JUDGMENT OF THE COURT (Third Chamber)

10 May 2012 (*)

(Articles 63 TFEU and 65 TFEU — Undertakings for collective investments in transferable securities (UCITS) — Different treatment of dividends paid to non?resident UCITS, subject to withholding tax, and dividends paid to resident UCITS, not subject to such tax — Whether it is necessary, for the purpose of determining whether the national measure is in conformity with the free movement of capital, to take account of the situation of shareholders — No such need)

In Joined Cases C?338/11 to C?347/11,

REFERENCES for a preliminary ruling under Article 267 TFEU from the Tribunal administratif de Montreuil (France), made by decision of 1 July 2011, received at the Court on 4 July 2011, in the proceedings

Santander Asset Management SGIIC SA, on behalf of FIM Santander Top 25 Euro Fi (C?338/11)

v

Directeur des résidents à l'étranger et des services généraux

and

Santander Asset Management SGIIC SA, on behalf of Cartera Mobiliaria SA SICAV (C?339/11),

Kapitalanlagegesellschaft mbH, on behalf of Alltri Inka (C?340/11),

Allianz Global Investors Kapitalanlagegesellschaft mbH, on behalf of DBI?Fonds APT n° 737 (C?341/11),

SICAV KBC Select Immo (C?342/11),

SGSS Deutschland Kapitalanlagegesellschaft mbH (C?343/11),

International Values Series of the DFA Investment Trust Co. (C?344/11),

Continental Small Co. Series of the DFA Investment Trust Co. (C?345/11),

SICAV GA Fund B (C?346/11),

Generali Investments Deutschland Kapitalanlagegesellschaft mbH, on behalf of AMB Generali Aktien Euroland (C?347/11)

v

Ministre du Budget, des Comptes publics, de la Fonction publique et de la Réforme de l'État,

THE COURT (Third Chamber),

composed of K. Lenaerts (Rapporteur), President of the Chamber, J. Malenovský, G. Arestis, T. von Danwitz and D. Šváby, Judges,

Advocate General: J. Mazák,

Registrar: R. ?ere?, Administrator,

having regard to the written procedure and further to the hearing on 16 February 2012,

after considering the observations submitted on behalf of:

– Santander Asset Management SGIIC SA, on behalf of FIM Santander Top 25 Euro Fi, and Santander Asset Management SGIIC SA, on behalf of Cartera Mobiliaria SA SICAV, by C. Charpentier, N. Gelli, P. Van den Perre and C. Profitos, avocats,

– Kapitalanlagegesellschaft mbH, on behalf of Alltri Inka, International Values Series of the DFA Investment Trust Co., Continental Small Co. Series of the DFA Investment Trust Co. and Generali Investments Deutschland Kapitalanlagegesellschaft mbH, on behalf of AMB Generali Aktien Euroland, by Y. Robert and S. Lauratet, avocats,

– Allianz Global Investors Kapitalanlagegesellschaft mbH, on behalf of DBI?Fonds APT n° 737, by P. Schultze and A. Feger, avocats,

– SICAV KBC Select Immo, by V. Louvel and S. Defert, avocats,

– SGSS Deutschland Kapitalanlagegesellschaft mbH, by A. Lagarrigue and B. Hardeck, avocats,

– SICAV GA Fund B, by P. Le Roux and L. Bogey, avocats,

– the French Government, by G. de Bergues and J.?S. Pilczer, acting as Agents,

– the European Commission, by C. Soulay and W. Roels, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 These references for a preliminary ruling concern the interpretation of Articles 63 TFEU and 65 TFEU.

2 The references have been made in proceedings between non?resident undertakings for collective investments in transferable securities (UCITS) and the French tax authorities concerning withholding tax levied on nationally?sourced dividends distributed to those UCITS.

National legal context

3 Under French law, UCITS include sociétés d’investissement à capital variable (open?ended investment companies) (SICAV) and fonds communs de placement (special investment companies) (FCP). Article 208(1)(a) A of the French code général des impôts (General Tax Code) (‘the CGI’) provides that SICAV are exempt from corporation tax on profits made in connection with their statutory object. As regards FCP, their status as collective holders of funds places them

automatically outside the scope of corporation tax.

4 Article 119a(2) of the CGI provides as follows:

'[Dividends] shall give rise to the levying of withholding tax at the rate fixed in Article 187 in the case of [dividends] benefiting persons whose fiscal residence or seat is outside France …'

5 Article 187 of the CGI is worded as follows:

'1. The rate of withholding tax provided for in Article 119 shall be fixed:

…

– at 25% for all other income.'

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

6 The applicants in the main proceedings are Belgian (Cases C?342/11 and C?346/11), German (Cases C?340/11, C?341/11, C?343/11 and C?347/11), Spanish (Cases C?338/11 and C?339/11) and American (Cases C?344/11 and C?345/11) UCITS investing inter alia in shares in French companies and receiving dividends from those shares. Pursuant to Article 119a(2) and Article 187(1) of the CGI, those dividends are subject to withholding tax in France at the rate of 25%.

7 The tribunal administratif de Montreuil considers that the national legislation at issue in the main proceedings provides for a difference in tax treatment to the detriment of non?resident UCITS, in that dividends originating in France received by such undertakings are subject to withholding tax, whereas dividends having the same origin paid to resident UCITS are not subject to that tax. According to the referring court, that difference in treatment constitutes a restriction on the free movement of capital within the meaning of Article 63 TFEU, which may be permitted, under Article 65 TFEU, only if the difference in treatment relates to situations which are not objectively comparable or if the restriction is justified by an overriding reason relating to the public interest. According to that court, for the purpose of determining whether the situations are comparable, the question whether the situation of the shareholders must be taken into account in addition to that of the UCITS is of vital importance.

8 The referring court explains that, if the situation of the UCITS alone were taken into account, irrespective of whether they were resident in France or in another Member State, they would have to be regarded as being in an objectively comparable situation. In that case, the difference in treatment could not be regarded as justified by an overriding reason in the public interest.

9 On the other hand, if, in view of, first, the sole object of UCITS, which is to arrange, as simple intermediaries not necessarily having legal personality, investments on behalf of investors and, second, the need for effective taxation of shareholders in respect of dividends — either directly under the French tax rules applicable to resident UCITS, or indirectly as a result of withholding tax being applied to non?resident UCITS — irrespective of whether the shareholders are resident or non?resident, it were necessary to take account not only of the situation of UCITS but also that of their shareholders, the withholding tax could be deemed to comply with the principle of free movement of capital in all cases in which (i) the situations could not be regarded as objectively comparable, having regard to the tax regime applicable as a whole, or (ii) an overriding reason in the public interest and concerning the effectiveness of fiscal supervision justified the difference in treatment.

10 In those circumstances, the tribunal administratif de Montreuil decided to stay the

proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must the situation of the shareholders be taken into account in addition to that of the UCITS?

(2) If so, what are the conditions under which the withholding tax at issue may be regarded as consistent with the principle of free movement of capital?’

11 By order of the President of the Court of 4 August 2010, Cases C?338/11 to C?347/11 were joined for the purposes of the written and oral procedures and of the judgment.

Consideration of the questions referred

12 It should be noted at the outset that, while Articles 119a(2) and 187 of the CGI apply generally to persons who are not resident for tax purposes or do not reside in France, the questions referred concern only the tax treatment of UCITS arising from the application of those provisions.

13 By its questions, the tribunal administratif de Montreuil asks in essence whether Articles 63 TFEU and 65 TFEU are to be interpreted as precluding national legislation, such as that at issue in the main proceedings, which taxes nationally?sourced dividends distributed to UCITS differently according to the place of residence of the recipient undertaking. In particular, as regards the taxation of dividends distributed by resident companies to non?resident UCITS, it seeks to ascertain whether, in order to determine whether there is a difference in treatment amounting to an obstacle to the free movement of capital, situations must be compared only by reference to the investment vehicle or whether the situation of the shareholders must also be taken into account.

14 It should be recalled at the outset that, according to settled case?law, while direct taxation falls within their competence, Member States must none the less exercise that competence in accordance with European Union law (Case C?334/02 *Commission* v *France* [2004] ECR I?2229, paragraph 21; Case C?155/09 *Commission* v *Greece* [2011] ECR I?65, paragraph 39; and Case C?10/10 *Commission* v *Austria* [2011] ECR I?5389, paragraph 23).

15 It is also established case?law that the measures prohibited by Article 63(1) TFEU, as restrictions on the movement of capital, include those which are such as to discourage non?residents from making investments in a Member State or to discourage that Member State’s residents from doing so in other States (Case C?370/05 *Festersen* [2007] ECR I?1129, paragraph 24; Case C?101/05 *A* [2007] ECR I?11531, paragraph 40; and Joined Cases C?436/08 and C?437/08 *Haribo Lakritzen Hans Riegel and Österreichische Salinen* [2011] ECR I?305, paragraph 50).

16 As regards whether the legislation of a Member State such as that at issue in the main proceedings constitutes a restriction on the movement of capital, it should be recalled that, under that legislation, dividends distributed by a resident company to a non?resident UCITS, irrespective of whether the UCITS is established in another Member State or a non?Member State, are taxed at the rate of 25% by way of withholding tax, whereas such dividends are not taxed when paid to a resident UCITS.

17 That difference in the tax treatment of dividends according to the UCITS’ place of residence may discourage, on the one hand, non?resident UCITS from investing in companies established in France and, on the other, investors resident in France from acquiring shares in non?resident UCITS.

18 Accordingly, such legislation constitutes a restriction on the free movement of capital, in principle prohibited by Article 63 TFEU.

19 It is, however, necessary to consider whether that restriction may be justified in light of the provisions of the FEU Treaty.

20 Under Article 65(1)(a) TFEU, '[t]he provisions of Article 63 [TFEU] shall be without prejudice to the rights of Member States … 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'.

21 In so far as Article 65(1)(a) TFEU is a derogation from the fundamental principle of the free movement of capital, it must be interpreted strictly. It cannot therefore be interpreted as meaning that all tax legislation which draws a distinction between taxpayers on the basis of their place of residence or the State in which they invest their capital is automatically compatible with the Treaty (see Case C?11/07 *Eckelkamp and Others* [2008] ECR I?6845, paragraph 57; Case C?510/08 *Mattner* [2010] ECR I?3553, paragraph 32; and *Haribo Lakritzen Hans Riegel and Österreichische Salinen*, paragraph 56).

22 The derogation in that provision is itself limited by Article 65(3) TFEU, which provides that the national provisions referred to in Article 65(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 63'.

23 The differences in treatment authorised by Article 65(1)(a) TFEU must therefore be distinguished from discrimination prohibited by Article 65(3) TFEU. The case?law shows that, for national tax legislation such as that at issue in the main proceedings to be capable of being regarded as compatible with the provisions of the Treaty on the free movement of capital, the difference in treatment must concern situations which are not objectively comparable or be justified by an overriding reason in the public interest (Case C?35/98 *Verkooijen* [2000] ECR I?4071, paragraph 43; Case C?319/02 *Manninen* [2004] ECR I?7477, paragraph 29; and Case C?250/08 *Commission* v *Belgium* [2011] ECR I?12341, paragraph 51).

24 For the purpose of determining whether the situations are comparable, the tribunal administratif de Montreuil is unsure whether the situation of the shareholders must be taken into account in addition to that of the UCITS.

25 The French Government stresses the fact that UCITS do not carry out investments on their own behalf but are collective investment vehicles acting on behalf of their shareholders. Since, from the tax point of view, the UCITS' involvement is neutral, the dividends which they receive are not taxed. It submits that account must, therefore, also be taken of the situation of the shareholders, in order to determine whether the different treatment of dividends paid to non?resident UCITS by comparison with that of dividends paid to resident UCITS concerns situations which are not objectively comparable.

26 That argument cannot be accepted, however.

27 It is true that it is for each Member State to organise, in compliance with European Union law, its system for taxing distributed profits. However, where national tax legislation establishes a distinguishing criterion for the taxation of distributed profits, account must be taken of that criterion in determining whether the situations are comparable (see, to that effect, Case C?170/05 *Denkavit Internationaal and Denkavit France* [2006] ECR I?11949, paragraphs 34 and 35; Case

C?303/07 *Aberdeen Property Fininvest Alpha* [2009] ECR I?5145, paragraphs 51 to 54; Case C?540/07 *Commission* v *Italy* [2009] ECR I?10983, paragraph 43; and Case C?284/09 *Commission* v *Germany* [2011] ECR I?9879, paragraph 60).

28 Moreover, only the relevant distinguishing criteria established by the legislation in question must be taken into account in determining whether the difference in treatment resulting from that legislation reflects situations which are objectively different. Accordingly, where a Member State chooses to exercise its tax jurisdiction over dividends distributed by resident companies on the sole basis of the place of residence of the recipient UCITS, the tax situation of the latter's shareholders is irrelevant for the purpose of determining whether or not that legislation is discriminatory.

29 The tax legislation at issue in the main proceedings establishes a distinguishing criterion based on the UCITS' place of residence, in that it subjects only non?resident UCITS to withholding tax on dividends which they receive.

30 Furthermore, there is no link between the non?taxation of dividends received by resident UCITS and the taxation of those dividends in the hands of the latter's shareholders, contrary to the claim made by the French Government. Indeed, the tax exemption enjoyed by resident UCITS is not conditional on their shareholders being taxed on the income distributed to them.

31 It should be noted in that regard that, where UCITS capitalise dividends received, there will be no redistribution of dividends which may give rise to their shareholders being subject to further taxation. The legislation at issue in the main proceedings therefore establishes no link between the tax treatment of nationally?sourced dividends received by UCITS which then go on to capitalise them — be they resident or non?resident — and the tax situation of their shareholders.

32 Nor does the legislation at issue take account of the tax situation of the shareholders in UCITS which distribute dividends received.

33 It should be noted in that regard that the French Government's argument is based on the premiss that shareholders in resident UCITS are themselves resident for tax purposes in France, whereas the shareholders in non?resident UCITS are resident for tax purposes in the State in which the UCITS concerned is established. Bilateral conventions on the avoidance of double taxation concluded between the French Republic and the Member State or non?Member State concerned thus ensure, according to the French Government, that shareholders in resident and non?resident UCITS receive similar tax treatment.

34 However, to the extent that it is based on a generalisation, that premiss is incorrect. It is, in fact, not unusual for a shareholder in a UCITS which is not resident in France to be resident for tax purposes in France or for a shareholder in a UCITS resident in France to be resident for tax purposes in another Member State or in a non?Member State.

35 It is clear from the legislation at issue in the main proceedings that nationally?sourced dividends paid to a resident distributing UCITS are exempt from tax even in cases in which the French Republic does not exercise its tax jurisdiction over the dividends redistributed by such a UCITS, in particular when they are paid to shareholders who are resident for tax purposes in another Member State or in a non?Member State.

36 Moreover, nationally?sourced dividends paid to non?resident distributing UCITS are taxed at a rate of 25%, irrespective of the tax situation of their shareholders.

37 As regards non?resident shareholders in such UCITS, while some bilateral conventions on

the avoidance of double taxation concluded between the French Republic and the Member State or non?Member State concerned provide that the State of residence of such shareholders is to take account of the withholding tax applied in France, it cannot be inferred from this that the tax situation of such shareholders will be taken into account under the legislation at issue in the main proceedings. On the contrary, it is the shareholders' State of residence that, under such conventions, is to take account of the tax treatment of the dividends in France in respect of the UCITS.

38 Even though, as the French Government claims, there is an administrative practice which enables a holder resident in France of shares in a non?resident UCITS to obtain, in certain cases, a tax credit for the withholding tax levied in respect of the non?resident UCITS, the fact remains that the legislation at issue in the main proceedings provides that nationally?sourced dividends distributed to a non?resident UCITS are to be taxed at a rate of 25% on the sole basis of the latter's place of residence and, therefore, irrespective of the tax situation of the shareholders in such UCITS.

39 In the light of the distinguishing criterion established by that legislation, based solely on the UCITS' place of residence, the situations must be compared only at the level of the investment vehicle in order to determine whether that legislation is discriminatory.

40 That conclusion is not altered by the fact that, in its judgment in Case C?194/06 *Orange European Smallcap Fund* [2008] ECR I?3747, concerning the Netherlands tax scheme applicable to UCITS, the Court took account of the tax regime applicable to shareholders who are natural persons for the purpose of determining whether a tax scheme such as that at issue in that case was compatible with free movement of capital. In fact, that tax scheme, unlike that at issue in the main proceedings, made the tax exemption enjoyed by UCITS conditional on the requirement that all the profits of those undertakings be distributed to their shareholders, in order to make the tax burden on investment proceeds through fiscal investment enterprises the same as that on direct investments by private investors (*Orange European Smallcap Fund*, paragraphs 8, 33 and 60). In that case, the national legislature therefore made the tax situation of the shareholder a distinguishing criterion for determining the tax treatment applicable.

41 On the other hand, in the cases in the main proceedings, the distinguishing criterion for determining the tax treatment applicable, established by the national legislation at issue, is not the tax situation of the shareholder but solely the status of the UCITS, namely whether or not it is resident.

42 Next, as pointed out by the tribunal administratif de Montreuil with regard to national legislation such as that at issue in the main proceedings, which seeks to prevent dividends distributed by resident companies being subject to a series of charges to tax, the situation of a resident recipient UCITS is comparable to that of a non?resident recipient UCITS (see *Aberdeen Property Fininvest Alpha*, paragraphs 43 and 44, and *Commission* v *Germany*, paragraph 58).

43 The argument of the French Government relying on the judgment in Case C?282/07 *Truck Center* [2008] ECR I?10767, paragraph 74, to the effect that the different treatment of resident UCITS and non?resident UCITS simply reflects the difference between the situations in which those undertakings find themselves with regard to tax collection, must be rejected. It should be noted that, in the case which gave rise to the judgment in *Truck Center*, the national legislation at issue provided that both resident recipient companies and non?resident recipient companies were to be taxed in respect of certain nationally?sourced income. That legislation simply laid down different procedures for charging tax, depending on the place where the recipient company had its registered office, which were justified on account of an objective difference in the situations in which resident and non?resident companies found themselves. However, in the cases in the main

proceedings, the legislation at issue does not simply provide for different procedures for charging tax depending on the place of residence of the recipient of nationally sourced dividends. On the contrary, it provides that only non?resident UCITS are to be taxed on such dividends.

44 Accordingly, the different treatment of resident UCITS, which are exempt from tax on nationally?sourced dividends received by them, and non?resident UCITS, which are subject to withholding tax in respect of such dividends, cannot be justified by a relevant difference in their situations.

45 It is also necessary to examine whether the restriction resulting from national legislation such as that at issue in the main proceedings is justified by overriding reasons in the public interest (see Case C?451/05 *ELISA* [2007] ECR I?8251, paragraph 79; *Haribo Lakritzen Hans Riegel and Österreichische Salinen*, paragraph 63; and *Commission* v *Belgium*, paragraph 68).

46 Various grounds of justification are put before the Court by the French Government, namely the need to safeguard the balanced allocation between the Member States of the power to tax, the need to guarantee the effectiveness of fiscal supervision and the preservation of the coherence of the tax system at issue in the main proceedings. With regard in particular to the grounds of justification for restrictions on the movement of capital in relation to non?Member States, the French Government relies, first, on the argument that, in that particular context, the rules at issue are necessary to guarantee the effectiveness of fiscal supervision and, second, on Article 64(1) TFEU.

47 It must be recalled that the need to safeguard the balanced allocation between the Member States of the power to tax may be accepted, in particular, where the system in question is designed to prevent conduct capable of jeopardising the right of a Member State to exercise its powers of taxation in relation to activities carried out in its territory (see Case C?231/05 *Oy AA* [2007] ECR I?6373, paragraph 54; Case C?379/05 *Amurta* [2007] ECR I?9569, paragraph 58; *Aberdeen Property Fininvest Alpha*, paragraph 66; and *Commission* v *Germany*, paragraph 77).

48 However, where a Member State has chosen not to tax resident UCITS in receipt of nationally?sourced dividends, it cannot rely on the argument that there is a need to ensure a balanced allocation between the Member States of the power to tax in order to justify the taxation of non?resident UCITS in receipt of such income (see *Amurta*, paragraph 59; *Aberdeen Property Fininvest Alpha*, paragraph 67; and *Commission* v *Germany*, paragraph 78).

49 Nor can the legislation at issue in the main proceedings be justified by the need to guarantee the effectiveness of fiscal supervision. As indeed the referring court itself observes, the effectiveness of fiscal supervision cannot justify taxation which affects solely and specifically non?residents.

50 As regards the argument concerning the need to preserve the coherence of the French tax system, the Court has previously held that the need to safeguard such coherence may justify rules that are liable to restrict fundamental freedoms (see Case C?204/90 *Bachmann* [1992] ECR I?249, paragraph 21; Case C?157/07 *Krankenheim Ruhesitz am Wannsee?Seniorenheimstatt* [2008] ECR I?8061, paragraph 43; and *Commission* v *Belgium*, paragraph 70).

51 However, for an argument based on such a justification to succeed, a direct link must be established, according to settled case?law, between the tax advantage concerned and the compensating of that advantage by a particular tax levy (*Commission* v *Belgium*, paragraph 71 and the case?law cited), with the direct nature of that link falling to be examined in the light of the objective pursued by the rules in question (Case C?418/07 *Papillon* [2008] ECR I?8947, paragraph 44, and *Aberdeen Property Fininvest Alpha*, paragraph 72).

52 As is apparent from paragraph 30 above, the exemption from withholding tax on dividends is not conditional on redistribution by the UCITS of the dividends received by it and on the shareholders in that UCITS being taxed in respect of the dividends as a means of compensating for the exemption from withholding tax.

53 Consequently, there is no direct link within the meaning of the case?law cited at paragraph 51 above between the exemption from withholding tax on nationally?sourced dividends received by a resident UCITS and the taxation of those dividends as income received by the shareholders in that UCITS.

54 Lastly, with regard in particular to the grounds of justification for restrictions on the movement of capital in relation to non?Member States, it should be noted, first, that the French Government has simply argued that, in the context of such movement and in the absence of tax conventions providing for mutual administrative assistance, the restrictions at issue should be justified by the need to guarantee the effectiveness of fiscal supervision. Admittedly, according to established case?law, such movements of capital take place in a different legal context from that of relations between Member States (*A*, paragraph 60). However, it is sufficient to note in that regard that the French Government has failed to put forward any evidence to substantiate its claim that taxation affecting solely and specifically non?resident UCITS is justified by the need for effective fiscal supervision. Second, since the references for a preliminary ruling do not seek an interpretation of Article 64(1) TFEU, there is no need to consider whether the restriction on movements of capital to or from non?Member States resulting from national legislation such as that at issue in the main proceedings could be justified under that provision.

55 In the light of all the above considerations, the answer to the questions referred is that Articles 63 TFEU and 65 TFEU must be interpreted as precluding the legislation of a Member State which provides for the taxation, by means of withholding tax, of nationally sourced dividends when they are received by UCITS resident in another State, whereas such dividends are exempt from tax when received by UCITS resident in the Member State in question.

The temporal effects of this judgment

56 When presenting oral argument, the French Government asked the Court to limit the temporal effects of this judgment, in the event that it ruled that national legislation such as that at issue in the main proceedings is incompatible with Articles 63 TFEU and 65 TFEU.

57 In support of its request, that government, first, drew the Court’s attention to the grave financial consequences which a judgment giving such a ruling would have. Second, it argued that, in the light of the conduct of the European Commission and that of other Member States, the French Republic was entitled to take the view that the legislation at issue in the main proceedings complied with European Union law.

58 In that connection, regard must be had to the settled case?law of the Court to the effect that the interpretation which, in the exercise of the jurisdiction conferred on it by Article 267 TFEU, the Court gives to a rule of European Union law clarifies and defines the meaning and scope of that

rule as it must be or ought to have been understood and applied from the time of its entry into force. It follows that the rule as thus interpreted may, and must, be applied by the courts even to legal relationships which arose and were established before the judgment ruling on the request for interpretation, provided that in other respects the conditions for bringing a dispute relating to the application of that rule before the competent courts are satisfied (see, in particular, Case C?347/00 *Barreira Pérez* [2002] ECR I?8191, paragraph 44; Joined Cases C?453/02 and C?462/02 *Linneweber and Akritidis* [2005] ECR I?1131, paragraph 41; and Case C?292/04 *Meilicke and Others* [2007] ECR I?1835, paragraph 34).

59 It is only exceptionally that the Court may, in application of the general principle of legal certainty inherent in the legal order of the European Union, decide to restrict for any person concerned the right to rely on a provision which it has interpreted with a view to calling in question legal relationships established in good faith. Two essential criteria must be fulfilled before such a limitation can be imposed, namely that those concerned should have acted in good faith and that there should be a risk of serious difficulties (see, inter alia, Case C?402/03 *Skov and Bilka* [2006] ECR I?199, paragraph 51, and Case C?2/09 *Kalinchev* [2010] ECR I?4939, paragraph 50).

60 More specifically, the Court has taken that step only in quite specific circumstances, where there was a risk of serious economic repercussions owing in particular to the large number of legal relationships entered into in good faith on the basis of rules considered to be validly in force and where it appeared that individuals and national authorities had been led to adopt practices which did not comply with European Union law by reason of objective, significant uncertainty regarding the implications of European Union provisions, to which the conduct of other Member States or the Commission may even have contributed (see, inter alia, Case C?423/04 *Richards* [2006] ECR I?3585, paragraph 42, and *Kalinchev*, paragraph 51).

61 As regards the French Government’s argument concerning the objective, significant uncertainty regarding the implications of European Union provisions, that government has failed to specify how the conduct of the Commission and other Member States may have contributed to such uncertainty. In any event, any argument alleging objective, significant uncertainty regarding the implications of European Union provisions cannot be accepted in the actions in the main proceedings. According to the established case?law of the Court cited at paragraph 27 above, for the purpose of determining whether legislation such as that at issue in the main proceedings is compatible in the light of Articles 63 TFEU and 65 TFEU, the assessment as to whether situations are comparable must be carried out at the level chosen by the Member State itself, namely, in the present case, at the level of the UCITS. Moreover, as stated by the referring court, no particular problem arises in assessing whether legislation such as that at issue in the main proceedings is compatible in the light of Article 63 TFEU and 65 TFEU if the situations must be compared at UCITS level.

62 As regards the French Government’s reference to the far?reaching budgetary consequences of the Court’s present judgment, it is settled case?law that the financial consequences which might ensue for a Member State from a preliminary ruling do not in themselves justify limiting the temporal effects of the ruling (Case C?184/99 *Grzelczyk* [2001] ECR I?6193, paragraph 52; Case C?209/03 *Bidar* [2005] ECR I?2119, paragraph 68; and *Kalinchev*, paragraph 52). In the present case, the French Republic, which requested only at the hearing that the temporal effects of the present judgment be limited, failed to put forward any data at the hearing which would have enabled the Court to consider whether the French Republic actually risks incurring serious economic repercussions.

63 Accordingly, there is no need to limit the temporal effects of this judgment.

Costs

64 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 (Third Chamber) hereby rules:

Articles 63 TFEU and 65 TFEU must be interpreted as precluding the legislation of a Member State which provides for the taxation, by means of withholding tax, of nationally?sourced dividends when they are received by undertakings for collective investments in transferable securities resident in another State, whereas such dividends are exempt from tax when received by undertakings for collective investments in transferable securities resident in the Member State in question.

[Signatures]

* Language of the case: French.