JUDGMENT OF THE COURT (First Chamber)

23 February 2006 *

In Case C-471/04,

REFERENCE for a preliminary ruling under Article 234 EC from the Bundesfinanzhof (Germany), made by decision of 14 July 2004, received at the Court on 5 November 2004, in the proceedings

Finanzamt Offenbach am Main-Land

v

Keller Holding GmbH,

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, N. Colneric, K. Lenaerts (Rapporteur), E. Juhász and E. Levits, Judges,

* Language of the case: German.

Advocate General: M. Poiares Maduro,
Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 1 December 2005,

after considering the observations submitted on behalf of:

— the Finanzamt Offenbach am Main-Land, by V. Hageböck, acting as Agent,

— Keller Holding GmbH, by K. Friedrich and H. Rehm, tax advisers, and J. Nagler, Rechtsanwalt,

— the German Government, by N. Wunderlich and U. Forsthoff, acting as Agents,

— the United Kingdom Government, by C. Jackson, acting as Agent, and S. Moore and J. Stratford, Barristers,

— the Commission of the European Communities, by R. Lyal and K. Gross, acting as Agents,

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

Judgment

1 This reference for a preliminary ruling relates to the interpretation of Article 52 of the EC Treaty (now, after amendment, Article 43 EC), Article 58 and Article 73b of the EC Treaty (now Article 48 EC and Article 56 EC).

2 The reference was made in the course of proceedings between the Finanzamt Offenbach am Main-Land and Keller Holding GmbH ('Keller Holding'), a company subject to unlimited tax liability in Germany, in relation to non-deductibility for tax purposes of financing costs having an economic link with dividends paid to it by an indirect subsidiary established in Austria.

Legal context

Agreement on the European Economic Area

3 Article 6 of the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3; 'the EEA Agreement') provides:

'Without prejudice to future developments of case-law, the provisions of this Agreement, in so far as they are identical in substance to corresponding rules of the

Treaty establishing the European Economic Community and the Treaty establishing the European Coal and Steel Community and to acts adopted in application of these two Treaties, shall, in their implementation and application, be interpreted in conformity with the relevant rulings of the Court of Justice of the European Communities given prior to the date of signature of this Agreement.'

4 Article 31(1) of the EEA Agreement is worded as follows:

'Within the framework of the provisions of this Agreement, there shall be no restrictions on the freedom of establishment of nationals of an EC Member State or an EFTA [European Free Trade Association] State in the territory of any other of these States. This shall also apply to the setting-up of agencies, branches or subsidiaries by nationals of any EC Member State or EFTA State established in the territory of any of these States.

Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of Article 34, second paragraph, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of Chapter 4.'

5 Article 34 of the EEA Agreement provides:

'Companies or firms formed in accordance with the law of an EC Member State or an EFTA State and having their registered office, central administration or principal place of business within the territory of the Contracting Parties shall, for the purposes of this Chapter, be treated in the same way as natural persons who are nationals of EC Member States or EFTA States.

"Companies or firms" means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making.'

Community law

6 Under Article 4(1) and (2) 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):

'1. Where a parent company, by virtue of its association with its subsidiary, receives distributed profits, the State of the parent company shall, except when the latter is liquidated, either:

— refrain from taxing such profits, or

— tax such profits while authorising the parent company to deduct from the amount of tax due that fraction of the corporation tax paid by the subsidiary which relates to those profits ... .

2. However, each Member State shall retain the option of providing that any charges relating to the holding and any losses resulting from the distribution of the profits of the subsidiary may not be deducted from the taxable profits of the parent company. ...'

The Convention between the Federal Republic of Germany and the Republic of Austria relating to avoidance of double taxation

7 Article 15 of the Convention of 4 October 1954 between the Federal Republic of Germany and the Republic of Austria relating to avoidance of double taxation in the areas of tax on income and property and of business and land taxation ('the Tax Convention') provides that '... the State of residence exempts income from profit distributions which a company having its registered office in that State receives from another company established in the other State and at least 10% of the capital of which is directly owned by the first company'.

National law

8 Paragraph 8b(1) of the Law on Corporation Tax 1991 (Körperschaftsteuergesetz 1991; 'the KStG'), entitled 'Shareholdings in foreign companies', provides that dividends which a corporation subject to unlimited tax liability receives from a capital company subject to unlimited tax liability are not taken into account in the calculation of taxable income in so far as the part amount from exempted foreign revenue 'is deemed to have been used for that purpose'.

9 That provision allows inter alia a corporation subject to unlimited tax liability in Germany to redistribute within its group dividends received from companies established in Austria, which are themselves exempted from tax in Germany by virtue of Article 15 of the Tax Convention, without the dividends thereby redistributed being included in the basis of assessment of the company which received them.

10 In a purely domestic case, the dividends which a company subject to unlimited tax liability in Germany distributes to another company subject to unlimited tax liability are included, for the latter, in the basis of assessment for corporation tax. However, to avoid double taxation of the profits distributed, Paragraph 36(2)(3) of the Law on Income Tax of 1990 (Einkommensteuergesetz 1990; 'the EStG') provides that the tax paid by a company subject to unlimited tax liability and distributing dividends is set against the tax payable by the shareholder who receives the dividends. Accordingly, even if the dividends are included in the basis of assessment of companies subject to unlimited tax liability in Germany, those companies are exempt from tax on dividends received as a result of the method of offsetting tax already paid.

11 Paragraph 3c of the EStG provides that, in so far as it has a direct economic link to tax-free profits, expenditure may not be deducted as constituting operating expenditure for the determination of the basis of assessment.

12 Under that provision, in conjunction with Paragraph 8b(1) of the KStG, the prohibition on the deduction of financing costs relating to a holding in a company does not apply if no dividends are distributed on a tax-free basis. Conversely, if dividends are distributed on a tax-free basis, the financing costs of the holding are not deductible in so far as they correspond proportionately to those dividends.

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

13 During the period 1993 to 1995, Keller Holding, which has its registered office and seat of management in Germany, held as sole shareholder, in particular, the shares in

another company established in Germany, Keller Grundbau GmbH ('Keller Grundbau'). The latter in turn owned the shares in Keller Grundbau GmbH Wien ('Keller Wien'), a company established in Austria.

14 In respect of the years 1994 and 1995, Keller Wien distributed dividends which, in accordance with the provisions of the Tax Convention, were received tax-free by Keller Grundbau, which forwarded them to Keller Holding. In accordance with Paragraph 8b(1) of the KStG, the dividends thereby redistributed were not taken into account in the calculation of the basis of assessment for corporation tax to which Keller Holding was liable.

15 Keller Holding deducted as operating expenditure the entire amount of the interest on the capital borrowed to acquire its shareholding in Keller Grundbau and of the incidental administrative costs. The Finanzamt Offenbach-Stadt, which was the tax office responsible at that time for Keller Holding's corporation tax, refused, by reference to Paragraph 8b(1) of the KStG in conjunction with Paragraph 3c of the EStG, the deduction of those costs to the extent to which they corresponded proportionately to the tax-free dividends, in particular those derived from Keller Wien.

16 Keller Holding brought an action before the Hessische Finanzgericht (Hessen Finance Court), which allowed it in so far as it concerned the tax decisions in respect of the years 1994 and 1995. Indeed, that court held that the national legislation in question was contrary to Articles 52, 58 and 73b of the Treaty.

17 Thereafter, the Finanzamt Offenbach am Main-Land became responsible for the taxation of Keller Holding. It then brought an appeal on a point of law ('Revision') before the Bundesfinanzhof (Federal Finance Court) against the decision of the Hessische Finanzgericht, which had ruled in favour of that company.

18 The Bundesfinanzhof finds that since dividends paid to a parent company subject to unlimited tax liability in Germany by its indirect subsidiary established in Austria are excluded from the basis of assessment of that parent company, in application of Paragraphs 8b(1) of the KStG and 3c of the EStG, expenditure relating to the latter's shareholdings is not deductible in so far as it corresponds proportionately to the tax-free dividends. On the other hand, the dividends received by a company subject to unlimited tax liability in Germany from an indirect subsidiary established in Germany are included in the basis of assessment of the recipient company and the expenditure relating to its shareholdings is deductible expenditure, even if, because the tax paid by the company distributing dividends is set against the tax payable by the shareholder who receives the dividends, the companies subject to unlimited tax liability in Germany are, in reality, exempt from tax on dividends paid by other companies established in Germany.

19 In those circumstances, the Bundesfinanzhof decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Is it contrary to Article 52, in conjunction with Article 58, of the Treaty ... and to Article 73b of that Treaty ... if financing costs incurred by a corporation which have a direct economic link to profits, not subject to tax in Germany, derived from a holding in a capital company established in another Member State may be deducted as operating expenditure only in so far as no profits from that holding are distributed on a tax-free basis?'

Concerning the question referred

20 By its question, the referring court asks essentially whether the provisions of the EC Treaty relating to freedom of establishment and free movement of capital preclude

legislation of a Member State which excludes the possibility for a parent company subject to unlimited tax liability in that State of deducting for tax purposes financing costs relating to dividends which are exempt from tax, because they are derived from an indirect subsidiary established in another Member State.

Preliminary observations

21 It is apparent from the order for reference that the possibility of deducting, in respect of the 1994 and 1995 tax years, financing costs relating to Keller Holding's shareholding in Keller Grundbau was refused in so far as they relate to dividends paid by an indirect subsidiary established in Austria to a German subsidiary and passed on by the latter to the parent company.

22 It is appropriate at the outset to reject the argument of the Finanzamt Offenbach am Main-Land and the German and United Kingdom Governments to the effect that the main proceedings concern a situation purely internal to a Member State such that there is no need to interpret the provisions of the Treaty on freedom of establishment or free movement of capital.

23 Although the main proceedings admittedly relate to a parent company having its registered office in Germany which challenges the decision of the German tax authorities refusing it the benefit of deducting expenditure incurred for the purpose of acquiring a shareholding in a subsidiary also established in Germany, that does not detract from the fact that that decision is based on national legislation which excludes the possibility of deducting that expenditure because of the direct economic link which is alleged to exist between it and dividends paid by an indirect subsidiary established in Austria and which, as such, are exempt from corporation tax in Germany, in accordance with Article 15 of the Tax Convention.

24 Given that the legislation at issue in the main proceedings applies to situations related to intra-Community trade, the problem raised by those proceedings may fall within the scope of the provisions of the Treaty relating to the fundamental freedoms (see, to that effect, Case 286/81 *Oosthoek's Uitgeversmaatschappij* [1982] ECR 4575, paragraph 9, and Case C-300/01 *Salzmann* [2003] ECR I-4899, paragraph 32).

25 Moreover, it must be recalled that the Republic of Austria did not join the European Union until 1 January 1995. It follows that, to the extent that the main proceedings relate to events which occurred in 1994, the Treaty did not apply to that State.

26 However, it is for the Court to provide the national court with all those elements for the interpretation of Community law which may be of assistance in adjudicating on the case pending before it, whether or not that court has specifically referred to them in its questions (see, inter alia, Case C-87/97 *Consorzio per la tutela del formaggio Gorgonzola* [1999] ECR I-1301, paragraph 16, and Case C-456/02 *Trojani* [2004] ECR I-7573, paragraph 38).

27 Accordingly, as stated by Keller Holding and the Commission of the European Communities, account must be taken, to the extent that the reference for a preliminary ruling relates to facts dating from 1994, of the provisions of the EEA Agreement relating to freedom of establishment and free movement of capital, which applied to relations between the Federal Republic of Germany and the Republic of Austria from 1 January 1994 and until the latter's accession to the European Union.

Interpretation of the provisions on freedom of establishment

28 First of all, it should be recalled that, according to settled case-law, although direct taxation falls within their competence, the Member States must none the less exercise that competence consistently with Community law (Case C-311/97 *Royal Bank of Scotland* [1999] ECR I-2651, paragraph 19, and Case C-319/02 *Manninen* [2004] ECR I-7477, paragraph 19).

29 The freedom of establishment conferred by Article 52 of the Treaty on Community nationals, which entails for them access to, and pursuit of, activities as self-employed persons and the forming and management of undertakings on the same conditions as those laid down for its own nationals by the laws of the Member State of establishment, includes, pursuant to Article 58 of the Treaty, the right of companies or firms formed in accordance with the laws of a Member State and having their registered office, central administration or principal place of business within the Community to pursue their activities in the Member State concerned through a subsidiary, a branch or an agency (Case C-307/97 *Saint-Gobain ZN* [1999] ECR I-6161, paragraph 35).

30 Furthermore, even though, according to their wording, the provisions concerning freedom of establishment are directed to ensuring that foreign nationals and companies are treated in the host Member State in the same way as nationals of that State, they also prohibit the Member State of origin from hindering the establishment in another Member State of one of its nationals or of a company incorporated under its legislation (Case C-264/96 *ICI* [1998] ECR I-4695, paragraph 21).

31 In accordance with the legislation at issue in the main proceedings, dividends paid by an indirect subsidiary and redistributed to the parent company by a subsidiary of

the latter are included in the assessment of tax payable by that parent company when all the companies concerned are subject to unlimited tax liability in Germany. However, by virtue of the method of offsetting tax already paid, those dividends are, in reality, exempt from tax.

32 Conversely, dividends paid under the same conditions by an indirect subsidiary established in Austria are, in accordance with Article 15 of the Tax Convention, directly exempted from tax and are not therefore included in the assessment of tax payable by the parent company subject to unlimited tax liability in Germany.

33 Since, in accordance with Paragraph 3c of the EStG, expenditure which has a direct economic link with non-taxable profits cannot be deducted as operating expenditure, the financing costs incurred by a parent company subject to unlimited tax liability in Germany and which has an indirect holding in a subsidiary established in Austria are not deductible to the extent that they relate to dividends paid by the latter and redistributed to the parent company under the tax-free scheme. On the other hand, where all the companies concerned are liable for tax in Germany, such expenditure is deductible in its entirety. In such a case, the dividends distributed are included in the assessment to tax for which the shareholder company is liable, even if, in reality, they are also exempt from tax.

34 It follows that the tax position of a company having an indirect subsidiary in Austria, like the defendant in the main proceedings, is less favourable than it would have been had that indirect subsidiary been established in Germany. It is true that, in both cases, dividends can be transferred within the group without being taxed, because of, respectively, exemption of the dividends paid by companies established in Austria in application of the Tax Convention or, where the indirect subsidiary is established in Germany, by the method of setting the tax paid by the company which distributed dividends against the tax payable by the company which received them. However, it

is only where the indirect subsidiary is established in Germany that financing costs having an economic link with the dividends paid by that subsidiary may be deducted in their entirety.

35 In the light of that difference in treatment, a parent company might be dissuaded from carrying on its activities through the intermediary of subsidiaries or indirect subsidiaries established in other Member States (see, to that effect, Case C-168/01 *Bosal* [2003] ECR I-9409, paragraph 27).

36 However, the German and United Kingdom Governments maintain, first, that such a difference in treatment does not constitute a restriction on freedom of establishment because the position of a parent company established in a Member State having an indirect subsidiary which has its registered office in the same State is not comparable to that of a parent company whose indirect subsidiary is established in another Member State. They point to the fact that, whereas dividends paid by a national indirect subsidiary are included in the basis of assessment of the parent company, dividends paid by an Austrian indirect subsidiary are exempt from tax. The restriction on the deductibility of the financing costs is the corollary of the non-taxable nature of dividends from abroad. The fact that Keller Holding does not benefit from the method of offsetting tax is due to the fact that Keller Wien is established in Austria and, therefore, is subject to Austrian corporation tax. Thus, the latter, unlike an indirect subsidiary established in Germany, paid corporation tax to the Austrian, and not the German, tax authorities.

37 In that regard, it is noteworthy that, as far as the taxation of dividends received is concerned, parent companies subject to unlimited tax liability in Germany are in a comparable position whether they receive dividends from an indirect subsidiary established in that Member State or from an indirect subsidiary having its registered office in Austria. In both cases, the dividends received by the parent company are, in

reality, exempt from tax. Accordingly, a restriction on the deductibility of a parent company's financing costs — as a corollary of the non-taxation of dividends — which affects solely dividends from abroad does not reflect a difference in the situation of parent companies according to whether the indirect subsidiary owned by the latter has its registered office in Germany or in another Member State.

38 In that regard, the fact that indirect subsidiaries established in Austria are not subject to corporation tax in Germany is not relevant. The difference in tax treatment at issue in the main proceedings relates to parent companies according to whether or not they have indirect subsidiaries in Germany, even though those parent companies are all established in that Member State. As far as the tax situation of the latter is concerned as regards the dividends paid by their indirect subsidiaries, the fact remains that those dividends do not give rise to tax being levied on the parent companies, whether they are derived from indirect subsidiaries taxable in Germany or in Austria.

39 Second, referring to Case C-204/90 *Bachmann* [1992] ECR I-249 and Case C-300/90 *Commission* v *Belgium* [1992] ECR I-305, the German and United Kingdom Governments maintain that the tax legislation at issue in the main proceedings is objectively justified by the need to maintain the coherence of the national tax system. There is a direct link, in connection with the same tax, between the grant of a tax advantage, that is, the deductibility of financing costs linked to a shareholding acquired by a company in another company, and the offsetting of that advantage by means of a fiscal levy, in this case, the taxation of the dividends distributed. Conversely, the financial disadvantage of a parent company such as that in the main proceedings, that is, the impossibility of deducting that expenditure, is offset by a corresponding advantage, in this case, the receipt of tax-free dividends.

40 In that respect, it should be pointed out that, in paragraphs 28 and 21 respectively of the judgments in *Bachmann* and *Commission* v *Belgium*, the Court recognised that the need to maintain the cohesion of a tax system can justify a restriction on the exercise of the fundamental freedoms guaranteed by the Treaty. However, for an argument based on such a justification to succeed, a direct link must be established between the tax advantage concerned and the offsetting of that advantage by a particular tax levy (see, to that effect, Case C-484/93 *Svensson and Gustavsson* [1995] ECR I-3955, paragraph 18; *ICI*, paragraph 29; and *Manninen*, paragraph 42).

41 It is apparent from the examination of the national legislation at issue that companies subject to unlimited tax liability in Germany which control a subsidiary or an indirect subsidiary established in that same Member State benefit both from the tax deductibility of the financing costs relating to their shareholdings and from tax exemption for dividends by application of the method of offsetting tax. By contrast, even though the dividends which parent companies subject to unlimited tax liability in Germany receive from a subsidiary or an indirect subsidiary established in Austria are also exempt from tax, the tax deduction of expenditure relating to their shareholdings is always excluded.

42 Thus, it is not possible to accept, as regards the need to maintain coherence in tax matters, the argument according to which, for a German parent company which has received dividends distributed by an indirect subsidiary established in Austria, the non-deductibility of its financing costs offsets the tax advantage constituted by the exemption of those dividends where, in the case of a parent company receiving dividends from an indirect subsidiary established in Germany, the tax advantage consisting in the deductibility of financing costs relating to its shareholdings in subsidiaries does not in fact correspond to any tax levy on the dividends distributed to that parent company. As the German Government itself maintains, in the latter case, in order to avoid double economic taxation of the dividends distributed, the charge to corporation tax of dividends distributed is compensated by being set against the tax paid by the distributing company.

43 In order to establish that it is necessary to maintain the coherence of the tax system, the German Government cannot rely on the fact that the profits realised by the foreign indirect subsidiary — unlike those of the indirect subsidiary established in Germany — are not taxable in that Member State. The legislation at issue in the main proceedings does not establish any relationship between the deductibility of the financing costs relating to the shareholdings of the parent company and the profits in respect of which the indirect subsidiary is liable to tax. Moreover, the profits realised by that indirect subsidiary, which enabled it to distribute dividends, are subject to corporation tax in Austria, just as the profits of an indirect subsidiary which has its registered office in Germany are taxable in that Member State, since the place of establishment of the parent company is of no importance in that regard.

44 For the same reasons, the national legislation at issue in the main proceedings cannot be justified by reference to the principle of territoriality, as acknowledged by the Court in paragraph 22 of the judgment in Case C-250/95 *Futura Participations and Singer* [1997] ECR I-2471. That legislation cannot be regarded as an application of that principle since it excludes the deductibility of financing costs incurred by a parent company subject to unlimited tax liability in Germany and receiving dividends from an indirect subsidiary established in Austria by reason of the fact that they are exempt from tax in Germany, whereas dividends paid to the same parent company by an indirect subsidiary subject to unlimited tax liability in Germany and having its registered office in that Member State also benefit in fact, by means of the method of offsetting the tax paid by the distributing company, from such an exemption.

45 Nor is the German Government entitled, in order to justify the national legislation at issue in the main proceedings, to rely on the fact that the legislation merely implements a taxing power provided for in Article 4(2) of Directive 90/435, which affords to each Member State the option of providing, where a parent company receives profits distributed by a subsidiary established in another Member State — profits which the first Member State refrains from taxing or taxes while authorising that parent company to deduct from the amount of tax due that fraction of the

corporation tax paid by the subsidiary which relates to those profits —, that charges relating to that holding may not be deducted from the taxable profits of that parent company. Irrespective of the question whether that directive applies to the present case, such an option can be exercised only in compliance with the fundamental provisions of the Treaty, in this case Article 52 thereof.

46 Since it has not been established that the national legislation at issue in the main proceedings is justified by overriding reasons in the public interest, it must be concluded that Article 52 of the Treaty precludes such legislation.

47 In so far as that legislation applies to events which took place in 1994, it is appropriate to refer to the provisions relating to freedom of establishment as set out in the EEA Agreement.

48 As Article 6 thereof states, the provisions of that agreement, in so far as they are identical in substance to corresponding rules of the Treaty and to acts adopted in application of that Treaty, must, in their implementation and application, be interpreted in conformity with the relevant rulings of the Court given prior to the date of signature of that agreement. Furthermore, both the Court and the EFTA Court have recognised the need to ensure that the rules of the EEA Agreement which are identical in substance to those of the Treaty are interpreted uniformly (Case C-452/01 *Ospelt and Schlössle Weissenberg* [2003] ECR I-9743, paragraph 29; Case C-286/02 *Bellio F.lli* [2004] ECR I-3465, paragraph 34; see also the judgment of the EFTA Court of 12 December 2003 in Case E-1/03 *EFTA Surveillance Authority* v *Iceland*, EFTA Court Report, p. 143, paragraph 27).

49 It must be observed that the rules prohibiting restrictions on the freedom of establishment, set out in Article 31 of the EEA Agreement, are identical to those imposed by Article 52 of the Treaty.

50 In these circumstances, the answer to the question referred must be that Article 52 of the Treaty and Article 31 of the EEA Agreement must be interpreted as precluding legislation of a Member State which excludes the possibility of deducting for tax purposes financing costs incurred by a parent company subject to unlimited tax liability in that State in order to acquire holdings in a subsidiary where those costs relate to dividends which are exempt from tax because they are derived from an indirect subsidiary established in another Member State or in a State which is party to the Agreement, whereas such costs may be deducted where they relate to dividends paid by an indirect subsidiary established in the same Member State as that of the place of the registered office of the parent company and which, in reality, also benefit from a tax exemption.

Interpretation of the provisions relating to free movement of capital

51 Since the provisions of the Treaty and of the EEA Agreement relating to freedom of establishment thus preclude national legislation such as that at issue in the main proceedings, it is not necessary to consider whether the provisions of the Treaty relating to free movement of capital also preclude that legislation.

Costs

52 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 (First Chamber) hereby rules:

Article 52 of the EC Treaty (now, after amendment, Article 43 EC) and Article 31 of the Agreement on the European Economic Area of 2 May 1992 must be interpreted as precluding legislation of a Member State which excludes the possibility of deducting for tax purposes financing costs incurred by a parent company subject to unlimited tax liability in that State in order to acquire holdings in a subsidiary where those costs relate to dividends which are exempt from tax because they are derived from an indirect subsidiary established in another Member State or in a State which is party to the Agreement, whereas such costs may be deducted where they relate to dividends paid by an indirect subsidiary established in the same Member State as that of the place of the registered office of the parent company and which, in reality, also benefit from a tax exemption.

[Signatures]