

Council Directive 2005/19/EC of 17 February 2005 amending Directive 90/434/EEC 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States

COUNCIL DIRECTIVE 2005/19/EC

of 17 February 2005

amending Directive 90/434/EEC 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 94 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament<sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>(2)</sup>,

Whereas:

- (1) Directive 90/434/EEC<sup>(3)</sup> introduced common rules applicable to business restructuring which are neutral from the point of view of competition.
- (2) The objective of Directive 90/434/EEC is that taxation of the income, profits and capital gains from business reorganisations should be deferred and Member States taxing rights safeguarded.
- (3) One of the aims of Directive 90/434/EEC is to eliminate obstacles to the functioning of the internal market, such as double taxation. In so far as this is not fully achieved by the provisions of that Directive, Member States should take the necessary measures to achieve this aim.
- (4) The experience gained following implementation of Directive 90/434/EEC in January 1992 has demonstrated different ways in which the Directive can be improved and how the beneficial effects of the common rules as adopted in 1990 could be extended.
- (5) On 8 October 2001 the Council adopted Regulation (EC) No 2157/2001 on the Statute for a European Company (SE)<sup>(4)</sup> and Directive 2001/86/EC supplementing the Statute for a European company with regard to the involvement of employees<sup>(5)</sup>. Similarly, on 22 July 2003 the Council adopted Regulation (EC) No 1435/2003 on the Statute for a European Cooperative Society (SCE)<sup>(6)</sup> and Directive 2003/72/EC supplementing the Statute for a European Cooperative Society with regard to the involvement of employees<sup>(7)</sup>. One of the most important features of these instruments is that both the SE and the SCE will be able to transfer their respective registered offices between Member States without being dissolved and going into liquidation.

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- (6) The transfer of the registered office is a means of exercising freedom of establishment as provided for in Articles 43 and 48 of the Treaty. No assets are transferred and the company and its shareholders do not derive any income, profits or capital gains from it. The company decision to reorganise its business by transferring its registered office should not be hampered by discriminatory tax rules or by restrictions, disadvantages or distortions arising from national tax legislation which is contrary to Community Law. The transfer of the registered office of an SE or an SCE from one Member State to another may not always lead to the SE or SCE ceasing to be resident in the first Member State. The tax residence of the SE or SCE continues to be determined by national legislation and tax treaties.
- (7) The transfer of the registered office of a company, or an event connected with that transfer, that brings about a change in tax residence, may give rise to some form of taxation in the Member State from which the office is transferred. Taxation may also occur in a case where the transfer of the registered office, or an event connected with that transfer, does not lead to a change in tax residence. In order to deal with that eventuality as far as the SE or SCE is concerned, a number of new rules have been introduced into Directive 90/434/EEC. In a case where, following the transfer of the registered office, the assets of the SE or of the SCE remain effectively connected with a permanent establishment belonging to the SE or SCE and situated in the Member State from which the registered office was transferred, that permanent establishment should enjoy benefits similar to those provided for in Articles 4, 5 and 6 of Directive 90/434/EEC. Those articles concern tax-exempted provisions and reserves, and the take-over of losses. Moreover, in accordance with Treaty principles, the taxation of shareholders on the occasion of the transfer of the registered office should be excluded. Having regard to the obligation on Member States under the Treaty to take all necessary measures to abolish double taxation, it is not necessary at this stage to establish common rules governing the tax residence of the SE or SCE.
- (8) Directive 90/434/EEC does not deal with losses of a permanent establishment in another Member State recognised in the Member State of residence of an SE or SCE. In particular, where the registered office of an SE or SCE is transferred to another Member State, such transfer does not prevent the former Member State of residence from reinstating losses of the permanent establishment in due time.
- (9) Directive 90/434/EEC does not cover a type of division where the company transferring branches of activity is not dissolved. Article 4 of that Directive should therefore be extended to cover such cases.
- (10) Article 3 of Directive 90/434/EEC defines the companies falling within its scope and the Annex thereto lists the forms of company to which the Directive applies. However, certain forms of company are not listed in that Annex even though they are resident for tax purposes in a Member State and are subject to corporation tax there. In the light of the experience, this appears to be an unjustifiable lacuna and the scope of the Directive should therefore be extended to cover entities which can carry out cross-border activities in the Community and which meet all the relevant requirements.

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- (11) Since the SE is a public limited liability company and since the SCE is a cooperative society, both similar in nature to other forms of company already covered by Directive 90/434/EEC, the SE and the SCE should be added to the list set out in the Annex to Directive 90/434/EEC.
- (12) The other new companies included in the list of the Annex to this Directive are corporate taxpayers in their Member State of residence but some of them are considered fiscally transparent by other Member States. In order for the benefits of Directive 90/434/EEC to be effective, Member States treating non-resident corporate taxpayers as fiscally transparent should apply the benefits of the Directive to them. However, given the difference in tax treatment by Member States of these particular corporate taxpayers, Member States should have the option not to apply the relevant provisions in the Directive when taxing a direct or indirect shareholder of those taxpayers.
- (13) Where shareholders of companies entering into the transactions governed by Directive 90/434/EEC are treated as fiscally transparent, persons having an interest in the shareholder should not suffer taxation on the occasion of restructuring transactions.
- (14) Some doubts exist as to the application of Directive 90/434/EEC to the conversion of branches into subsidiaries. In these operations, the assets connected to a permanent establishment and constituting a 'branch of activity', as defined in Article 2(i) of Directive 90/434/EEC, are transferred to a newly set up company which will be a subsidiary of the transferring company and it should be made clear that this transaction, being the transfer of assets from a company of a Member State of a permanent establishment located in a different Member State to a company of the latter Member State, is covered by the Directive.
- (15) The current definition of 'exchange of shares' in Article 2(d) of Directive 90/434/EEC does not state whether the term encompasses further acquisitions beyond that granting a simple majority of voting rights. It is not uncommon for company statutes and voting rules to be drafted in such a way that further acquisitions are needed before the acquirer can obtain complete control over the target company. The definition of 'exchange of shares' should therefore be amended to state that that term covers all such further acquisitions.
- (16) In the case of mergers and divisions, the receiving company may derive gains from the difference in value between the assets and liabilities received and the shares that it may have held in the transferring company that are annulled following these operations. Article 7 of Directive 90/434/EEC provides for the exemption of these capital gains since these profits may be derived just as easily in the form of distributed profits from the transferring company that would have been exempted under 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<sup>(6)</sup>. The objectives of both Directive 90/434/EEC and Directive 90/435/EEC coincide with regard to this particular issue but the conditions required are not the same. Directive 90/434/EEC should therefore be amended to assimilate its requirements to those of Directive 90/435/EEC and to take into account the lower shareholding threshold included in that Directive.

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- (17) Given the extension of Directive 90/434/EEC to include partial divisions and the transfer of a registered office of an SE or an SCE, the scope of the provision regarding the countering of tax avoidance and tax evasion should be amended accordingly.
- (18) Directive 90/434/EEC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Directive 90/434/EEC is hereby amended as follows:

1. the title shall be replaced by the following:  
Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office, of an SE or SCE, between Member States.;
2. Article 1 shall be replaced by the following:

*Article 1*

Each Member State shall apply this Directive to the following:

- (a) mergers, divisions, partial divisions, transfers of assets and exchanges of shares in which companies from two or more Member States are involved,
- (b) transfers of the registered office from one Member State to another Member State of European companies (*Societas Europaea* or SE), as established in Council Regulation (EC) No 2157/2001 of 8 October 2001, on the statute for a European Company (SE)<sup>(9)</sup>, and European Cooperative Societies (SCE), as established in Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE)<sup>(10)</sup>;
3. Article 2 shall be amended as follows:
  - (a) The following paragraph shall be added:
    - (b)(a) “partial division” shall mean an operation whereby a company transfers, without being dissolved, one or more branches of activity, to one or more existing or new companies, leaving at least one branch of activity in the transferring company, in exchange for the pro-rata issue to its shareholders of securities representing the capital of the companies receiving the assets and liabilities, and, if applicable, a cash payment not exceeding 10 % of the nominal value or, in the absence of a nominal value, of the accounting par value of those securities;
  - (b) Paragraph (d) shall be replaced as follows:
    - (d) “exchange of shares” shall mean an operation whereby a company acquires a holding in the capital of another company such that it obtains a majority of the voting rights in that company, or, holding such a majority, acquires a further holding, in exchange for the issue to the shareholders of the latter company, in exchange for their securities, of securities representing the capital of the former company, and, if applicable, a cash payment not exceeding 10 %

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of the nominal value, in the absence of a nominal value, of the accounting par value of the securities issued in exchange;

(c) The following paragraph shall be added:

(j) “transfer of the registered office” shall mean an operation whereby an SE or an SCE, without winding up or creating a new legal person, transfers its registered office from one Member State to another Member State;

4. the eighth indent of Article 3(c) with respect to Italy shall be replaced as follows:

— imposta sul reddito delle società in Italy,

5. the heading of Title II shall be replaced by the following:

TITLE IIRules applicable to mergers, divisions, partial divisions, and exchanges of shares.

6. Article 4 shall be replaced by the following:

*Article 4*

1 A merger, division or partial division shall not give rise to any taxation of capital gains calculated by reference to the difference between the real values of the assets and liabilities transferred and their values for tax purposes.

For the purpose of this Article the following definitions shall apply:

- a “value for tax purposes”: the value on the basis of which any gain or loss would have been computed for the purposes of tax upon the income, profits or capital gains of the transferring company if such assets or liabilities had been sold at the time of the merger, division or partial division but independently of it;
- b “transferred assets and liabilities”: those assets and liabilities of the transferring company which, in consequence of the merger, division or partial division, are effectively connected with a permanent establishment of the receiving company in the Member State of the transferring company and play a part in generating the profits or losses taken into account for tax purposes.

2 Where paragraph 1 applies and where a Member State considers a non-resident transferring company as fiscally transparent on the basis of that State’s assessment of the legal characteristics of that company arising from the law under which it is constituted and therefore taxes the shareholders on their share of the profits of the transferring company as and when those profits arise, that State shall not tax any income, profits or capital gains calculated by reference to the difference between the real values of the assets and liabilities transferred and their values for tax purposes.

3 Paragraphs 1 and 2 shall apply only if the receiving company computes any new depreciation and any gains or losses in respect of the assets and liabilities transferred according to the rules that would have applied to the transferring company or companies if the merger, division or partial division had not taken place.

4 Where, under the laws of the Member State of the transferring company, the receiving company is entitled to have any new depreciation or any gains or losses in respect of the assets and liabilities transferred computed on a basis different from that set out in paragraph 3, paragraph 1 shall not apply to the assets and liabilities in respect of which that option is exercised.;

7. Article 6 shall be replaced by the following:

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### Article 6

To the extent that, if the operations referred to in Article 1, paragraph a, were effected between companies from the Member State of the transferring company, the Member State would apply provisions allowing the receiving company to take over the losses of the transferring company which had not yet been exhausted for tax purposes, it shall extend those provisions to cover the take-over of such losses by the receiving company's permanent establishments situated within its territory.;

8. in Article 7, paragraph 2 shall be replaced by the following:

2. The Member States may derogate from paragraph 1 where the receiving company has a holding of less than 20 % in the capital of the transferring company.

From 1 January 2007 the minimum holding percentage shall be 15 %. From 1 January 2009 the minimum holding percentage shall be 10 %.;

9. Article 8 shall be replaced by the following:

### Article 8

1 On a merger, division or exchange of shares, the allotment of securities representing the capital of the receiving or acquiring company to a shareholder of the transferring or acquired company in exchange for securities representing the capital of the latter company shall not, of itself, give rise to any taxation of the income, profits or capital gains of that shareholder.

2 On a partial division, the allotment to a shareholder of the transferring company of securities representing the capital of the receiving company shall not, of itself, give rise to any taxation of the income, profits or capital gains of that shareholder.

3 Where a Member State considers a shareholder as fiscally transparent on the basis of that State's assessment of the legal characteristics of that shareholder arising from the law under which it is constituted and therefore taxes those persons having an interest in the shareholders on their share of the profits of the shareholder as and when those profits arise, that State shall not tax those persons on income, profits or capital gains from the allotment of securities representing the capital of the receiving or acquiring company to the shareholder.

4 Paragraphs 1 and 3 shall apply only if the shareholder does not attribute to the securities received a value for tax purposes higher than the value the securities exchanged had immediately before the merger, division or exchange of shares.

5 Paragraphs 2 and 3 shall apply only if the shareholder does not attribute to the sum of the securities received and those held in the transferring company, a value for tax purposes higher than the value the securities held in the transferring company had immediately before the partial division.

6 The application of paragraphs 1, 2 and 3 shall not prevent the Member States from taxing the gain arising out of the subsequent transfer of securities received in the same way as the gain arising out of the transfer of securities existing before the acquisition.

7 In this Article the expression "value for tax purposes" means the value on the basis of which any gain or loss would be computed for the purposes of tax upon the income, profits or capital gains of a shareholder of the company.

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8                   Where, under the law of the Member State in which he is resident, a shareholder may opt for tax treatment different from that set out in paragraphs 4 and 5, paragraphs 1, 2 and 3 shall not apply to the securities in respect of which such an option is exercised.

9                   Paragraphs 1, 2 and 3 shall not prevent a Member State from taking into account when taxing shareholders any cash payment that may be made on the merger, division, partial division or exchange of shares.;

10.           Article 10 shall be replaced by the following:  
*Article 10*

1                   Where the assets transferred in a merger, a division, a partial division or a transfer of assets include a permanent establishment of the transferring company which is situated in a Member State other than that of the transferring company, the Member State of the transferring company shall renounce any right to tax that permanent establishment.

The Member State of the transferring company may reinstate in the taxable profits of that company such losses of the permanent establishment as may previously have been set off against the taxable profits of the company in that State and which have not been recovered.

The Member State in which the permanent establishment is situated and the Member State of the receiving company shall apply the provisions of this Directive to such a transfer as if the Member State where the permanent establishment is situated were the Member State of the transferring company.

These provisions shall also apply in the case where the permanent establishment is situated in the same Member State as that in which the receiving company is resident.

2                   By way of derogation from paragraph 1, where the Member State of the transferring company applies a system of taxing worldwide profits, that Member State shall have the right to tax any profits or capital gains of the permanent establishment resulting from the merger, division, partial division or transfer of assets, on condition that it gives relief for the tax that, but for the provisions of this Directive, would have been charged on those profits or capital gains in the Member State in which that permanent establishment is situated, in the same way and in the same amount as it would have done if that tax had actually been charged and paid.;

11.           the following Title shall be inserted:

#### TITLE IVa

#### **Special case of transparent entities**

##### *Article 10a*

1                   Where a Member State considers a non-resident transferring or acquired company to be fiscally transparent on the basis of that State's assessment of the legal characteristics of that company arising from the law under which it is constituted, it shall have the right not to apply the provisions of this Directive when taxing a direct or indirect shareholder of that company in respect of the income, profits or capital gains of that company.

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- 2 A Member State exercising the right referred to in paragraph 1 shall give relief for the tax which, but for the provisions of this Directive, would have been charged on the fiscally transparent company on its income, profits or capital gains, in the same way and in the same amount as that State would have done if that tax had actually been charged and paid.
- 3 Where a Member State considers a non-resident receiving or acquiring company to be fiscally transparent on the basis of that State's assessment of the legal characteristics of that company arising from the law under which it is constituted, it shall have the right not to apply Article 8 paragraphs 1, 2 and 3.
- 4 Where a Member State considers a non-resident receiving company to be fiscally transparent on the basis of that State's assessment of the legal characteristics of that company arising from the law under which it is constituted, that Member State may apply to any direct or indirect shareholders the same treatment for tax purposes as it would if the receiving company were resident in that Member State.;
12. the following Title shall be inserted.

#### TITLE IVb

#### **Rules applicable to the transfer of the registered office of an SE or an SCE**

##### *Article 10b*

- 1 Where,
- a an SE or an SCE transfers its registered office from one Member State to another Member State, or
  - b in connection with the transfer of its registered office from one Member State to another Member State, an SE or an SCE, which is resident in the first Member State, ceases to be resident in that Member State and becomes resident in another Member State,
- that transfer of registered office or the cessation of residence shall not give rise to any taxation of capital gains, calculated in accordance with of Article 4(1), in the Member State from which the registered office has been transferred, derived from those assets and liabilities of the SE or SCE which, in consequence, remain effectively connected with a permanent establishment of the SE or of the SCE in the Member State from which the registered office has been transferred and play a part in generating the profits or losses taken into account for tax purposes.
- 2 Paragraph 1 shall apply only if the SE or the SCE computes any new depreciation and any gains or losses in respect of the assets and liabilities that remain effectively connected with that permanent establishment, as though the transfer of the registered office had not taken place or the SE or the SCE had not so ceased to be tax resident.
- 3 Where, under the laws of that Member State, the SE or the SCE is entitled to have any new depreciation or any gains or losses in respect of the assets and liabilities remaining in that Member State computed on a basis different from that set out in paragraph 2, paragraph 1 shall not apply to the assets and liabilities in respect of which that option is exercised.

##### *Article 10c*

- 1 Where,



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- a an SE or an SCE transfers its registered office from one Member State to another Member State, or
- b in connection with the transfer of its registered office from one Member State to another Member State, an SE or an SCE, which is resident in the first Member State, ceases to be resident in that Member State and becomes resident in another Member State,

the Member States shall take the necessary measures to ensure that, where provisions or reserves properly constituted by the SE or the SCE before the transfer of the registered office are partly or wholly exempt from tax and are not derived from permanent establishments abroad, such provisions or reserves may be carried over, with the same tax exemption, by a permanent establishment of the SE or the SCE which is situated within the territory of the Member State from which the registered office was transferred.

- 2 To the extent that a company transferring its registered office within the territory of a Member State would be allowed to carry forward or carry back losses which had not been exhausted for tax purposes, that Member State shall allow the permanent establishment, situated within its territory, of the SE or of the SCE transferring its registered office, to take over those losses of the SE or SCE which have not been exhausted for tax purposes, provided that the loss carry forward or carry back would have been available in comparable circumstances to a company which continued to have its registered office or which continued to be tax resident in that Member State.

#### *Article 10d*

- 1 The transfer of the registered office of an SE or of an SCE shall not, of itself, give rise to any taxation of the income, profits or capital gains of the shareholders.

- 2 The application of paragraph 1 shall not prevent the Member States from taxing the gain arising out of the subsequent transfer of the securities representing the capital of the SE or of the SCE that transfers its registered office.

13. In Article 11, paragraph 1 shall be replaced by the following:

1. A Member State may refuse to apply or withdraw the benefit of all or any part of the provisions of Titles II, III, IV and IVb where it appears that the merger, division, partial division, transfer of assets, exchange of shares or transfer of the registered office of an SE or an SCE:

- a has as its principal objective or as one of its principal objectives tax evasion or tax avoidance; the fact that one of the operations referred to in Article 1 is not carried out for valid commercial reasons such as the restructuring or rationalisation of the activities of the companies participating in the operation may constitute a presumption that the operation has tax evasion or tax avoidance as its principal objective or as one of its principal objectives;
- b results in a company, whether participating in the operation or not, no longer fulfilling the necessary conditions for the representation of employees on company organs according to the arrangements which were in force prior to that operation.

14. The Annex shall be replaced by the text in the Annex to this Directive.

#### *Article 2*

- 1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply both with the provisions of this Directive regarding the transfer

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of the registered office of an SE or of an SCE, and with the entry (a) in the Annex to this Directive by 1 January 2006. Member States shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive, as regards the provisions other than those referred to in paragraph 1, by 1 January 2007. Member States shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

3 Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### *Article 3*

This Directive is addressed to the Member States.

Done at Brussels, 17 February 2005.

*For the Council*

*The President*

J.-C. JUNCKER

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## ANNEX

## ANNEX

### LIST OF COMPANIES REFERRED TO IN ARTICLE 3(a)

- (a) companies incorporated under Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) and Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees, and cooperative societies incorporated under Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE) and Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees;
- (b) companies under Belgian law known as “société anonyme”/“naamloze vennootschap”, “société en commandite par actions”/“commanditaire vennootschap op aandelen”, “société privée à responsabilité limitée”/“besloten vennootschap met beperkte aansprakelijkheid”/“société coopérative à responsabilité limitée”/“coöperatieve vennootschap met beperkte aansprakelijkheid”, “société coopérative à responsabilité illimitée”/“coöperatieve vennootschap met onbeperkte aansprakelijkheid”, “société en nom collectif”/“vennootschap onder firma”, “société en commandite simple”/“gewone commanditaire vennootschap”, public undertakings which have adopted one of the abovementioned legal forms, and other companies constituted under Belgian law subject to the Belgian Corporate Tax;
- (c) companies under Czech law known as: “akciová společnost”, “společnost s ručením omezeným”;
- (d) companies under Danish law known as “aktieselskab” and “anpartsselskab”. Other companies subject to tax under the Corporation Tax Act, in so far as their taxable income is calculated and taxed in accordance with the general tax legislation rules applicable to “aktieselskaber”;
- (e) companies under German law known as “Aktiengesellschaft”, “Kommanditgesellschaft auf Aktien”, “Gesellschaft mit beschränkter Haftung”, “Versicherungsverein auf Gegenseitigkeit”, “Erwerbs- und Wirtschaftsgenossenschaft”, “Betriebe gewerblicher Art von juristischen Personen des öffentlichen Rechts”, and other companies constituted under German law subject to German corporate tax;
- (f) companies under Estonian law known as: “täisühing”, “usaldusühing”, “osaühing”, “aktsiaselts”, “tulundusühistu”;
- (g) companies under Greek law known as “ανώνυμη εταιρεία”, “εταιρεία περιορισμένης ευθύνης (Ε.Π.Ε.)”;
- (h) companies under Spanish law known as “sociedad anónima”, “sociedad comanditaria por acciones”, “sociedad de responsabilidad limitada”, and those public law bodies which operate under private law;
- (i) companies under French law known as “société anonyme”, “société en commandite par actions”, “société à responsabilité limitée”, “sociétés par actions simplifiées”, “sociétés d’assurances mutuelles”, “caisses d’épargne et de prévoyance”, “sociétés civiles” which are automatically subject to corporation tax, “coopératives”, “unions de

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- coopératives”, industrial and commercial public establishments and undertakings, and other companies constituted under French law subject to the French Corporate Tax;
- (j) companies incorporated or existing under Irish laws, bodies registered under the Industrial and Provident Societies Act, building societies incorporated under the Building Societies Acts and trustee savings banks within the meaning of the Trustee Savings Banks Act, 1989;
  - (k) companies under Italian law known as “società per azioni”, “società in accomandita per azioni”, “società a responsabilità limitata”, “società cooperativa”, “società di mutua assicurazione”, and private and public entities whose activity is wholly or principally commercial;
  - (l) under Cypriot law: “εταιρείες” as defined in the Income Tax laws;
  - (m) companies under Latvian law known as: “akciju sabiedrība”, “sabiedrība ar ierobežotu atbildību”;
  - (n) companies incorporated under the law of Lithuania;
  - (o) companies under Luxembourg law known as “société anonyme”, “société en commandite par actions”, “société à responsabilité limitée”, “société coopérative”, “société coopérative organisée comme une société anonyme”, “association d’assurances mutuelles”, “association d’épargne-pension”, “entreprise de nature commerciale, industrielle ou minière de l’État, des communes, des syndicats de communes, des établissements publics et des autres personnes morales de droit public”, and other companies constituted under Luxembourg law subject to the Luxembourg Corporate Tax;
  - (p) companies under Hungarian law known as: “közkereseti társaság”, “betéti társaság”, “közös vállalat”, “korlátolt felelősségű társaság”, “részvénytársaság”, “egyesülés”, “közhasznú társaság”, “szövetkezet”;
  - (q) companies under Maltese law known as: “Kumpaniji ta’ Responsabilità Limitata”, “Soċjetajiet en commandite li l-kapital tagħhom maqsum f’azzjonijiet”;
  - (r) companies under Dutch law known as “naamloze vennootschap”, “besloten vennootschap met beperkte aansprakelijkheid”, “Open commanditaire vennootschap”, “Coöperatie”, “onderlinge waarborgmaatschappij”, “Fonds voor gemene rekening”, “vereniging op coöperatieve grondslag” and “vereniging welke op onderlinge grondslag als verzekeraar of kredietinstelling optreedt”, and other companies constituted under Dutch law subject to the Dutch Corporate Tax;
  - (s) companies under Austrian law known as “Aktiengesellschaft”, “Gesellschaft mit beschränkter Haftung”, “Erwerbs- und Wirtschaftsgenossenschaften”;
  - (t) companies under Polish law known as: “spółka akcyjna”, “spółka z ograniczoną odpowiedzialnością”;
  - (u) commercial companies or civil law companies having a commercial form as well as other legal persons carrying on commercial or industrial activities, which are incorporated under Portuguese law;
  - (v) companies under Slovenian law known as: “delniška družba”, “komanditna družba”, “družba z omejeno odgovornostjo”;

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- (w) companies under Slovak law known as: “akciová spoločnosť”, “spoločnosť s ručením obmedzeným”, “komanditná spoločnosť”.
- (x) companies under Finnish law known as “osakeyhtiö”/“aktiebolag”, “osuuskunta”/“andelslag”, “säästöpankki”/“sparbank” and “vakuutusyhtiö”/“försäkringsbolag”;
- (y) companies under Swedish law known as “aktiebolag”, “försäkringsaktiebolag”, “ekonomiska föreningar”, “sparbanker”, “ömsesidiga försäkringsbolag”;
- (z) companies incorporated under the law of the United Kingdom.

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- (1) Opinion delivered on 10 March 2004 (not yet published in the Official Journal).
- (2) [OJ C 110, 30.4.2004, p. 30.](#)
- (3) [OJ L 225, 20.8.1990, p. 1.](#) Directive as last amended by the 2003 Act of Accession.
- (4) [OJ L 294, 10.11.2001, p. 1.](#) Regulation as amended by Regulation (EC) No 885/2004 ([OJ L 168, 1.5.2004, p. 1.](#)).
- (5) [OJ L 294, 10.11.2001, p. 22.](#)
- (6) [OJ L 207, 18.8.2003, p. 1.](#) Regulation as amended by Decision of the EEA Joint Committee No 15/2004 ([OJ L 116, 22.4.2004, p. 68.](#)).
- (7) [OJ L 207, 18.8.2003, p. 25.](#)
- (8) [OJ L 225, 20.8.1990, p. 6.](#) Directive as last amended by Directive 2003/123/EC ([OJ L 7, 13.1.2004, p. 41.](#)).
- (9) [OJ L 294, 10.11.2001, p. 1.](#) Regulation as amended by Regulation (EC) No 885/2004 ([OJ L 168, 1.5.2004, p. 1.](#)).
- (10) [OJ L 207, 18.8.2003, p. 1.](#) Regulation as amended by Decision of the EEA Joint Committee No 15/2004 ([OJ L 116, 22.4.2004, p. 68.](#)).