paid by a subsidiary established in that Member State to an FII established in another Member State which is subject to corporation tax at a zero rate, provided that all of its profits are paid to its shareholders.

23 It is appropriate, at the outset, to determine whether a company, like the FIIs at issue in the main proceedings, which is subject to corporation tax at a zero rate, provided that all of its profits are paid to its shareholders, may be qualified as a 'company of a Member State', for the purposes of Article 2 of Directive 90/435, so that the payment of dividends to that company falls within the scope of that directive.

24 For that purpose, in accordance with settled case-law it is necessary to take into account not only the wording of that provision, but also the objectives and the scheme of that directive (see, to that effect, judgments of 3 April 2008, *Banque Fédérative du Crédit Mutuel*, C?27/07, EU:C:2008:195, paragraph 22, and of 1 October 2009, *Gaz de France — Berliner Investissement*, C?247/08, EU:C:2009:600, paragraph 26).

25 In that regard it must be recalled that Directive 90/435, as is apparent in particular from its third recital, seeks, by the introduction of a common tax system, to eliminate any disadvantage to cooperation between companies of different Member States as compared with cooperation between companies of the same Member State and thereby to facilitate the grouping together of companies at EU level. That directive thus seeks to ensure the neutrality, from the tax point of view, of the distribution of profits by a subsidiary established in one Member State to its parent

company established in another Member State (judgment of 1 October 2009, *Gaz de France — Berliner Investissement*, C?247/08, EU:C:2009:600, paragraph 27 and the case-law cited).

26 As is apparent from Article 1, Directive 90/435 relates to distributions of profits received by companies of a Member State from their subsidiaries established in other Member States.

27 Article 2 of Directive 90/435 establishes the conditions which a company has to satisfy to be regarded as a company of a Member State within the meaning of that directive and thus defines its scope *ratione personae* (see, to that effect, judgment of 1 October 2009, *Gaz de France — Berliner Investissement*, C?247/08, EU:C:2009:600, paragraph 29).

28 Compliance by the company paying the dividends and the companies receiving the dividends with the conditions laid down in Article 2(a) and (b) of that directive relating to the companies' legal form and the companies' domicile for tax purposes does not appear to be disputed by the parties to the main proceedings before the referring court, nor is it in dispute before the Court of Justice.

29 The parties to the main proceedings are, however, in dispute over the issue whether the third condition, laid down in Article 2(c) of that directive, that the company concerned must also be subject to one of the taxes listed in that provision, without the possibility of an option or of being exempt, including the *vennootschapsbelasting* in the Netherlands, or to any other tax which may be substituted for one of those taxes, is satisfied in the situation at issue in the main proceedings.

30 It is therefore necessary to determine whether that condition is satisfied where the company concerned is subject to such a tax at a zero rate, provided that all of its profits are paid to its shareholders.

31 It must be pointed out in that regard that Article 2(c) of Directive 90/435 lays down a positive criterion for qualifying, that is to say, being subject to the tax in question, and a negative criterion, that is to say, not being exempt from that tax and not having the possibility of an option.

32 The establishment of both those criteria, one positive, the other negative, leads to the conclusion that the condition laid down in Article 2(c) of the directive does not merely require that a company should fall within the scope of the tax in question, but also seeks to exclude situations involving the possibility that, despite being subject to that tax, the company is not actually liable to pay that tax.

33 Although, formally, a company which is subject to tax at a zero rate, provided that all of its profits are paid to its shareholders, is not exempt from that tax, it is, in practical terms, in the same situation as the one which Article 2(c) of Directive 90/435 seeks to exclude, that is to say, a situation in which it is not liable to pay that tax.

34 As the Advocate General made clear in points 43 and 44 of his Opinion, the inclusion in national legislation of a provision whereby a specific category of companies may, in certain circumstances, be entitled to be taxed at a zero rate is tantamount to not subjecting those companies to that tax (see also judgment of 20 May 2008, *Orange European Smallcap Fund*, C?194/06, EU:C:2008:289, paragraphs 33 and 34).

35 Such an interpretation is consistent with the broad logic of Directive 90/435 and the objective pursued by that directive of ensuring the neutrality, from the tax point of view, of the distribution of profits by a subsidiary established in one Member State to its parent company established in another Member State through the elimination of double taxation of those profits.

36 That directive seeks to prevent double taxation of profits distributed by subsidiary companies to parent companies (see, inter alia, judgments of 3 April 2008, *Banque Fédérative du Crédit Mutuel*, C?27/07, EU:C:2008:195, paragraph 27; of 22 December 2008, *Les Vergers du Vieux Tauves*, C?48/07, EU:C:2008:758, paragraph 37; and of 1 October 2009, *Gaz de France — Berliner Investissement*, C?247/08, EU:C:2009:600, paragraph 57) through the mechanisms laid down in Article 4(1) and Article 5(1) of Directive 90/435.

37 Thus, first, Article 4(1) of Directive 90/435 provides that, where a parent company receives, by virtue of its association with its subsidiary, distributed profits, the Member State of the parent company is either to refrain from taxing such profits, or to authorise the parent company to deduct from the amount of tax payable that fraction of the corporation tax paid by the subsidiary which relates to those profits and, if appropriate, the amount of the withholding tax levied by the Member State in which the subsidiary is resident, up to the limit of the amount of the corresponding domestic tax (judgments of 12 December 2006, *Test Claimants in the FII Group Litigation*, C?446/04, EU:C:2006:774, paragraph 102, and of 3 April 2008, *Banque Fédérative du Crédit Mutuel*, C?27/07, EU:C:2008:195, paragraph 25).

38 Secondly, Article 5(1) of Directive 90/435 provides for exemption in the State of the subsidiary from withholding tax upon distribution of profits to its parent company, at least where the latter holds a minimum of 25% of the capital of the subsidiary (judgment of 3 April 2008, *Banque Fédérative du Crédit Mutuel*, C?27/07, EU:C:2008:195, paragraph 26 and the case-law cited).

39 The mechanisms of that directive are therefore intended for situations in which, if they were not applied, the exercise by the Member States of their powers of taxation might lead to the profits distributed by the subsidiary company to the parent company being subject to double taxation.

40 Where a parent company, like the FIIs at issue in the main proceedings, is entitled under the legislation of its Member State of establishment to a zero rate of taxation for all its profits, provided that all those profits are distributed to its shareholders, the risk of double taxation on the part of that parent company of profits which were distributed to it by its subsidiary is ruled out.

41 Accordingly, in the light of all of the foregoing, it must be concluded that a company which, like the FIIs at issue in the main proceedings, is subject to corporation tax at a zero rate of taxation, provided that all of its profits are distributed to its shareholders, does not satisfy the condition laid down in Article 2(c) of Directive 90/435 and does not therefore fall within the meaning of a ‘company of a Member State’ for the purposes of that directive.

42 In those circumstances, the payment of dividends by a subsidiary established in one Member State to such a company established in another Member State does not fall within the scope of that directive.

43 Therefore the answer to the first question is that Directive 90/435 must be construed to the effect that Article 5(1) does not preclude legislation of a Member State whereby an advance tax on investment income is levied on dividends paid by a subsidiary established in that Member State to an FII established in another Member State which is subject to corporation tax at a zero rate, provided that all of its profits are paid to its shareholders, since such an institution does not constitute a ‘company of a Member State’ for the purposes of that directive.

Question 2

44 By its second question, the referring court asks, in essence, whether Articles 43 and 56 EC

must be construed to the effect that they preclude legislation of a Member State whereby an advance tax on investment income is levied on dividends paid by a subsidiary established in that Member State to an FII established in another Member State which is subject to corporation tax at a zero rate, provided that all of its profits are paid to its shareholders.

45 According to settled case-law, in the context of the cooperation between the Court of Justice and national courts, instituted by Article 267 TFEU, the need to provide an interpretation of EU law which can be of use to the referring court makes it necessary for that court to define the factual and legislative context of the questions referred or, at the very least, to explain the factual circumstances on which those questions are based. The Court of Justice is empowered to rule on the interpretation or validity of EU provisions only on the basis of the facts which the national court puts before it (order of 3 September 2015, *Vivium*, C?250/15, not published, EU:C:2015:569, paragraph 8 and the case-law cited).

46 Those requirements concerning the content of a request for a preliminary ruling are expressly set out in Article 94 of the Rules of Procedure of the Court, of which the national court should, in the context of the cooperation instituted by Article 267 TFEU, be aware and which it is bound to observe scrupulously (judgment of 10 November 2016, *Private Equity Insurance Group*, C?156/15, EU:C:2016:85, paragraph 61 and the case-law cited).

47 Thus, the court making the reference must set out the tenor of any national provisions applicable in the case and the precise reasons that led it to raise the question of the interpretation of certain provisions of EU law and to consider it necessary to refer questions to the Court for a preliminary ruling. The Court has previously held that it is essential that the national court should give, at the very least, some explanation of the reasons for the choice of the EU law provisions which it seeks to have interpreted and of the link it establishes between those provisions and the national legislation applicable to the proceedings pending before it (see, to that effect, judgment of 10 March 2016, *Safe Interenvíos*, C?235/14, EU:C:2016:154, paragraph 115; order of 12 May 2016, *Security Service and Others*, C?692/15 to C?694/15, EU:C:2016:344, paragraph 20; and judgment of 10 November 2016, *Private Equity Insurance Group*, C?156/15, EU:C:2016:85, paragraph 62).

48 The information provided in requests for a preliminary ruling serves not only to enable the Court to provide useful answers to the questions submitted by the referring court, but also to ensure that the governments of the Member States and other interested parties have the opportunity to submit observations, in accordance with Article 23 of the Statute of the Court of Justice of the European Union (judgment of 10 November 2016, *Private Equity Insurance Group*, C?156/15, EU:C:2016:85, paragraph 63 and the case-law cited). It is the Court's duty to ensure that that opportunity is safeguarded, given that, under that provision, only the orders for reference are notified to the interested parties (order of 29 November 2016, *Jacob and Lennertz*, C?345/16, not published, EU:C:2016:911, paragraph 17 and the case-law cited).

49 In the present case, with regard to the national provisions applicable in the main proceedings, the referring court merely reiterates the provisions of Article 266 of the ITC 1992 and Article 106(5) of the RD/ITC 1992. In accordance with Article 106(5) of the RD/ITC 1992, which implements Article 266 of the ITC 1992, the withholding tax on dividends is waived where the debtor is a subsidiary company established in Belgium and the recipient of the dividends is a parent company established in another Member State. The referring court does not, however, mention the content of the provisions applicable to the payment of dividends to parent companies established in Belgium.

50 Although the referring court refers to the order of 12 July 2012, *Tate & Lyle Investments* (C?384/11, not published, EU:C:2012:463), it does not stipulate whether the national provisions

applicable in the main proceedings are the same as those at issue in the case giving rise to that order. In addition, it appears from the observations submitted by the defendants in the main proceedings and by the Belgian Government that the payment of dividends to investment companies established in Belgium are governed by a tax system which derogates from the general provisions of law at issue in the case giving rise to the order of 12 July 2012, *Tate & Lyle Investments* (C?384/11, not published, EU:C:2012:463). The request for a preliminary ruling contains no details on the content of the national provisions applicable to the payment of dividends to investment companies established in Belgium.

51 In the absence of any details regarding the national legal framework applicable to the payment of dividends to companies established in Belgium, which are comparable to the recipient companies at issue in the main proceedings, the Court is not in a position to determine whether the dividends paid to the recipient companies at issue in the main proceedings are treated unfavourably compared with the dividends paid to such comparable companies established in Belgium. Accordingly, the Court is not in a position to determine whether Articles 43 and 56 EC must be construed to the effect that they preclude legislation of a Member State whereby an advance tax on investment income is levied on dividends paid by a subsidiary established in that Member State to an FII established in another Member State which is subject to corporation tax at a zero rate, provided that all of its profits are paid to its shareholders.

52 Accordingly, the second question is inadmissible.

Costs

53 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

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 must be construed to the effect that Article 5(1) does not preclude legislation of a Member State whereby an advance tax on investment income is levied on dividends paid by a subsidiary established in that Member State to a fiscal investment institution established in another Member State which is subject to corporation tax at a zero rate, provided that all of its profits are paid to its shareholders, since such an institution does not constitute a 'company of a Member State' for the purposes of that directive.

[Signatures]

* Language of the case: Dutch.