

## **EU Rejects French 'Discriminatory' Pension Taxation**

The European Commission has decided to refer France to the European Union's (EU) Court of Justice for discriminatory taxation of foreign pension and investment funds, which it considers to be in breach of European Union rules on free movement of capital.

Defending its decision, the Commission argues that in particular, France does not grant a withholding tax exemption on dividends distributed by French companies to pension and investment funds established in the EU and in the European Economic Area (EEA) whereas it grants such an exemption if the pension and investment funds are established in France.

The Commission cites French legislation (articles 119bis and 187 of the French Tax Code), which provide that dividends paid to foreign persons (including pension and investment funds) are subject to a withholding tax of 25% (or 15% in case of bilateral treaties). By contrast, dividends distributed to domestic pension and investments funds are exempt from a withholding tax.

The Commission considers that this difference in treatment limits the free movement of capital guaranteed by article 63 of the Treaty on the Functioning of the EU (TFEU) and article 40 of the EEA Agreement.

According to the Commission, as a result of this discrimination, pension and investment funds based in other EU countries and in the EEA are placed at a disadvantage compared to their French-based counterparts and French customers are therefore liable to enjoy less choice of pension and investment funds.

Alluding to the fact that in 2010 France introduced new legislative provisions under which the income from shares distributed to non-profit organizations (including pension funds) established in France or not, are taxed at a flat rate of 15%, the Commission notes that these changes appear not to have been applied in practice in the absence of more detailed administrative implementing rules.

The Commission sent a reasoned opinion to France on March 18, 2010 requesting that it end such discriminatory tax treatment.