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moment paying the invoice until the moment the VAT refund actually takes place, which period may differ from country to country.

Furthermore, there is a discussion with respect to the qualification of telecom related supplies and services for VAT purposes, such as the provision of ducts (tube containing a number of fibre pairs), dark fibre (fibre wire that is not yet connected to a network) and enlightened fibre (operational fibre connected to a network), hosting of telecom lines and telecom equipment (switch boards, amplifiers etc.) by one telecom provider to another. Some of these transactions (such as the sale or leasing of ducts and space in a telecom-hotel) can be regarded as the supply or service of immovable assets. This may imply VAT-exempt supplies, non-deductible input VAT and/or real estate transfer tax.

With respect to telecom-related services, the question about the place of taxability in cases of cross-border services also arises. Since telecom services and the leasing of movable assets follow the rules of Art. 9(2)(e), which means that where an EU telecom provider supplies leasing or telecom services to a taxable person in another EC country the VAT in connection with the telecom services is levied from the recipient and the reverse charge mechanism prevents red-tape and the financing of foreign VAT. Telecom services includes the related transfer of assignment of the right to use of (telecom) capacity.[8] According to the Netherlands Government[9] this also includes the provision of networks and telecom infrastructure such as cables and satellites. This interpretation supports the view that telecom-related services should fall under rule for taxability in the country of the recipient and the reverse charge mechanism. However, in practice in some European countries the sale and leasing of ducts and dark fibre may be taxable in the place where these assets are situated.

4. Conclusion

The telecom industry can be faced with the levy of VAT in many different ways. The current VAT rules concerning the place of supply of telecom services is momentarily under revision in a new proposal to amend the Sixth VAT Directive. The European Council of Economic and Finance Ministers will discuss this proposal which received a lot of criticism at the meeting on 13 December 2001.

Besides the levying of VAT, the telecom industry can also be faced with other indirect taxes such as the real estate transfer tax. Momentarily, there is an ongoing discussion in the Netherlands regarding whether the transfer of a cable network triggers real estate transfer tax.

Leasing of telecom networks and network-related services are complicated in cases of cross-border services and the current VAT system does not guarantee full tax-neutrality for the telecom business.

8 See Art. 9(2)(e).
9 Netherlands Parliament 1996/97, 25 379, no. 3.

The implementation of the Parent–Subsidiary Directive in Greece

REVIEW
2002-1

Nasos Nikolopoulos[1]

1. Introduction

The Parent-Subsidiary Directive was introduced in the Greek legal system through the same implementation law that the Mergers Directive was also introduced. The provisions of the Parent-Subsidiary Directive lay within Arts. 8 to 11 (Chapter B) of Law 2578/ 1998. The Directive regulates the tax treatment of associated corporate entities i.e. parent companies and their subsidiaries within the EU. The Parent-Subsidiary Directive provides that the Member State of the subsidiary abolishes any withholding tax and that the Member State of the parent company will exempt the dividends or impute the tax already paid in the Member State where the subsidiary has its seat. The Directive aims for the introduction of neutral tax legislation in order to prevent distortions within the Common Market through the elimination of double taxation between Member States.

2. Scope of the Parent–Subsidiary Directive

The corporate entities that fall in the field of application

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of the Directive are the same as in the Mergers Directive.[2] Only the Greek public companies that are subject to income tax on profit-making legal persons' fall within the scope of the Directive.[3] However, public companies as well as Greek companies of limited liablity are subject to corporate tax. Until 1992, dividends paid by a company to another enterprise were taxed the same way as dividends paid to individuals, i.e. the distributing company withheld the tax at source. The tax treatment of dividends was changed, however, by Law 2065/1992.[4] The new rules provide that the company's profits will be taxed only at the corporate level. The company's profits are submitted to the same statutory rate of 35 per cent; therefore, there is no longer a difference between distributed and non-distributed profits and the distributing company withholds no tax at source.[5] The tax reform made obsolete the provision of Art. 5(2) of the Directive. This Article provided that:

> 'notwithstanding paragraph 1, the Hellenic Republic may, for so long as it does not charge corporation tax on distributed profits, levy a withholding tax on profits distributed to parent companies of other Member States. However, the rate of that withholding tax cannot exceed the rate provided in bilateral double taxation agreements.'

Article 5(1) of the Directive provides that, when the parent company[6] holds a minimum of 25 per cent of the subsidiary's capital[7] for a minimum period of two years,[8] the profits distributed by the subsidiary to its parent company shall be exempt from withholding tax. The Member States can withhold the application of the Directive in cases where the parent companies do not maintain for the minimum period of two consecutive years the required percentage of the subsidiary's capital. In Art. 3(2)[9] of the Directive a general anti-abuse clause is set out, which permits the Member States to include domestic or agreement-based provisions required for the prevention of fraud or abuse in their national legislation. Greece did not refer to the optional provision of Art. 3(2) of the Directive in the implementation Law. Article 3(2) provides that the Member States can substitute on the basis of bilateral agreements the requirement of 25 per cent with that of voting rights of the parent company.

3. The concept of associated companies

The Directive regulates the tax treatment of the dividends paid from the subsidiaries to their parent companies. Double taxation is one of the major issues with regards to the tax treatment of associated companies within the Common Market. The wording of Article of the Directive sets out three possible elements that can be deemed as connecting factors between the parent company and a subsidiary.

- The Directive covers only associated companies, i.e. legally independent corporate entities and not companies with some permanent establishment abroad. This differentiation is essential, since the two legal entities have a number of similarities in their commercial activities. They both are used as special economic vehicles, through which the domestic company proceeds with its financial activities abroad.
- The legally independent companies must have a dependency relation. The parent company can either hold 25 per cent of the subsidiary's capital or have a voting right up to that percentage, substantially influencing the subsidiary's effective management.
- The wording of the Directives allows the Member State to adopt different domestic legislation with regards to the required capital holding. The domestic legislation, however cannot provide for a percentage less than 25 per cent, since the word used in the text of Art. 3(1)[10] is 'at least 25%'.[11]

The concept of associated companies has been also used in both the Fourth and the Seventh Directives on consolidated accounts.[12] None of the Directives provides a common working definition of the concept and only the second one refers to the substantial elements of the connecting factors of corporate entities. A legal entity is to be deemed a parent company when:

- it has a voting majority of the shareholders or corporate partners of the subsidiary;
- it has the right to appoint or recall the members of the managing board of the subsidiary;
- it has the right to substantially influence the effective management of the subsidiary;
- it holds the majority of the subsidiary's capital and therefore controls its managing board.

The working definition of associated corporate entities under Greek company law is given in Art. 42(ε) of Law 2190/20 which regulates the legal framework of Greek public companies. The concept of this provision is in accordance with Art. 1 of the Seventh Directive.[13]

2 Article 8 of the Greek implementation Law under the heading ' Field of application'. Also see the arguments presented in this essay.

3 Article 2(a) and (c) of the Directive.

4 Article 16.

5 Αναγνωστοπούλου, Χαρ. (Anagnostopoulos, Har.), "Ο τρόπος φορολογίας των αλλοδαπών μετόχων ημεδαπών ΑΕ μετά την ισχύ του Ν. 2065/1992" (The tax treatment of foreign shareholders of domestic public companies after the introduction of Law 2065/1992), ΔΦΝ, (1993), p. 810 ff.

6 Article 9(c) of the Greek implementation Law.

7 Article 9(c) of the Greek implementation Law and Art. 3(1) of the Directive.

8 Article 11 of the Greek Implementation Law.

9 'By way of derogation from paragraph 1, Member States shall have the option of 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.'

10 The same provision exists in Art. 9(γ) of the Greek implementation Law.

11 The same percentage is also set out in Art. 10(2)(a) of the OECD Model Convention.

12 78/660/EEC and 83/349/EEC.

13 Παπαγιάννη, I. (Papagianni, I.), "Συνδεδεμένες επιχειρήσεις" (Associated companies), Επιστημονική Επετηρίδα Αρμενοπούλου (Armenopoulos), (1993), p. 159.

From a tax point of view, however, the concept of the parent company is not only related to the element of the effective control of the subsidiary's capital or management. The tax treatment of dividends paid from a subsidiary to the parent company is a wider issue and the Directive regulates the cross-border flow of dividends within the EU. The rules set out by the Directive are carefully drafted since they cover a legislative field, direct taxation, which is mainly a domestic matter of the Member States. The adoption of more comprehensive measures by the Commission that would cover any cross-border payment of dividends in the EU would be a drastic solution to the issue.[14] The principle of fiscal sovereignty of the Member States in combination with the principle of subsidiarity of the Directives, however, restricts the flexibility of the Commission in direct tax matters. The aim of the Directive is to eliminate double taxation of cross-border payment of dividends, the adoption, therefore of a lower capital holding requirement would be the most appropriate measure. The Commission, however, had to take into account the existing domestic tax legislation of the Member States while drafting the Directive. An extended application of the Directive to all kinds of cross-border payment of dividends would lead to a major reduction of the revenue of Member States. The balance had to be kept, therefore, the scope of the Directive was restricted to the absolutely essential cases.

The extension of the Directive's scope can be achieved through double tax conventions between the Member States. This is provided in Arts. 3(2) and 7(2) of the Directive that make reference to bilateral agreements between Member States in order to regulate issues that derive from the application of the Directive.

A last practical issue with regards to the issue of associated companies is that of indirectly associated companies. This indirect association takes place when a parent company holds the majority of the capital of a subsidiary that also holds the majority of the capital of a Third Company. In similar cases a differentiation between the direct and the indirect association between these companies should be made. There is an obvious direct association between the parent company and its subsidiary. On the other hand the association between the parent company and the third one, which is the subsidiary's subsidiary, is indirect. According to Art. 3 of the Directive, its provisions are applicable only under the requirement that the parent company hold at least the 25 per cent of the subsidiary's capital. The second requirement, set out in Art. 4, is that the parent company has to receive cross-border payment by the subsidiary in the form of dividends. This second requirement cannot be fulfilled in the case of indirect association because then the third company, which is the subsidiary's subsidiary, pays dividends to its parent company, which is the subsidiary. It is obvious, therefore, that cases of indirect association between companies cannot be covered by the Directive.

4. The tax treatment of dividends of associated companies

The state where the parent company has its seat can either refrain from taxing the profits paid by the subsidiary or, in case that these profits are taxed, deduct the tax paid for the cross-border dividends from the overall amount of tax that the parent company is liable for. In the latter case, the amount of tax deducted cannot exceed the total amount of tax that the parent company is liable for in the state of its seat. In case that the amount of tax paid by the subsidiary is less than the amount due by the parent company, the latter has to pay the difference. On the other hand, if the tax paid by the subsidiary is equal or more than the amount due by the parent company, the latter will pay no tax in its state of seat.

The provision of Art. 4(1) covers the distributed profits[15] paid from the subsidiary to its parent company. The term profits was used deliberately instead of the term dividends in order to give a wider application to the Directive with regards to the various domestic concepts of the payment of dividends between associated companies. The wide scope of this provision, however, gives rise to a series of practical issues. The provision of Art. 4(1) excludes from its application the payment of profits made by way of liquidation of the subsidiary. This is not the case, however, with respect to payment of profits of previous years. The restriction applies on the specific profits made out of the liquidation of the subsidiary itself.[16] The wording of the provision gives a wider interpretation to the concept of profits. The transfer of profits can take place through transfer pricing. In case that the profits of the parent company are adjusted and appropriately taxed, they could fall within the field of application of Art. 4(1). The transfer pricing procedure is dealt with in the Arbitration Convention,[17] which has a more specific field of application, therefore such issues are regulated from it.

5. The tax treatment in Greece

The Parent-Subsidiary Directive was implemented in Greece eight years after the Commission first introduced it. The existing Greek legal framework, however, was already consistent with the Directive's provisions. Furthermore, Greece has an extensive network of double tax treaties for the elimination of double taxation also align with the aims of the Directive.

According to Art. 4 of Law Decree 3843/58, all domestic capital companies organised for profit-making are subject to an unlimited tax liability on all their

[14] This was proposed by the Ruding Committee.

[15] Article 4(1) of the Directives states: ' When a parent company ... receives distributed profits'.

[16] Article 4(1) of the Directives states: 'except when the subsidiary is liquidated'.

[17] 'Convention of the 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises'; (90/436/EEC).

worldwide income. They are taxed on their income deriving from domestic sources as well as on their income deriving from foreign sources, provided that there is no legal exemption or a bilateral tax relief agreement in effect. Article 10(4γ) of Law Decree 3843/55 provides the exemption of income tax already paid abroad on cross-border income that is also subject to domestic income tax.[18] The amount of this tax relief from domestic income taxation cannot exceed the overall amount of income tax that the company is liable for under domestic legislation. Greece is a tax credit jurisdiction;[19] therefore, its tax law is in general terms compatible with the aims of the Directive.

Article 4(2) of the Directive provides that 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 subsidiary may not be deducted from the taxable profits of the parent company. Where the management costs relating to the holding in such a case are fixed at a flat rate, the amount so fixed may not exceed 5 per cent of the profits distributed by the subsidiary. This provision prevents the abuse of the Directives' benefits through fraudulent or overstated management costs that would constitute tax evasion with all the consequential legal consequences.[20]

The profits distributed from the subsidiary to its parent company are exempt from any withholding tax at source. This provision comes to effect only if the parent company holds the required 25 per cent of the subsidiary's capital. The concept of imposition of withholding tax at source does not include any advance tax payment by the parent company to the state where the subsidiary has its seat, as this is in relation with the payment of dividends to the parent company. On the other hand, the state where the parent company has its seat is not entitled to impose any withholding tax at the source on the profits that the parent company receives from its subsidiary. This provision, in combination with the provisions concerning the tax treatment of dividend payments between associated companies, results in the elimination of double taxation.

Greece was granted an exemption period from the application of the Directive with regards to the taxation of dividends at the source.[21] According to Art. 4 of Law Decree 3843/58, which was then in effect, only the non-distributed profits of public companies were subject to income tax of legal entities. The distributed profits where deemed as part of the shareholders personal income and were taxed as income deriving from mobile assets. Profits distributed to other legal entities where subject to withholding at the rate of 25 per cent, provided that there was not a bilateral agreement. This way double taxation of distributed dividends was avoided. Given this peculiarity of the Greek tax legislation at that time, Greece was entitled to withhold income tax at the source if the profits were distributed to a parent company that had its seat in another Member State. The tax withheld could not exceed the rate provided by the double tax treaties between the Member States. The tax reform that took place with Law 2065/92 put an end to the exemption period. Article 16(6) provides that public companies are liable for all their taxable amount of profits, i.e. their net profits. Greece is no longer, therefore, entitled to impose any withholding tax at the source in cases of cross-border distribution of dividends or profits.

The Directive shall not affect the application of domestic or agreement-based provisions designed to eliminate or lessen economic double taxation of dividends, in particular provisions relating to the payment of tax credits to the recipients of the dividends. This is clearly stated in Art. 7(2) of the Directive. This specific provision supplies the Member States with a wider range of instruments through which they could achieve the scope of this Directive, which is the elimination of double taxation of dividends. The Directive leaves a significant range of discretion to the Member States with regards to the means that they will achieve this goal.

6. The anti-abuse provision of the Directive

Article 3(2) of the Parent-Subsidiary Directive provides that Member States can refrain from applying the Directive to parent companies that do not maintain for an uninterrupted period of at least two years the 25 per cent of the subsidiary's capital. These requirements have to be fulfilled in order for a company to benefit from the application of the Directive.

6.1. Considerations concerning the holding period

The starting point in time for the application of this provision is, however, not defined. It is also not clear whether the period of two years set out in Art. 3(2) of the Directive is a requirement that already has to be effectively fulfilled for a company to benefit; or whether the benefits of the Directive are granted on the condition that the required two-year period will elapse while the parent company still maintains 25 per cent of the subsidiary's capital.[22] The aim of this provision is to prevent the abuse of the Directive's provisions by companies that make a short-term investment in order to benefit from the Directive's incentives, i.e. tax relief at source on the distributed profits. The benefits deriving from the Directive should be granted before the period of two years elapses so that it has direct effect. In case the parent company breaches its obligation to hold the shares, any benefit granted to it should be withheld. This in accordance with the *ratio legis* of the Directive. In any other case it is assumed that the double economic taxation is

[18] This is also stated in Art. 10(3) of the Greek implementation law, under the heading 'Tax issues'.

[19] Article 10(4) of the Greek implementation law, under the heading 'Tax issues'.

[20] The issue of tax evasion under Greek law has been already dealt with in Nasos Nikolopoulos 'The implementation of the Mergers Directive in Greece', *EC Tax Review*, (2001/1), para. 2.4.4.

[21] Article 5(2) of the Parent-Subsidiary Directive.

[22] Weber, Dennis, 'A closer look at the general anti-abuse clause in the Parent-Subsidiary and the Mergers Directive', *EC Tax Review*, (1996), pp. 60–63.

tolerated for the period of two years and only after that it is eliminated. This would be in contradiction to the aim and field of application of the Directive.

This issue relates to the right of taxpayers to exercise the rights conferred to them when domestic law is incompatible with Arts. 3(2) and 5 of the Directive. On this point the ECJ concluded that parent companies might rely directly on the rights conferred by these provisions 'if those companies observe the holding period set by that Member State'.[23] Most implementing legislations of Member States,[24] which have exercised the option referred to by Art. 3(2) of the Directive, have contemplated only a holding period accrued prior to the dividend distribution, so that at the time the dividend is paid, the condition for the exemption has been satisfied. The Greek tax authorities have, therefore, laid down special procedures in order to protect their interests. A special refund procedure is the usual practice. Paying subsidiaries are, however, allowed to apply the exemption directly, provided that withholding agents are jointly liable with the recipient of the income which is subject to withholding tax.

In the light of *Denkavit*, the issue arises of whether resident subsidiaries may apply the exemption directly in the case of post-distribution holding periods that are not governed by domestic law. The exemption should also be applicable to payments during post-distribution holding periods. Member States, however, should not have introduced any special legislation for the pre-distribution holding period, such as a refund procedure. This is also the case if a general principle of domestic law provides that exemptions subject to conditions are applied only at the time that they are met through a refund procedure, which is usual in Greece. Furthermore, the interpretation of Art. 3(2) endorsed by the ECJ also holds true for the purposes of relief at the parent company's level granted by Art. 4[25] of the Directive. Indeed, Art. 3(2) is relevant to the application of both Arts. 4 and 5 of the Directive. Finally the application of the tax relief to resident companies that have not met the holding period at the time if the distribution does not require any special compliance rules, provided that the company liable to tax, i.e. the parent company, is a resident person. The tax authorities can, therefore, exercise their *fiscal imperium* within their jurisdiction.

7. The *Denkavit* case

On 17 October 1996, the ECJ gave its judgment[26] on the interpretation of the Parent-Subsidiary Directive. This was the first time that the ECJ had given a judgment on an EC Directive in the area of direct taxation,[27] therefore the case sets out useful guidance on the issue. The ECJ decision originates from three cases that had similar features. In all of them a company resident in the Netherlands for direct tax purposes held a participation in excess of 25 per cent of the capital of a company residing in Germany for direct tax purposes. The Court dealt with the three following questions.

1. Whether the option granted to the Member States by Art. 3(2) of the Directive should be interpreted 'as meaning that the Member States are entitled to exclude a parent company resident in another Member State from the tax benefits set out in Article 5 in the case where the parent company, at the time of distribution to it of the profits referred to in that Article, had not yet continuously held for a period of at least two years a minimum of 25 per cent of the share capital of the domestic subsidiary, but did however, subsequently complete the minimum holding period'.[28]
2. Whether Art. 5 of the Directive had direct effect and whether a parent company can rely on that provision before the courts of the state of the subsidiary.[29]
3. On the assumption that the national rule in question was contrary to the Directive, whether the postponement of the dividends distribution by the parent company until the end of the holding period, entitled such parent company to damages for loss of interest against the state of residence of the subsidiary.[30]

7.1. The literal interpretation of *Denkavit*

On the first question the ECJ applied the literal interpretation of the text of Art. 3(2) holding that:

> 'it follows from the wording of the provision and in particular from the use of present tense[31] in all language versions except the Danish, that, in order to receive a tax advantage, the parent company must have a holding in the subsidiary during a certain period of time, without being necessary that this period should have come to an end at the time when the tax advantage is granted.'[32]

[23] Consideration 40 of the *Denkavit* case (C-284/94). This case is dealt with in section 1.7 of this article.

[24] This derives from *The Survey on the Implementation of the EC Corporate Tax Directives* published in 1995 by the International Bureau of Fiscal Documentation (IBFD).

[25] That is, exemption, indirect tax credit in the parent company's country of residence.

[26] Judgment of the 17 October 1996, Joined Cases C-283/94 (*Denkavit International BV v Bundesamt für Finanzen*), C-291/94 (*VITIC Amsterdam BV v Bundesamt für Finanzen*) and C-292/94 (*Voormeer BV v Bundesamt für Finanzen*), known as the *Denkavit* case.

[27] This applies only on EC Directives regarding substantive tax rules, as the Court had already given a judgment regarding the exchange of information (Directive 77/799/EEC), C-1/93, *Hulliburton Services BV v Staatssecretaris van Financien* (1994) ECR I-1137.

[28] See question 1 posed to the ECJ by the *Finanzgericht Köln* in Cases C-291/94 and 292/94 under Consideration 17. Under C-283/94 interpretation was requested on whether or not the tax relief granted by Art. 5 was available *even in the presence of an undertaking* by the foreign parent company to maintain the participation for the required period.

[29] Question 2, Consideration 17 for all the three cases.

[30] See question 3 on C-283/94 under Consideration 17.

[31] Use of 'maintain'.

[32] Consideration 25.

In the reasoning of *Denkavit*, the textual meaning is thus given much weight. Generally, under the ECJ jurisprudence, purely literal interpretation is not considered to be sufficient to construe an EC provision. Even when the text is clear, case law shows that the Court looks at the aim of the legislation.[33] The reason for the strong reliance on literal interpretation in *Denkavit* lies with the fact that the provision that was to be interpreted was an option granted to the Member States and constituted an exception from the general principle of exemption from the withholding tax laid down by Art. 5(1). 'The option, therefore, cannot be given an interpretation going beyond the actual words of Article 3(2), to the detriment of beneficiary undertakings.'[34]

The principle of strict interpretation endorsed by the Court indicates that such criteria should be applied in all the instances in which the Directive provides for derogation or grants options to Member States. This is particularly true for Art. 1(2) of the Directive that permits Member States to introduce internal or treaty-based anti-abuse provisions. The same rule applies for Art. 3(2), first indent, that permits the replacement of the minimum holding requirement based on capital with a requirement based on voting rights. Similarly, strict interpretation should apply to Art. 4(2) that allows Member States to provide for non-deductibility of expenses relating to the participation in the subsidiary.

7.2. The teleological approach of *Denkavit*

The purpose of the EC legislators has always been used by the ECJ legislators as a means of interpretation that completes and in some cases overrides the criteria of the literal interpretation of the text.[35] This teleological method of interpretation is also known as the criteria of the 'useful effect'[36] of the EC legislation and it has been used by the ECJ to promote the objectives of the EC provision under examination.[37] It also rules out the means of interpretation that may have the effect of altering or hindering the achievement of the goals pursued by the EC legislator.[38] In *Denkavit*, the ECJ used the purpose to confirm the interpretation based on the text of the Directive.[39] This approach is an expression of interpretation relying on the objective intent of the provision that is used as an aid of interpretation. In seeking the purpose of the provision of Art. 3.1 of the Directive the ECJ refers to the recitals in the preamble of the Directive.[40]

8. Concluding remarks

The Parent-Subsidiary Directive has been implemented with a significant delay of eight years after its first introduction in European law in 1990. Its implementation has raised several practical issues. The anti-abuse rules, the 25 per cent minimum shareholding requirement of the parent company in the subsidiary's capital, in addition to the requirement of a minimum holding period has restricted significantly the field of application of the Directive. Furthermore, the Annexes of the Directive have to be amended so that all the qualifying Greek limited liability companies could benefit from the application of the Directive. Finally, Greece has to abolish the difference in income tax rate between the domestic and non-resident Member States' companies as its maintenance amounts to discrimination.

[33] Case 6/60, *J.E Humblet v Belgium* (1960) ECR 559, Consideration 2, where it is stated that 'the Court cannot be satisfied with the literal interpretation only and believes it is necessary to ascertain if such interpretation is confirmed by other criteria and particularly the intent ... and the *ratio legis*'.

[34] ECJ decision, Consideration 27, last sentence.

[35] This is particularly the case where the words used in different language versions of the Community provisions have different meanings under the domestic laws of each Member State. The ECJ held several times that the scope of a provision contained in a Directive may not be appraised solely on the basis of its textual interpretation. It must be interpreted with sufficient flexibility in keeping with its objective. The provisions must be interpreted with reference to the purpose and the general scheme of the rule of which it forms a part. See *inter alia*, Case 100/84, *Commission v United Kingdom* (1985) ECR 1169, Considerations 16 and 17; Case 29/91 *Sophie Redmond Stichting v Hendrikus Bartol and Others* (1992) ECR 3189, Considerations 10 and 11. In this respect the ECJ has also held several times that for the purposes of ensuring a uniform interpretation within the Community the terms used in Community law may not be defined by reference to the national laws of Member States but have a Community meaning. See Case 53/81 *D.M Levin v Staatssecretaris van Justitie* (1982) ECR 1035, Consideration 11.

[36] Maisto, Guglielmo, 'The EC Court's interpretation of the Parent-Subsidiary Directive under the *Denkavit* case', *Intertax* (1997) 25/5, p. 184.

[37] L.N. Brown and T. Kennedy, *The Court of Justice of the European Communities* (Sweet and Maxwell, London, 1994), pp. 316 *et seq.*

[38] 'It follows that in applying the national law and in particular the provisions of a national law specifically introduced in order to implement the Directive, national courts are required to interpret their national law in the light of the wording and the purpose of the Directive in order to achieve the result referred to in the third paragraph of Article 189 of the Treaty.' (Case 80/86, *Officier van Justice v Kolpinguis* (1987) ECR 3969, Consideration 12, last sentence.)

[39] Consideration 26 states: 'moreover, the interpretation is confirmed by the purpose of the Directive which ... is facilitating the tax arrangements governing cross-border cooperation'.

[40] Consideration 22 of the judgment.