MULTINATIONAL COMPANIES AND VAT: A FIRST REACTION TO THE PHILIP MORRIS ITALIAN SUPREME COURT DECISION

Andrea Parolini[1]

On 7th March 2002 the Italian Supreme Court (*Corte di Cassazione*) decided a case (decision 3368/02[2]) regarding the existence in Italy of a fixed establishment ('FE') of a German company for VAT purposes. This article wants to raise some preliminary comments on such a decision, and, in particular, on the compatibility of the principles of law set forth by the Italian Supreme Court with the Sixth Directive[3]. Such comments are preceded by a short description of the facts and of the procedure before the lower Tax Courts.

---

1 Catholic University – Piacenza.

2 The decision is published both in the official Italian language and in an unofficial translation in the English language in *International Tax Law Reports*, 2002, Part 6, 947. The decision has raised the interest of scholars and has been commented on in several articles (*ex multis* R. Rizzardi, *Nessun dubbio che l'IVA sul servizio resa dal residente non è dovuta dal committente ma solo dal prestatore,* in Guida Normativa, 2002, vol. 56, 2; P. Centore, *Soggezione passiva e responsabilità dell'operatore non residente*, in L'IVA, 2002, 425; R. Succio, *Sull'assimalibilita della stabile organizzazione di un gruppo di società non residenti*, in GT, 2002, 621; A. Cotto – M. Peirolo, *La stabile organizzazione nel sistema dell'imposta sul valore aggiunto,* in Rassegna di Fiscalità Internazionale, 2002, 460; P. Tognolo, *Philip Morris Case: The Position of the Italian Court of Cassation on PE Matters*, in Tax Planning International Review, 2002, 6, 14).

3 77/388/EEC of May 17th, 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment.

1 The Facts and the Procedure before the Tax Courts[4]

1.1 The Facts

Philip Morris GmbH ('GermanCo') was a company having its legal seat in Germany which manufactured finished tobacco products through its factory located in Germany. In the years 1992-1995, GermanCo sold its products to the Italian Monopoly pursuant to a distribution agreement concluded in 1985 by the Monopoly with another group German entity which - as from 1992 - was succeeded in the agreement by GermanCo[5].

GermanCo shipped the products from its factory in Germany directly to the Monopoly in Italy, namely into the various Italian depots (*depositi*) owned by the same Monopoly. Subsequent to the entry into the depots, the Monopoly transferred the products to the six hundred warehouses (*magazzini)* which were located throughout the territory of Italy and were managed by private entrepreneurs under a licence from the Monopoly. Finally, the warehouses (*magazzini*) delivered the products to the sale outlets (tobacconist shops). The tobacconist shops paid the price for the products directly to the Monopoly which paid VAT to the Italian Treasury.

Intertaba ('ItalCo') was a company having its legal seat in Italy which manufactured cigarette filters in its factory located in Italy. The filters were to a large extent sold to the Monopoly. No sales of filters had ever been made to GermanCo.

ItalCo supplied to GermanCo services consisting of the collection of information and inspection of the warehouses, retail outlets and the depots owned by the Monopoly. The right of GermanCo to appoint a representative having the exclusive right to inspect the conditions of the products in the warehouses, retail

4 The facts described in this summary are very similar to the ones relating to the Philip Morris direct tax case (Italian Supreme Court decision no. 7682/02). This case has been discussed in a Seminar held on August 27, 2002 in the course of the 56th Congress of the International Fiscal Association ('IFA') in Oslo (a summary of the proceedings has been published by R. Goulder, *IFA Panelists Slam Italian High Court Ruling on Permanent Establishment*, in Tax Notes International, 2002, Vol. 27, no. 10, 1152). In order to facilitate the works of the Seminar, IFA has delivered to the participants of the Seminar an outline of the case. The description laid down in this article has been inspired by the outline delivered by IFA, and departs from the latter insofar as to cover the different aspects covered in the VAT case. The Author wishes to thank the International Fiscal Association for having authorised the use of the outline.

5 The distribution of tobacco products has been reserved to the Italian Monopoly from 1927 to 1998 and, during this period, the Monopoly exercised such exclusive right of distribution.

outlets and depots was stipulated by the distribution agreement concluded by the Monopoly with GermanCo. Such agreement also stipulated that the representative could not carry on any activity other than the inspecting of the warehouses and that any marketing or solicitation of sales by the representative was prohibited and would have been subject to a sanction by the Monopoly; the agreement stipulated that any violation would be recorded in a report to be issued by the officers of the Monopoly.

All the distribution agreements concluded by the Monopoly with all the other foreign tobacco manufacturers – including companies related to GermanCo but also some of its independent competitors – were identical to the distribution agreement concluded by the Monopoly with GermanCo, including the appointment of a representative for the inspection of goods and collection of information.

The services rendered by ItalCo to GermanCo were remunerated through a compensation which was subject to Italian VAT. ItalCo supplied similar services to other foreign manufacturing related companies selling products to the Italian Monopoly under the same terms and conditions (such companies were located in Belgium, Switzerland and the Netherlands).

1.2 The VAT Assessments

In 1996, the Italian tax authority issued VAT assessments against GermanCo for the years 1992-1995, holding that:

(i) ItalCo was a permanent establishment of GermanCo.

(ii) The Italian permanent establishment of GermanCo had to invoice the sale of tobacco products to the Italian Monopoly and therefore GermanCo had to pay penalties for failure of issuing invoices and failure to file a VAT return in Italy.

(iii) The spread between the price charged by the Monopoly to the tobacconist and the price paid by the Monopoly to GermanCo was a fee charged by the Monopoly to GermanCo for the distribution services supplied by the Monopoly.

Since the Monopoly failed to issue an invoice for its services, the Italian permanent establishment of GermanCo had the obligation to issue a document equivalent to the omitted invoice and pay VAT on the service supplied by the Monopoly. Consequently, GermanCo was requested to pay such VAT and penalties on the services rendered by the Monopoly and no deduction of such VAT was allowed to GermanCo.

The Monopoly did not receive an assessment for its invoicing violations.

1.3 The Replies of GermanCo

GermanCo challenged the assessments and denied the existence of a permanent establishment on the following grounds:

(i) GermanCo neither owned premises nor had premises available to it in Italy and therefore had no human and technical resources in the territory of that State.

(ii) GermanCo had neither personnel nor agents with binding powers in Italy.

(iii) GermanCo sold goods to the Monopoly so that the characterisation of the spread earned by the Monopoly as a service fee was wrong. Even a service should have been characterised as a sale under the VAT rules for commission agents acting in their own name. The amount of the alleged service fee was already subject to VAT as it was included in the price of the products at the time of sale, so that subjecting again such amount to VAT would have resulted in double taxation.

(iv) The denial to GermanCo of the right to deduct the VAT payable on the services supplied by the Monopoly was illegitimate.

(v) Evidence produced by the tax authority was immaterial and irrelevant because it either dated back to 1976, a time when GermanCo had not even started to sell products to the Monopoly, or related to group entities other than GermanCo, or because the documents simply demonstrated the fact that ItalCo was a member of a group (e.g. delivery of the balance sheet to the parent company). The capital of ItalCo was neither directly nor indirectly owned by GermanCo.

1.4 Decision of the Lower Courts

The Lower Court (*Commissione Tributaria Provinciale di Milano*) ruled that the assessments were void because GermanCo had no permanent establishment in Italy. Particularly, the Court held that:

(i) The tax authorities failed to identify the assets and the business structure belonging to GermanCo; and

(ii) The evidence provided by the tax authorities simply proved that GermanCo and ItalCo belonged to the same group. Such proof was irrelevant in order to assess the existence of a FE since it was not possible to assess the existence of a permanent establishment of a group of companies.

The decision of the Lower Court was upheld by the High Court (*Commissione Tributaria Regionale di Milano*).

1.5 Decision of the Supreme Court

The tax authority appealed the High Court decision in favor of GermanCo to the Italian Supreme Court. The Supreme Court cancelled the decision of the High Court and remitted the case to a different Chamber of the High Court.

After having analysed the various issues and the decision of the High Court, the Supreme Court expressed five principles of law – that the High Court will have to apply in deciding the case – in the remand procedure. This article focuses on two of these principles of law that:

(i) A joint stock company having its legal seat in Italy may be the multiple Permanent Establishment (PE) of foreign companies belonging to the same group pursuing a unitary strategy. In the decision the Supreme Court stated that it is wrong to conclude – as the High Court concluded – that a PE of a group cannot exist;

(ii) The entrusting of the management or control of business transactions to a national entity by a company which is not based in Italy, even if it concerns a certain area of business, gives rise to the acquisition of a permanent place of business for the purposes of VAT.

2 Comments on the Case

2.1 The Italian VAT Regime of Supplies of Tobacco Products

Before analysing the principles of law, some preliminary issues have to be dealt with in order to better understand the case at issue.

First, in Italy, the VAT regime of supplies of tobacco products diverges from the standard multiphase system. Pursuant to Article 74 (1) of the Presidential Decree No. 633 of 26th October 1972 (the 'Italian VAT Decree') the sales of the products are subject to a single phase VAT regime. Under that regime, VAT is collected at the point of sale and any supply of goods prior to the sale to the tobacconist is outside the scope of VAT (the single phase regime was in place before 1st January 1977 and was notified by the Italian Government to the Council according to article 27 (5) of the Sixth Directive).

As a consequence of the application of the single phase regime, in Italy VAT is always collected on the price of the tobacco products (which are set by a Ministerial Decree) at the place of consumption applying the Italian standard rate (20 per cent). Therefore, there is no doubt that in the case analysed by the Supreme Court VAT was also applied on the 'spread' realised by the Monopoly which has been characterised as consideration for a supply of distribution services.

Secondly, in the case under consideration the existence in Italy of a FE of GermanCo was not relevant in determining the territoriality of the supply of services. Indeed, the service allegedly supplied by the Monopoly to GermanCo, being services related to the distribution of goods rendered by an Italian taxable person, were covered by the general rule laid down by article 9 (1) of the Sixth Directive.

The assessment of the FE resulted from the application of article 41 (6) of the Italian VAT Decree. That article obliged the beneficiary of a taxable supply registered for VAT purposes to issue a document substitutive of an invoice and to pay VAT on behalf of the supplier. The recipient of the taxable supply who failed to fulfill such procedure was requested to pay VAT to the Treasury and was subject also to tax penalties[6]. Such article would not be applicable without establishing the existence of a FE of GermanCo since the latter was not registered for VAT purposes in Italy.

Even if in the case at issue the existence of the FE was not determinative of the territoriality of a service, it should be inferred that the interpretation of such expression should in any event be consistent with the jurisprudence of the European Court, which addresses the interpretation of the FE concept and its role within the scope of the Sixth Directive.

6 Such article has been recently repealed so that the recipient of the taxable supply failing to fulfil the above procedure is subject exclusively to tax penalties and not to the duty to pay VAT to the Italian Treasury.

In such case law the European Court has constantly acknowledged that the application of the FE criterion is alternative to the place where the undertaking has established its business (*id est* the legal seat[7]) and has to be applied only to the extent that reference to the latter place would not give a rational result for VAT purposes.

In the case being analysed by the Italian Supreme Court:

(i) The entire value of the products supplied by the non-resident to the Italian resident taxable person (and therefore also the value of the services allegedly rendered by the Italian supplier to the non-resident taxable person) was subject to VAT under the single phase regime;

(ii) Any input VAT paid by GermanCo would have been fully recoverable. Notwithstanding this, in the assessment the tax authorities have requested GermanCo to pay VAT without recognising the correspondent right of deduction.

In short, the assessment of the FE may very well generate double taxation (the VAT would be levied the first time on the entire value of the tobacco products under the single phase regime and the second time on the value of the service allegedly supplied by the Monopoly to GermanCo, which, anyway, was embodied in the market value of the tobacco products) and implies the payment of penalties by GermanCo for the omission of the Monopoly.

One might doubt of the rationality of the result.

---

7 See Opinion of Mr Advocate General Mancini delivered on 6 June 1985 in C-168/84, *Berkholz*, paragraph 2. As pointed out by S.A.E. Esajas, *Foreign Companies, Tax Shifts and VAT Refunds in the EC*, in VAT Monitor, 1998, 204, ' … *the phrase 'the place where the business is established' has the same meaning as 'the seat of the business activities' or 'the principal place of business'. This follows from comparing the wordings of the explanatory memorandum and the proposed text of the Sixth Directive. The proposed text of Article 9 of the Sixth Directive refers to the place 'where the business is established', while the explanation refers to the place 'where the seat of the business activities is established'. The preambles of the Directive refer to the 'principal place of business' while the text refers to the 'place where the business is established'.*

2.2 'Fixed Establishment' Versus 'Permanent Establishment'

The Supreme Court faces several issues relating to the application of VAT, one of the most interesting being the relationship between the FE criterion, laid down by article 9 of the Sixth Directive, and the permanent establishment ('PE') criterion, laid down by article 5 of the OECD Model Convention ('OECD MC') which applies in the direct tax field[8].

It is worth mentioning that the term FE (which in the Italian version of the Sixth Directive corresponds to the expression '*centro di attività stabile*') has never been transposed in the Italian VAT legislation. Indeed, in the Italian VAT Decree the term found is identical to the one used in the income tax legislation, which is PE (*stabile organizzazione*). In Italy, there has been a debate amongst scholars as to whether the concept of PE, used both in Italian VAT and direct tax legislation, was indeed the same or had to be interpreted differently in the light of the fact that VAT is a tax on consumption whilst direct taxes are applied on the income[9].

---

8 An analysis of the possible consequences deriving from the different wording is found in P. Pistone, *Fixed Establishment and Permanent Establishment*, in IBFD VAT Monitor, 1999, 101.

9 *Ex multis*: P. Ludovici, *Il regime impositivo della stabile organizzazione agli effetti dell'imposta sul valore aggiunto*, in Rivista di diritto tributario, 1998, I, 67; P. Pistone, *Centro di attività stabile e stabile organizzazione: l'Iva richiede un'evoluzione per il XXI secolo?*, in Rivista di diritto tributario, 1999, III, 12, M. Cerrato, *Considerazioni in tema di stabile organizzazione ai fini dell'IVA e delle imposte sui redditi*, in Giurisprudenza Italiana, 1998, 829; A. Fiorelli – A. Santi, *Specificità del concetto di stabile organizzazione nel tributo sul valore aggiunto*, in Rassegna Tributaria, 367; M. Giorgi, *Permanent Establishment in the VAT System: Internal and Community Aspects*, in Rivista di Diritto Tributario Internazionale, 2000, 23.

The Supreme Court addressed this problem and affirmed that the definition of FE for VAT purposes was the same as the definition of PE under the OECD Model Convention, except for the agency PE laid down by article 5 (5) of the OECD Model Convention[10] which does not amount to a FE for VAT purposes[11].

---

10 Such paragraph reads as follows: 5. 'Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.'

11 Page 50 of the decision. The Supreme Court arrives at this conclusion by making reference to the definition of permanent establishment laid down by German tax law since such definition ' … *comes from the legal system of the country in which Philip Morris Germany GmbH is based, it may provide useful support for the definition to be used in our system.* Notwithstanding this, on the basis of the same German legislation the Supreme Court in the decision 7689/02 held that a Dutch company belonging to the Philip Morris Group (Philip Morris Holland BV) had a FE in Italy. One might wonder whether such approach is in line with the rules of interpretation of European Law. Indeed, according to the jurisprudence of the Court of Justice, Community law must receive its autonomous interpretation and it is not to be interpreted according to the national legal orders of the Member States, unless the Community provision makes express reference to them (on the issues relating to the interpretation of European Law see, amongst other, H.G. Schermers – D.F. Waelbroeck, *Judicial Protection in the European Union*, The Hague, 2001, §21-§30).

Such a conclusion is shared by the literature that analysed the principles expressed in the case law of the European Court according to which the term FE is a place of business which requires a minimum size of human and technical resources of the foreign taxpayer[12]. The requirements for the existence of a FE are therefore of a physical nature and not of an agency nature[13]. Since in the direct tax field the agency PE comes into play only when the non-resident does not have a fixed place of business available to him in the other state, the agency PE should not be a FE for VAT purposes. Such conclusion is corroborated by paragraph 35 of the Commentary on article 5 of the OECD Model Convention, where it is clearly stated that the agency PE laid down by article 5 (5) OECD MC is alternative and may be relevant only to the extent that the non-resident has no place of business in the other State[14].

What is difficult to understand on reading the Supreme Court decision is that the Court, after having affirmed that an agency PE did not amount to a FE for VAT purposes, did not analyse if GermanCo was carrying on its activity in the premises

12 See Case 168/84, *Berkholz*, paragraph 18, where it has been stated that '… *services cannot be deemed to be supplied at an establishment other than the place where the supplier has established his business unless that establishment is of a certain minimum size and both the human and technical resources necessary for the provision of the services are permanently present*'. The same conclusion has been reached in the Case C-231/94, Faaborg-Gelting Linen A/S, paragraph 17; Case C-390/96, Lease Plan Luxembourg SA, paragraph 24; Case C-190/95, ARO Lease BV, paragraph 15.

13 Such conclusion is shared also by I Roxan, *Locating the Fixed Establishment in VAT*, in British Tax Review, 1998, 628 that, on the basis of the decision of the European Court in the Case C-190/95, ARO Lease BV, affirms: '*The Court's rejection of the Commission's approach in ARO Lease of interpreting the place where the business is established as meaning the place where the business in economic reality carried on, makes it even clearer that 'to establish' has to be read as 'to be established physically' or 'to be established in identifiable physical premises'. This did not intend to recognize the possibility of an agency FE as an alternative to a physical FE*'. It is worth noting that the same principle has been applied when the European Court was requested to analyse if a fully-owned subsidiary was a FE of the parent company in a case in which the parent company and the subsidiary were linked by an agency agreement under which the subsidiary had the power to bind the parent company, the fully owned subsidiary was providing services exclusively *vis-à-vis* the parent company and the supply of services escaped VAT in both States (Case C-260/95, *DFDS A/S*. The fact patterns of the case described are found in B.J.M. Terra, *The Place of Supply in European VAT*, London, 1998, 123-138). In order to conclude that the subsidiary was the FE of the parent company both the European Court and the Advocate General La Pergola found it necessary to analyse if the subsidiary was not an entity distinct from the parent (on this issue, see also paragraph 3.3).

14 Paragraph 35 of the OECD Commentary on Article 5 of the OECD MC reads as follows:
Under paragraph 5, only those persons who meet the specific conditions may create a permanent establishment; all other persons are excluded. It should be borne in mind, however, that paragraph 5 simply provides an alternative test of whether an enterprise has a permanent establishment in a State. If it can be shown that the enterprise has a permanent establishment within the meaning of paragraphs 1 and 2 (subject to the provisions of paragraph 4), it is not necessary to show that the person in charge is one who would fall under paragraph 5.'

of ItalCo, but analysed extensively the dependency of the ItalCo on GermanCo, a circumstance that is relevant only for the existence of an agency PE.

2.3 Companies Belonging to Multinationals: *Philip Morris v DFDS*[15]

As already outlined above, at the end of the decision the Supreme Court stipulated that:

(i) A joint stock company having its legal seat in Italy may be the multiple PE of foreign companies belonging to the same group pursuing a unitary strategy. In the decision the Supreme Court stated that it is wrong to conclude – as the High Court concluded – that a PE of a group cannot exist; and

(ii) The entrusting of the management or control of business transactions to a national entity by a company which is not based in Italy, even if it concerns a certain area of business, gives rise to the acquisition of a permanent place of business for the purposes of VAT.

One has to wonder whether such principles are compatible with the Sixth Directive and the real challenge seems to be to understand whether the case submitted to the Supreme Court was similar to the one submitted to the European Court in the case C-260/95, *Customs and Excise Comrs v DFDS A/S*. According to *DFDS*, in an agency relationship, in the event that a supply of services escapes VAT in both states, the fact that a business activity is carried on by a non-resident through a separate legal entity established in another Member State is not in itself sufficient to conclude that the controlled company cannot be a FE of the controlling company.

If the supply actually escapes VAT in both states, one would need to consider the activity actually rendered by the subsidiary. If such subsidiary merely acts as an auxiliary organ of the latter and, as a consequence, it loses its distinction from the controlling company, the non-resident will have a place of business with a minimum size of human and technical resources and the FE will come into play to the extent the application of the fixed establishment criterion gives rise to a

---

15 *Customs and Excise Comrs v DFDS A/S* (Case C-260/95) [1997] ECR I-1005.

rational result for VAT purposes (according to the European Court, a non rational result may exist to the extent that a taxable supply escapes VAT taxation in both states, either partially or totally).

One might wonder how to apply such principles in a group context.

A hint to the answer to this question can be found in article 4 (4), second indent of the Sixth Directive. Such article stipulates that a Member State (only after having consulted the VAT Committee according to Article 29 of the Sixth Directive) may treat as a single taxable person, persons established in the territory of the country who, while legally independent, are closely bound to one another by financial, economic and organisational links[16].

The Sixth Directive, therefore, recognises that in a group of companies several taxable persons may be 'legally independent' and at the same time bound to one another by financial, economic and organisational links, but this will not cause the various companies to lose their 'independence' for VAT purposes. Such companies, therefore, have to be treated as separate taxable persons and the possibility to consider them as a single taxable person is an exception that cannot be applied in a cross-border context.

If one reads article 4 (4) of the Sixth Directive it must be concluded that the principles laid down by the European Court in the *DFDS* case cannot be adapted to be applied in the group context. Therefore, the mere fact that a company belongs to the 'group' and that the group itself pursues a unitary strategy should not be relevant in assessing the existence of a FE.

Taking the above into consideration, one has to investigate if, in the case analysed by the Supreme Court, ItalCo was in a situation comparable to the one analysed by the European Court in the *DFDS* case. From the perusal of the decision of the Supreme Court it concludes that:

(i) There was not loss of VAT since:

 (a) The entire value of the tobacco products was subject to VAT under the single phase regime (see above);

16 The history of Article 4 (4), second indent of the Sixth Directive is extensively analysed in B.J.M. Terra – J. Kajus, *A Guide to European Tax Directives - Commentary on the Value Added Tax of the European Community*, Amsterdam, Commentary on Article 4, paragraph. IV.

(b) The service rendered by ItalCo to GermanCo was subject to VAT in Italy;

(ii) ItalCo was not a wholly owned subsidiary of GermanCo;

(iii) ItalCo had its own activity (the production of filters);

(iv) GermanCo was contractually linked to ItalCo only because the latter was instructed to inspect the depots and warehouses (such service was remunerated by GermanCo and the compensation was subject to VAT and income tax in Italy);

(v) Any marketing or solicitation of sales by ItalCo was prohibited.

At first glance, such fact patterns seem to be very different from the ones found in the *DFDS* case, therefore it can be doubted that the *DFDS* doctrine might apply to the case at hand. Indeed, if one reads the principles of law expressed by the Supreme Court and transposes them to a factual situation, an Italian company (ItalCo) could be a FE of a non resident company, not because it merely acts as an auxiliary company of the controlling company, but because:

(i) It belongs to a multinational which pursues an unitary strategy (such condition is most likely met by any company belonging to a multinational); and

(ii) It controls the fulfillment of the obligations undertaken by an Italian company (the Monopoly) with a foreign company belonging to the group (GermanCo) under a contract whose compensation is subject to Italian VAT (such circumstance has been totally disregarded by the Supreme Court).

3 Conclusions

From the analysis above it can be concluded that the interpretation provided for by the Supreme Court in the *Philip Morris* decision raises some doubts as to its compatibility with the Sixth Directive. The application of the principles of law expressed by the Supreme Court may lead to non rational results and may very well create conflict between Member States (and, moreover, may jeopardize the application of the territoriality rules laid down by article 9 of the Sixth Directive).
The consequences of the decision may have a strong impact on multinationals, whose companies might be assessed as the FE of the 'group' simply because they

supply services to other companies belonging to the same group. For the purposes of the assessment of the FE it may not be relevant that no loss of VAT occurred and that the services supplied by the Italian company to the other companies belonging to the group were remunerated.

What matters in the case in point is that the Supreme Court did not find it necessary to refer the case to the European Court even though FE is a Community concept which must have an independent and uniform interpretation throughout the Community and that there should be no discretion for individual Member States to diverge from such interpretation. Due to the impact of the decision on multinationals, the involvement of the European Court in the analysis of the compatibility of such principles of law would be most welcome[17].

17 The involvement of the European Court in the case in point is possible since the European Court in the case 166/73, *Rheinmuehlen*, affirmed that national courts have the widest discretion in referring matters to the Court of Justice if they consider that a case pending before them raises questions involving interpretation, or consideration of the validity, of provisions of Community law, necessitating a decision on their part. Therefore, in the remand procedure, the inferior court must be free, if it considers that the ruling on law made by the superior court could lead it to give a judgment contrary to Community law, to refer to the Court questions which concern it.