



Press and Information

Court of Justice of the European Union

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Judgment in Case C-416/17
Commission v France

The Conseil d'État should have referred a question to the Court for a preliminary ruling concerning the interpretation of EU law, in order to determine whether it was necessary to refuse to take into account the tax incurred by a non-resident subsidiary on the profits underlying dividends redistributed by a non-resident company

By disregarding the mechanism for the avoidance of economic double taxation, France failed to fulfil its obligations under EU law.

In its judgment in *Accor*¹, the Court of Justice held that the difference in the treatment of dividends distributed by a resident subsidiary and those distributed by a non-resident subsidiary was contrary to EU law and that the French mechanism for avoidance of double taxation was incompatible with the provisions of the Treaty.

The Conseil d'État (Council of State, France), following the *Accor* judgment, delivered several judgments which gave rise to complaints addressed to the Commission. The Commission found that certain conditions relating to the reimbursement of the advance payment established by those judgments were likely to constitute infringements of EU law. After France refused to comply with the Commission's opinion calling upon it to adopt certain measures, the Commission brought an action for failure to fulfil obligations before the Court of Justice.

In today's judgment, the Court considers that, in the context of tax rules which seek to prevent the double economic taxation of distributed profits, the situation of a corporate shareholder receiving foreign-sourced dividends is comparable to that of a corporate shareholder receiving nationally-sourced dividends, in so far as, in both cases, the profits made are, in principle, liable to be subject to a series of charges to tax. EU law requires a Member State which has a system for the avoidance of double economic taxation as regards dividends paid to residents by resident companies to treat dividends paid to residents by resident companies in the same way as dividends paid to residents by non-resident companies.

The Court thus finds that **France was required, in order to bring an end to the discriminatory treatment in the application of the tax mechanism seeking to avoid the economic double taxation of distributed dividends, to take into account the taxation levied earlier on the distributed profits resulting from the exercise of the tax powers of the Member State in which the dividends originated, within the limits of its own powers of taxation, irrespective of the level of the chain of interests on which that tax was levied, that is to say a subsidiary or a sub-subsidiary. France therefore failed to fulfil its obligations under EU law.**

Concerning the complaint that the Conseil d'État should have made a reference for a preliminary ruling before determining the arrangements for reimbursement of the advance payment, the levying of which had been deemed incompatible with EU law by the judgment in *Accor*, the Court points out that a Member State's failure to fulfil obligations may, in principle, be established whatever the agency of that State whose action or inaction is the cause of the failure to fulfil its obligations, even in the case of a constitutionally independent institution. In addition, where there is

¹ Case: [C-310/09](#) *Accor*

no judicial remedy against the decision of a national court, that court is in principle obliged to make a reference to the Court where a question of the interpretation of the Treaty is raised before it.

The Court also states that the obligation to make a reference laid down in that provision is intended in particular to prevent a body of national case-law that is not in accordance with the rules of EU law from being established in any of the Member States. That obligation does not apply, by way of exception, when the national court finds that the question raised is irrelevant or that the provision of EU law in question has already been interpreted by the Court or that the correct application of EU law is so obvious as to leave no scope for any reasonable doubt.

For the first time, the Court finds that **a court or tribunal against whose decisions there is no judicial remedy under national law should have requested a preliminary ruling from the Court of Justice in order to avert the risk of an incorrect interpretation of EU law**. Since the Conseil d'État failed to make that reference, even though the correct application of EU law in its judgments was not so obvious as to leave no scope for doubt, the infringement is established.

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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