JUDGMENT OF THE COURT
13 February 1996

In Joined **Cases C-197/94 and C-252/94**,

REFERENCES to the Court under Article 177 of the EC Treaty by the Tribunal de Grande Instance, Dax (France), and the Tribunal de Grande Instance, Quimper (France), for a preliminary ruling in the proceedings pending before those courts between

Société Bautiaa

and

Directeur des Services Fiscaux des Landes (C-197/94)

and between

Société Française Maritime

and

Directeur des Services Fiscaux du Finistère (C-252/94)

on the interpretation of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (OJ, English Special Edition 1969 (II), p. 412), as amended by Council Directive 73/79/EEC of 9 April 1973 varying the field of application of the reduced rate of capital duty provided for in respect of certain company reconstruction operations by Article 7(1)(b) of the Directive concerning indirect taxes on the raising of capital (OJ 1973 L 103, p. 13), by Council Directive 73/80/EEC of 9 April 1973 fixing cmmon rates of capital duty (OJ 1973 L 103, p. 15), by Council Directive 74/553/EEC of 7 November 1974 amending Article 5(2) of Directive 69/335 (OJ 1974 L 303, p. 9), and by Council Directive 85/303/EEC of 10 June 1985 (OJ 1985 L 156, p. 23),

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, C.N. Kakouris, J.-P. Puissochet and G. Hirsch (Presidents of Chambers), G.F. Mancini, F.A. Schockweiler, J.C. Moitinho de Almeida, P.J.G. Kapteyn, P. Jann, H. Ragnemalm (Rapporteur) and L. Sevón, Judges,

Advocate General: G. Cosmas,

Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

- Société Bautiaa, by Pierre Poret, of the Paris Bar,
- Société Française Maritime, by Charles-Louis Vier, of the Paris Bar,
- the French Government, by Catherine de Salins, Deputy Director in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Jean-Louis Falconi, Foreign Affairs Secretary, acting as Agents,
- the Commission of the European Communities, by Enrico Traversa and Hélène Michard, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Société Bautiaa, represented by Pierre Poret, Société Française Maritime, represented by Charles-Louis Vier, the French Government, represented by Gauthier Mignot, Foreign Affairs Secretary in the Legal Affairs Directorate of the Ministry of Foreign Affairs, acting as Agent, and the Commission, represented by Enrico Traversa and Hélène Michard, at the hearing on 12 September 1995,

after hearing the Opinion of the Advocate General at the sitting on 14 November 1995,

gives the following

Judgment

1 By orders of 15 June and 9 August 1994, received at the Court on 8 July and 13 September 1994, the Tribunaux de Grande Instance (Regional Courts) of Dax and Quimper referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (OJ, English Special Edition 1969 (II), p. 412, hereinafter "Directive 69/335"), as amended by Council Directive 73/79/EEC of 9 April 1973 varying the field of application of the reduced rate of capital duty provided for in respect of certain company reconstruction operations by Article 7(1)(b) of the Directive concerning indirect taxes on the raising of capital (OJ 1973 L 103, p. 13), by Council Directive 73/80/EEC of 9 April 1973 fixing common rates of capital duty (OJ 1973 L 103, p. 15, hereinafter "Directive 73/80"), by Council Directive 74/553/EEC of 7 November 1974 amending Article 5(2) of Directive 69/335 (OJ 1974 L 303, p. 9), and by Council Directive 85/303/EEC of 10 June 1985 (OJ 1985 L 156, p. 23, hereinafter "Directive 85/303").

2 Those questions were raised in proceedings between, first, Société Bautiaa and the Directeur des Services Fiscaux des Landes (Head of the Landes Tax Office) (C-197/94) and, second, Société Française Maritime and the Directeur des Services Fiscaux du Finistère (Head of the Finistère Tax Office) (C-252/94) concerning the reimbursement of sums paid by them to the tax authorities pursuant to national legislation regarding registration duty on capital contributions made in the context of mergers.

The national legislation

3 Article 810-I of the French General Tax Code ("the Code") provides as follows:

"Registration duty shall be payable on contributions of movable assets at the rate of 1%."

4 There are several exceptions to that rule, including Article 812-I-1 of the Code, headed "Increases of capital", which provides:

"... the duty prescribed by Article 810-I shall be payable at the rate of 3% where it applies to acts increasing, by the capitalization of profits or of permanent or temporary reserves of any kind, the capital of the companies referred to in Article 108" (that is to say, companies liable to corporation tax).

5 Article 816 of the Code provides, with particular regard to merger transactions:

"I. Acts recording merger transactions entered into exclusively by legal persons or organizations liable to corporation tax shall be subject to the following arrangements:

(1) A fixed registration duty or a fixed charge for the publication of notices in respect of immovable property shall be payable in the sum of 1 220 francs;

(2) The proportional duty of 3% provided for in Article 812-I-1 shall be reduced to 1.20%.

It shall be calculated on the value of the net assets of the company acquired, subject to deduction of the amount of its share capital which is released and not paid up ...".

The Community rules

6 As regards capital duty, Directive 69/335, concerning indirect taxes on the raising of capital, is aimed in particular at achieving the harmonization of the factors involved in the fixing and levying of capital duty in the Community, by means of the elimination of tax obstacles which interfere with the free movement of capital.

7 Article 4 of that directive lists the transactions which are subject to capital duty and those on which the Member States may charge such duty. In particular, it provides:

"1. The following transactions shall be subject to capital duty:

...

(c) an increase in the capital of a capital company by contribution of assets of any kind;

...

2. The following transactions may be subject to capital duty:

(a) an increase in the capital of a capital company by capitalization of profits or of permanent or temporary reserves;

...".

8 Article 7 of Directive 69/335 initially laid down a band of rates within which the Member States were at liberty to fix the rates applicable on their territory, and provided for the application of compulsory or optional reduced rates, depending on the nature of the transaction carried out. It was worded as follows:

"1. Until the entry into force of the provisions to be adopted by the Council in accordance with paragraph 2:

(a) the rate of capital duty may not exceed 2% or be less than 1%;

(b) this rate shall be reduced by 50% or more when one or more capital companies transfer all their assets and liabilities, or one or more parts of their business, to one or more capital companies which are in the process of being formed or which are already in existence.

...

4. Where a Member State exercises the power provided for in Article 4(2), capital duty may be charged at a reduced rate."

9 The rates thus fixed have been twice amended.

10 First, Article 1 of Directive 73/80, which took effect from 1 January 1976, provided:

"The rate of the capital duty provided for in Article 7 of (Directive 69/335) shall, with effect from 1 January 1976, be 1%."

Article 2 went on to provide:

"The reduced rates provided for in Article 7(1)(b) and (bb) of the same Directive shall, with effect from 1 January 1976, be any rate between 0% and 0.50%."

11 Next, Directive 85/303, which took effect from 1 January 1986, provided for the exemption of the transactions referred to in Article 7(1)(b). Article 7, as amended by that directive, reads as follows:

"1. Member States shall exempt from capital duty transactions, other than those referred to in Article 9, which were, as at 1 July 1984, exempted or taxed at a rate of 0.50% or less.

The exemption shall be subject to the conditions which were applicable, on that date, for the grant of the exemption or, as the case may be, for imposition at a rate of 0.50% or less.

...

2. Member States may either exempt from capital duty all transactions other than those referred to in paragraph 1 (that is to say, other than mergers, hive-offs and partial transfers of assets) or charge duty on them at a single rate not exceeding 1%.

...".

12 However, Article 9 of Directive 69/335 provides for the possibility of derogation from the rates laid down by Article 7:

"Certain types of transactions or of capital companies may be the subject of exemptions, reductions or increases in rates in order to achieve fairness in taxation, or for social considerations, or to enable a Member State to deal with special situations. The Member State which proposes to take such a measure shall refer the matter to the Commission in good time, having regard to the application of Article 102 of the Treaty."

13 Lastly, Article 10 of Directive 69/335 provides:

"Apart from capital duty, Member States shall not charge, with regard to companies, firms, associations or legal persons operating for profit, any taxes whatsoever:

(a) in respect of the transactions referred to in Article 4;

(b) in respect of contributions, loans or the provision of services, occurring as part of the transactions referred to in Article 4;

...".

Case C-197/94

14 On 5 November 1990 Société Bautiaa, a public limited liability company, acquired Société Nouvelle de Matériaux et Travaux Publics ("SNMTP") with retroactive effect from 1 January 1990 at a net value of FF 1 931 948. The merger contract provided for the payment of a proportional registration duty of 1.20% on the sum of FF 1 881 948, representing the "surplus" on the merger produced by the transaction, that is to say, the difference between the value of the net assets contributed by SNMTP and the amount of its paid-up and unredeemed share capital (FF 50 000). That duty, amounting to FF 22 583, was paid by Société Bautiaa to the French Treasury on 9 January 1991.

15 On 31 December 1991 that company applied to the tax authorities for reimbursement of the duty thus paid on the ground that Article 816-I-2 of the Code, by which merger transactions are subject to a proportional registration duty of 1.20%, was incompatible with Directive 69/335, as amended, which prohibits Member States from levying capital duties on mergers concluded on or after 1 January 1986. By decision of 27 April 1992 the Head of the Landes Tax Office rejected the application.

16 On 9 July 1992 Société Bautiaa commenced proceedings against the Head of the Tax Office before the Tribunal de Grande Instance, Dax, for reimbursement of the duty paid.

17 In the course of those proceedings, the Head of the Tax Office contended, first, that the merger transaction giving rise to the levying of the duty at issue constituted, from a fiscal standpoint, a capitalization of reserves. According to a decision of the Chambre des Requêtes of 31 October 1927, a capitalization of reserves is made up of two transactions: first, the distribution to the members of all or part of the reserves built up by the company and, second, the immediate contribution of those reserves by those members, resulting in their capitalization within the share capital, in return for the issue of free shares to the shareholders. In order to compensate for the exemption from allotment tax for which such an allotment of shares qualifies, a specific registration duty on capitalizations of reserves was introduced. According to the Head of the Tax Office, that reasoning necessarily extends to mergers, since a merger may have the effect of capitalizing the reserves of the company acquired within the capital of the acquiring company. He contends that the taxation of the

merger transaction therefore compensates for the exemption from income tax of the allotment of free shares.

18 The Head of the Tax Office maintained, next, that Directive 69/335, as most recently amended by Directive 85/303, applies only to ordinary capital duty on straightforward contributions, and does not cover the duty payable on a capitalization of reserves or merger, since the latter duty constitutes a "substitute for allotment tax", the justification for which has nothing to do with the capital duty to which the directive relates.

19 Société Bautiaa contended, for its part, that the duty of 1.20% levied on merger contracts pursuant to Article 816-I-2 of the Code is merely a special rate of the proportional duty of 3% provided for in Article 812-I-1, which is itself nothing more than the "capital duty" laid down by Article 810-I levied at the rate of 3% instead of 1%. It concludes from this that the 1.20% duty levied on the merger of 26 December 1990 is a capital duty the levying of which is contrary to Directive 69/335, as amended, and that the argument relied on by the administrative authorities, characterizing it as a substitute for allotment tax, is invalid.

20 By judgment of 15 June 1994, the Tribunal de Grande Instance, Dax, stayed the proceedings and referred to the Court for a preliminary ruling the following question:

"Must Article 99 et seq. of the Treaty and Article 7 of Directive 69/335/EEC of 17 July 1969 (as most recently amended by Directive 85/303/EEC of 10 June 1985) be interpreted as precluding the application of national legislation which maintains at 1.20% the registration duty payable on company mergers, as in the case of Articles 812 to 816-I of the General Tax Code?"

Case C-252/94

21 From 1987 to 1991 Société Française Maritime carried out a number of merger transactions on which the French State levied capital duty at the rate of 1.20% pursuant to Article 816-I-2 of the Code. The total duties paid on those mergers by Société Française Maritime amounted to FF 1 406 940.

22 On 5 March 1992 Société Française Maritime applied for reimbursement of the duties thus paid, less the fixed duty of FF 1 220 which was all that it considered to be due.

23 In support of its application, it maintained that Article 816-I-2 of the Code, imposing a 1.20% proportional capital duty on mergers, was inconsistent with Article 7 of Directive 69/335, as amended by Directives 73/80 and 85/303. It stated in that regard that, with effect from 1 January 1976, Directive 73/80 limited the duties payable on mergers to 0.50%, whilst Directive 85/303 required the Member States, with effect from 1 January 1986, to exempt transactions which were, as at 1 July 1984, exempted or taxed at a rate of 0.50% or less.

24 The Head of the Finistère Tax Office rejected its application by decision of 12 October 1992.

25 On 20 November 1992 Société Française Maritime commenced proceedings against the Head of the Finistère Tax Office before the Tribunal de Grande Instance, Quimper, claiming relief from the duties referred to above and relying on the same grounds as those previously advanced by it in its application. The tax authority argued in its defence that the company' s claim in respect of the duties paid in 1987 and 1989 was inadmissible and out of time, and that the only issue still in dispute was the merger concluded in January 1991. It also maintained that the 1.20% duty did not constitute a capital duty in the strict sense of the term but was in fact a substitute for allotment tax, which is not covered by Directive 69/335.

26 Société Française Maritime contested the objection of inadmissibility raised by the administrative authorities with regard to its claim in respect of the duties paid in 1987 and 1989 on the ground that, in accordance with the judgment of the Court of Justice in Case C-208/90 Emmott [1991] ECR I-4269, no time-bar may be pleaded against a national of a Member State who relies on the rules laid down by a directive so long as that Member State has not properly transposed that directive into its domestic law.

27 By an interim judgment of 9 August 1994, the Quimper court declared that the company' s claim in respect of the duties paid in 1987 and 1989 was inadmissible, and decided, as to the rest of the claim, that a question should be referred to the Court of Justice for a preliminary ruling. An appeal in cassation was lodged against the latter decision on 9 August 1994. By letter of 2 March 1995, registered at the Court Registry on 7 March 1995, the Quimper court stated that, in its view, there were no grounds for suspending the present proceedings.

28 The question referred for a preliminary ruling by the Tribunal de Grande Instance, Quimper, is worded as follows:

"Does Directive 85/303 of 10 June 1985, which determines in particular the system of taxation applicable to mergers and which provides that 'Member States shall exempt from capital duty transactions ... which were, as at 1 July 1984, exempted or taxed at a rate of 0.50% or less' (Article 7(1) of the directive), in conjunction with Directive 73/80 of 9 April 1973 which set the ceiling, with effect from 1 January 1976, for the duty levied upon company mergers at 0.50%, authorize the levying, by the tax authority of a Member State, of a proportional registration duty at a rate of 1.20% on company mergers?"

29 By order of 30 June 1995 the two cases were joined for the purposes of the oral procedure and the judgment.

The interpretation of Directive 69/335, as amended

30 The questions referred by the national courts are aimed essentially at establishing whether Article 7(1) of Directive 69/335, as amended, with effect from 1 January 1976, by Directive 73/80, and subsequently, with effect from 1 January 1986, by Directive 85/303, precludes the application of a national law maintaining at 1.20% the rate of registration duty on contributions of movable assets made in the context of a merger.

31 In order to classify the duty at issue for the purposes of Directive 69/335, and to assess its compatibility with that directive as regards, in particular, the rates applicable, it is necessary, first of all, to determine whether transactions such as those which gave rise to the levying of capital duty in the two disputes in the main proceedings fall within the scope of Directive 69/335, and to classify them in the light of that directive. It is apparent from Article 1 of the directive, read in conjunction with Article 4, that the duty levied on contributions to capital companies constitutes a "capital duty" within the meaning of the directive where it applies to transactions covered by that directive.

32 The transactions which are or may be rendered subject to the harmonized capital duty by the Member States are defined objectively, and with uniform application to all Member States, in Article 4 of the directive, without reference to any specific aspects of their individual domestic legislation or to the way in which national tax systems are organized.

33 It is apparent from the documents before the Court that the duty at issue is levied on merger transactions entered into exclusively by legal persons or organizations liable to corporation tax.

34 Such a transaction constitutes an increase in the capital of a capital company by contribution of assets of any kind, within the meaning of Article 4(1)(c) of Directive 69/335, in the particular circumstances referred to in Article 7(1)(b), that is to say, the transfer by one or more capital companies of all of their assets and liabilities to one or more capital companies which are in the process of being formed or which are already in existence.

35 Contrary to the contention advanced by the French Government, it is not possible, in the context of a merger covered by Directive 69/335, to apply separate treatment to a capitalization of the reserves of the company to be acquired which falls within Article 4(2)(a) of Directive 69/335.

36 First, the term "merger", as used in the national provision, clearly refers to a capital-raising transaction consisting in an increase in the capital of a company (the "acquiring company") by the contribution to it of the whole of the assets of another company (the "company acquired"); second, the purpose of the capital raising is to strengthen another company

already in existence, namely the acquiring company, the capital of which is increased by the contribution made by the shareholders of the company acquired. As regards the latter point, the Court noted, in paragraph 14 of its judgment in Case C-15/89 Deltakabel [1991] ECR I-241, that the decisive test to be satisfied in order for a capital-raising transaction to attract capital duty is the strengthening of the economic potential of the company benefiting from it.

37 It follows that, in the two disputes in the main proceedings, the transaction whereby the company acquired capitalized its reserves merely constituted a capital-raising transaction which was not completed, for the purposes of the application of the directive, until the acquiring company' s capital was increased by the contribution to it of the assets of the company acquired. It is only when the amalgamation of the two companies is finally completed that the criterion of the strengthening of economic potential is fulfilled and the levying of capital duty, at the rate fixed by Article 7(1)(b) of Directive 69/335, is justified.

38 It would appear, therefore, that transactions of the type at issue in the main proceedings fall within the scope of Directive 69/335, and that they must be examined in the light of Article 4(1)(c) of that directive (increase of capital by contribution of assets of any kind), with the ensuing consequences as regards the application of the rate of capital duty payable under Article 7(1), as amended by Directive 85/303.

39 As regards the duty to which those transactions are subject, it is settled case-law that the nature of a tax, duty or charge must be determined by the Court, under Community law, according to the objective characteristics by which it is levied, irrespective of its classification under national law (see the judgments in Case 295/84 Rousseau Wilmot v Organic [1985] ECR 3759 and Case C-200/90 Dansk Denkavit and Poulsen Trading v Skatteministeriet [1992] ECR I-2217).

40 Since the registration duty at issue applies to capital contribution transactions falling within the scope of Directive 69/335, it constitutes a capital duty within the meaning of that directive. Consequently, it is necessary to examine its compatibility with Article 7(1)(b) of Directive 69/335, particularly as regards the rate.

41 In the light of the successive amendments made to that provision, it appears that, from 1 January 1976 to 31 December 1985, the maintenance by a Member State of a capital duty of the type in issue was incompatible with Article 7(1)(b) of Directive 69/335, as amended by Directive 73/80, which provided that the reduced rates referred to in Article 7(1)(b) were not to exceed 0.50%.

42 With effect from 1 January 1986, the maintenance of such a duty remained incompatible with the directive, Article 7(1) having been amended by Directive 85/303, which clearly provides for the mandatory exemption from all capital duties on increases of capital effected by means of the contribution by one company of the whole of its assets to another.

43 The reply to the question referred must therefore be that Article 7(1) of Directive 69/335, as amended, with effect from 1 January 1976, by Directive 73/80 and subsequently, with effect from 1 January 1986, by Directive 85/303, precludes the application of national laws maintaining at 1.20% the rate of registration duty on contributions of movable property made in the context of a merger.

The effects of this judgment ratione temporis

44 At the hearing, the French Government requested the Court to limit the effects of this judgment ratione temporis in the event of a decision that the maintenance of a registration duty of the type in issue in the main proceedings is incompatible with Community law.

45 In support of its request it alleged, first, the existence of significant objective uncertainty owing to the conduct of the other Member States and, above all, the Commission, and, second, the extremely serious repercussions which this judgment would have on France' s public finances.

46 As regards the first argument, the French Government relied on a declaration made in the course of the preparatory work relating to Directive 69/335, which stated:

"The delegations find ... that that article (Article 9 of the directive) allows France to apply to the transactions referred to in Article 4(2)(a) rates different from those provided for by Article 7(4)".

According to the French Government, the latter provision corresponds to Article 7(1) of the final version of the directive.

47 It is settled case-law that the interpretation which, in the exercise of the jurisdiction conferred upon it by Article 177 of the Treaty, the Court of Justice gives to a rule of Community law clarifies and defines where necessary the meaning and scope of that rule as it must be or ought to have been understood and applied from the time of its coming into force. It follows that the rule as thus interpreted may, and must, be applied by the courts even to legal relationships arising and established before the judgment ruling on the request for interpretation, provided that in other respects the conditions enabling an action relating to the application of that rule to be brought before the courts having jurisdiction are satisfied (see the judgment in Case 61/79 Denkavit Italiana [1980] ECR 1205, paragraph 16).

48 Having regard to those principles, it is only exceptionally that the Court may limit the effects of a judgment ruling on a request for interpretation (see, in particular, paragraph 17 of the judgment in Denkavit Italiana, cited above). The Court has taken such a step only in certain specific circumstances, for instance where there was a risk of serious economic repercussions owing in particular to the large number of legal relationships entered into in good faith on the basis of rules considered to be validly in force, and where it appeared that both individuals and national authorities had been prompted to adopt practices which did not comply with Community law by reason of objective, significant uncertainty regarding the implications of Community provisions, to which the conduct of other Member States or the Commission may even have contributed (see, in particular, the judgment in Case C-163/90 Legros and Others [1992] ECR I-4625).

49 In this case there is nothing to justify a derogation from the principle that a ruling on the interpretation of Community law takes effect from the date on which the rule interpreted entered into force (see Case C-137/94 Richardson [1995] ECR I-0000, paragraph 33).

50 First, the French Government has not shown that, at the time when the registration duty at issue was levied, Community law could reasonably be understood as authorizing the maintenance of that duty. The arguments advanced to show that it believed that it enjoyed a derogation pursuant to Article 9 of Directive 69/335, allowing it to apply different rates from those laid down by Article 7(1)(b) of the directive, are not relevant.

51 It should be noted in that regard, first, that the French Government was unable to provide any information on the question whether the declaration relied on by it was ever recorded in the minutes of the Council meeting. Moreover, it is settled case-law that declarations recorded in Council minutes in the course of preparatory work leading to the adoption of a directive cannot be used for the purpose of interpreting that directive where no reference is made to the content of the declaration in the wording of the provision in question. The declaration therefore has no legal significance (see the judgment in Case C-292/89 Antonissen [1991] ECR I-745, paragraph 18).

52 Next, it is common ground that Article 9 of the directive expressly refers, for the purposes of a derogation from the provisions of the directive, to the procedure laid down in Article 102 of the EC Treaty, which was not followed in the present case.

53 Lastly, it should be noted that the derogation relied on by the French Government relates only to the rate of duty on transactions of the type referred to in Article 4(2)(a) of the directive (increase of capital by capitalization of profits or of permanent or temporary reserves), and not to those referred to in Article 4(1)(c), read in conjunction with Article 7(1)(b), which cover mergers.

54 Second, the argument that the French Government would suffer significant financial loss cannot be accepted.

55 The financial consequences which might ensue for a government owing to the unlawfulness of a tax or imposition have never in themselves justified limiting the effects of a judgment of the Court (see the judgment in Dansk Denkavit and Poulsen Trading, cited above). Furthermore, to limit the effects of a judgment solely on the basis of such considerations would considerably diminish the judicial protection of the rights which taxpayers have under Community fiscal legislation (see the judgment in Joined Cases C-367/93 to C-377/93 Roders and Others v Inspecteur der Invoerrechten en Accijnzen [1995] ECR I-2229).

56 Consequently, there are no grounds for limiting in time the effects of the present judgment

Costs

57 The costs incurred by the French Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national courts, the decision on costs is a matter for those courts

On those grounds,

THE COURT,

in answer to the questions referred to it by the Tribunaux de Grande Instance of Dax and Quimper, by orders of 15 June and 9 August 1994, hereby rules:

Article 7(1) of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital, as amended, with effect from 1 January 1976, by Council Directive 73/80/EEC of 9 April 1973 fixing common rates of capital duty and subsequently, with effect from 1 January 1986, by Council Directive 85/303/EEC of 10 June 1985, precludes the application of national laws maintaining at 1.20% the rate of registration duty on contributions of movable property made in the context of a merger.