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SOUDNÍ DVŮR EVROPSKÝCH SPOLEČENSTVÍ  
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GERICHTSHOF DER EUROPÄISCHEN GEMEINSCHAFTEN  
EUROOPA ÜHENDUSTE KOHUS  
ΔΙΚΑΣΤΗΡΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ  
COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES  
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES  
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH  
CORTE DI GIUSTIZIA DELLE COMUNITÀ EUROPEE  
EIROPAS KOPIENU TIESA



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I KÖZÖSSÉGEK BÍRÓSÁGA  
IL-QORTI TAL-GUSTIZZJA TAL-KOMUNITAJIET EWROPEJ  
HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN  
TRYBUNAŁ SPRAWIEDLIWOŚCI WSPÓLNOT EUROPEJSKICH  
TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPEIAS  
SÚDNY DVOR EURÓPSKÝCH SPOLOČENSTEV  
SODIŠČE EVROPSKIH SKUPNOSTI  
EUROOPAN YHTEISÖJEN TUOMIOISTUIN  
EUROPEISKA GEMENSKAPERNAS DOMSTOL

## Press and Information

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Advocate General's Opinion in Case C-292/04

*Meilicke and Others v Finanzamt Bonn-Innenstadt*

### **ADVOCATE GENERAL STIX-HACKL PROPOSES THAT THE TEMPORAL EFFECTS OF THE JUDGMENT IN MEILICKE REGARDING THE COMPATIBILITY OF GERMAN PROVISIONS ON THE TAXATION OF DIVIDENDS SHOULD NOT BE LIMITED**

*The Federal Republic of Germany has not adduced sufficient evidence of serious economic repercussions*

The German Income Tax Law provided for a tax credit for dividends. It is a mechanism by which taxpayers can deduct a percentage of dividends paid to them by German companies. This rule does not apply to dividends paid by companies established in other Member States.<sup>1</sup>

Between 1995 and 1997 Heinz Meilicke, a German national living in Germany, received dividends on shares he held in Dutch and Danish companies. In 2000 the heirs of Mr Meilicke, who had died in the meantime, applied unsuccessfully to the Finanzamt Bonn-Innenstadt for a tax credit in respect of those dividends.

The Finanzgericht Köln, to which they then appealed, referred a question to the Court of Justice of the European Communities asking whether the provisions of Community law on the free movement of capital allowed tax rules such as the German rules.

In his Opinion of 10 November 2005 Advocate General Tizzano took the view that the German tax rules were incompatible with the free movement of capital within the meaning of the EC Treaty. However, the conditions for a limitation of the temporal effects of such a ruling were met. In view of the amount of the reimbursement proposed at the time there would be a risk of serious economic repercussions if there were no limitation of temporal effects. Moreover, until the judgment in *Verkooijen*<sup>2</sup> of 6 June 2000, the scope of the

<sup>1</sup> The Federal Republic of Germany abolished this system by a law of 2000 which was applicable as of the 2001 tax year.

<sup>2</sup> Case C-35/98 [2000] ECR I-4071.

provisions on the free movement of capital in relation to tax mechanisms such as that at issue was not entirely clear.

In view of the importance of the question of a possible limitation of the temporal effects of the judgment to be delivered, after the hearing of the Opinion the case was assigned to the Grand Chamber which decided to reopen the oral procedure. Advocate General Christine Stix Hackl has now put a second Opinion before the Court.

First, in the view of the Advocate General, the fact that the Court of Justice has already interpreted the relevant provisions of Community law in earlier judgments without limiting their temporal effects does not preclude an application for a limitation of the temporal effects of this judgment. The uncertain outcome of proceedings on a reference for a preliminary ruling on a new question of law makes it difficult for Member States to assess the significance of the proceedings concerned for their own legal system exactly and at the right time.

The Advocate General then points out that a limitation of the temporal effects of a judgment may only be ordered exceptionally, where there is a risk of serious economic repercussions and there was objective, significant uncertainty regarding the implications of Community law provisions. The Member State seeking a limitation of the temporal effects of a judgment must demonstrate and, if necessary, adduce evidence that both conditions are fulfilled.

The Advocate General voices doubts as to whether the requirement of evidence is fulfilled as regards both conditions. However, the question whether there was objective, significant legal uncertainty, from the point of view, also, of the conduct of the Commission, can be left aside since in any case the Federal Republic of Germany has not adduced sufficient evidence that a finding of incompatibility by the Court would create the risk of serious economic repercussions. The level of financial budgetary repercussions is not in itself sufficient evidence of such a risk.

Finally, the Advocate General points to the possibility Member States have, even in the absence of a limitation of the temporal effects of the judgment, of laying down appropriate time limits for bringing a claim in the interests of legal certainty in order to protect both the taxpayer and the authorities.

**IMPORTANT: The Advocate General's Opinion is not binding on the Court. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court of Justice are now beginning their deliberations in this case. Judgment will be given at a later date.**

*Unofficial document for media use, not binding on the Court of Justice.*

*Languages available: DE, EN, FR*

*The full text of the Opinion may be found on the Court's internet site  
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-292/04>*

*It can usually be consulted after midday (CET) on the day of delivery.*

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