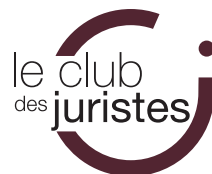


JUNE 2015

REPORT

TOWARDS RECOGNITION OF THE GROUP INTEREST IN THE EUROPEAN UNION?



TOWARDS RECOGNITION OF THE GROUP INTEREST IN THE EUROPEAN UNION?

REPORT FROM THE CLUB DES JURISTES

Committee on Europe
JUNE 2015



Registered association - 4, rue de la Planche 75007 Paris
Phone : +33 (0)1 53 63 40 04 - Fax : +33 (0)1 53 63 40 08

www.leclubdesjuristes.com

List of the people heard by the Committee

A study of the Committee on Europe of the Club des Juristes,
realised under the joint presidency
of **Anne Outin-Adam**, Director of legislative and legal policies
at Paris Ile-de France Chamber of Commerce and Industry
and Maître **Didier Martin**, Senior partner, Bredin Prat

With the valuable contribution of **Pierre-Henri Conac**,
Professor of Commercial and Company Law
at the University of Luxembourg

And the active participation of:

Françoise Arnaud-Faraut and **Anne-Marie Reita-Tran**,
experts of the Paris Ile-de France Chamber of Commerce and Industry

Tanguy Allain, Associate Professor at the University of Cergy-Pontoise

Charlotte Baret, BNP Paribas

Odile de Brosses, AFEP

Kareen Ceintre, ALSTOM

Sandrine Elbaz, SAINT-GOBAIN

Olivia Guillaume, SANOFI

Corinne Jacquot, SOCIETE GENERALE

Serge Rognon, L'OREAL

Christoph Teichmann, Professor at the University of Wurzburg

Isabelle Urbain-Parléani, Professor at Université Paris Descartes

Jean-Paul Valuet, ANSA

Table of contents

Towards recognition of the group interest in the European Union?	9
Context	9
Summary of the recommendations.....	9
Draft for a european recommendation on the group interest.....	10
Economic data and legal issue	14
Substantive law in France	16
European benchmark	17
The group interest in 24 Member States: a close-up	18
The proposals in detail	19
I - Objectives	19
II - Answers to be offered	21
A - Which european instrument? Not a directive, but a recommendation with a diffusion of good practices	21
B - What content: what European regime for the group interest?	22

APPENDIX 1 :

Summary table of comparative law26

Detailed table of comparative law30

1 - Member States in which the group interest
is not recognised31

2 - Member States in which the group interest
is legally accepted36

3 - Member States in which the group interest
is recognised by case law42

APPENDIX 2 :

**Comparison of intra-group operations which
could be considered to be part of the group interest48**

Towards recognition of the group interest in the European Union?

Context

The 2011 report of the Reflection Group on the Future of European Company Law stated that «*The EU Commission should consider, subject to evidence that it would be a benefit to take action at the EU level, to adopt a recommendation recognising the interest of the group.*» The explicit aim of that report was to **reinforce the flexibility of group management in a cross-border context.**

In 2012, following up on that report, the European Commission announced its firm intention to recognise the group interest when it declared that it would propose «*an initiative*» in that direction in 2014.¹ This topic is moreover implicitly present in other current evolutions of European company law (propositions of directive on the single-member limited liability company or LLC,² consultation on mergers and divisions). The multiplication of entry points testifies that this issue presents a real practical challenge.

Summary of the recommendations

On the general structure of a european initiative

In order for legal constraints to be adapted to economic stakes, decision-making processes inside cross-border groups must be made more flexible and more secure, especially when the individual interests of the subsidiaries are balanced against the overall interest of the group.

(1) European Commission, Consultation on the future of European Company Law, 2012.

(2) *Societas Unius Personae*.

A European recommendation would be a flexible solution for a harmonised recognition of the group interest, since it would make it possible to avoid the difficulty of an increased legislative rigidity, which is always a disadvantage in terms of competitiveness.

On the regime of a european group interest

The French "Rozenblum" case being quite well-known already in Europe, it should be recommended to the Member States that they adopt a similar legal mechanism.

Thus, within the framework of intra-group operations, the group interest should be allowed to be claimed by the leaders of the parent company or the subsidiary companies, for criminal as well as civil liability, based on the following criteria:

- the belonging to a same group, based on the existence of structural links between the companies and the implementation of a common strategy;
- the conformity of the decision to the group interest, without the company which bears the charge of it being endangered (for that matter, that criterion alone would be enough in case of a wholly-owned subsidiary);
- the existence of a compensation to the benefit of the latter.

Draft for a european recommendation on the group interest

WHEREAS:

(1) The groups of companies and the holdings have a considerable economic weight. A few dozens of them account for most of the industrial and commercial activity worldwide. In practice, when a parent company defines its strategy, it may have to give priority to the group interest, even when the latter does not entirely coincide with its subsidiary's own interest.

A homogenisation of such issues at European level would be appropriate since it would offer better legal certainty within cross-border groups. SMEs would also benefit from a regime making the coordination between several European subsidiaries easier. They also face – maybe even more – legal difficulties in the management of foreign subsidiaries.

(2) It should be underlined that, on the one hand, the concept of the group interest is not contrary to the respect of the legal personality of the different companies of the group and that, on the other hand, the corporate interest is not exclusive of the group interest.

(3) The group interest should not be mistaken for «company law», as understood in Germany in particular, which implies a series of legal constraints that apply to the parent companies and subsidiaries. The economic operators unanimously consider that such an evolution would result in an inappropriate increased rigidity of business practice.

(4) In order to take into consideration the economic imperatives of the groups and to facilitate management, the group interest must mean the possibility for a parent company to take decisions – or to have its subsidiaries take decisions – which are first and foremost part of a global strategy of the group, and which are superior to the particular interests of each individual entity. However, such decision-making strategies should not endanger any subsidiary. Generally speaking, and provided other conditions are respected – especially in terms of proportionality and balance – what is at stake is the establishment of a standardised framework for the intra-group operations in Europe through the enhancing of legal certainty, without the autonomy of the different structures being questioned.

(5) Broadly speaking, the two following observations can be made:

- The first observation is that of the existence of a real patchwork among Member States: some countries do not recognise the group interest (though there sometimes is corporate law, as in Germany), while others recognise the group interest, with wide variations depending on whether their legal system is built on case law or legislation. Such a heterogeneous assessment is characteristic of the practical difficulties that the cross-border groups may encounter.

- The second observation is that there is a general tendency in a number of Member States where the law is evolving to move closer to the Rozenblum case.³ Such is the case for example in the Czech Republic or in Poland. That evolution towards standardisation should be encouraged, as it provides greater legal certainty.

(6) In 2012, the European Commission stated its intention to recognise the notion of the group interest by announcing that it would suggest «an initiative in 2014 aiming at (...) recognition of the group interest.»⁴ This was an outcome of the 2011 report of the Reflection Group on the future of European Company Law which stated that «The EU Commission should consider, subject to evidence that it would be a benefit to take action at the EU level, to adopt a recommendation recognising the interest of the group.»

(7) Other current evolutions of European company law (proposition of a directive on the single-member limited liability company, or LLC, consultation of the Commission on mergers and divisions) also point out to that group interest. The multiplication of entry points testifies that that issue presents a real practical challenge.

Given the difficulties mentioned above, the protean character of the notion of the group interest in Europe, which results in legal uncertainty for the groups of companies, and the political will that has already been expressed, the European Commission **RECOMMENDS** the following to the Member States:

1) In order to meet to the greatest extent possible the needs of the companies, of all sizes, which are looking for growth and competitiveness, Member States should adopt an approach facilitating the cross-border management of groups, which would reduce the costs and ensure better certainty of internal operations.

2) Within that framework, the group should be defined based on the accounting consolidation scope, which is a standardised notion at European level.

(3) France, the Netherlands, Belgium, Luxembourg...

(4) European Commission, Consultation on the Future of European Company Law, 2012.

3) *The operations at stake would mainly belong to three domains in which legal certainty should be enhanced:*

- *the distribution of general costs within the group (administrative, IT and logistics costs);*
- *the strategic choices of development: developing such and such business line may give an advantage to a subsidiary to the expense of another. Though such orientations may be a legitimate answer to economic objectives, they should not result in a company of the group being put into danger, which may imply that measures should be taken to protect minority shareholders and creditors;*
- *the intra-group transactions that are not conducted under normal market conditions.*

4) *Such recognition would be made in a standardised way based on the case law of some of the Member States⁵ defined as follows:*

- *the group interest could be recognised at the level of criminal and civil liability, for the leaders of subsidiaries and parent companies;*
- *for it to be characterised, the following conditions must be fulfilled:*
 - *belonging to a same group, based on the existence of structural links between the companies and the implementation of a common strategy;*
 - *conformity of the decision to the group interest, with no endangering of the company that bears the charge of it;*
 - *existence of a compensation to the benefit of the latter.*
- *In the case of wholly-owned subsidiaries, the sole criterion of not being put into danger could be enough.*

(5) The countries which have adopted the «Rozenblum» doctrine, especially France, the Netherlands, Belgium, Luxembourg...

5) *The recognition of the group interest should be accompanied by measures of information and protection of the minority shareholders and creditors, in particular to guarantee transparency as to the belonging to a group.*

6) For information purposes only, the intra-group operations that could be considered as belonging to the group interest are listed below:

The elaboration of that white list should be the result of the work conducted together with representatives of the economic operators organised in groups. To this end, appendix 2 to this document – which studies the intra-group operations at stake from the point of view of comparative law – could be helpful.

Economic data and legal issue

The groups of companies **have a considerable economic weight**. A few dozens of them account for most of the industrial and commercial activity worldwide.

At the French level, a study⁶ conducted by INSEE – the French national institute of statistics and economic studies – and published in 2012, established that the French productive fabric is *«even more concentrated than it was thought to be»*: 200 large companies employ 28% of the employees, produce one third of the added value, one half of the export turnover and almost two thirds of domestic spending in R&D.

Among the multiple motives that could support the adoption of that organisation, there is:⁷

- individualisation of branches of business and segmentation of risks,
- flexibility of the organisation of the management (distribution of responsibilities),

(6) That study is based on the new definition of the company as established by the 2008 law of modernisation of the economy based on economic criteria. The latter considers that a group is one and the same company, while the legal approach considers subsidiaries as autonomous legal units.

(7) « Les groupes de PME : une ou plusieurs sociétés ? » Paul Billon, *Lexis Nexis Litec Professionnels* 2009.

- financial flexibility (centralisation of the cash management by the parent company, possibility to compensate for the cash shortfalls of a subsidiary with the cash surplus of another),
- flexibility in the management (centralisation of common services: accounting, administrative, IT, financial and legal management),
- fiscal flexibility.

For want of legal personality, the group of companies is a concept that is more economic than legal. Consequently, by virtue of the fundamental principle of the autonomy of legal persons, subsidiaries are distinct legal entities which have individual corporate interests.

As it happens, the development of the concept of the «group interest» is a particularly illuminating manifestation of the **need to reconcile economic realities and legal norms**. For, *«in many situations, there can be a fundamental contradiction in the legal independence of the controlled company – which may be only formal – and its economic dependence – which may be quite real – towards a controlling company or group of companies.»*⁸ Thus, in practice, a parent company, when defining its strategy, may decide to give priority to the group interest, even though the latter doesn't comply with its subsidiary's own interest.

Such a hierarchical organisation of the specific interests of each company in relation to a **group interest that is defined within the framework of an overall economic strategy** calls for a specific legal treatment at the European level for enhanced legal certainty of cross-border groups.

(8) « La notion de groupe de sociétés et d'entreprises en droit des activités économiques », J. Paillusseau, *Recueil Dalloz* 2003, p. 2346.

WHAT DOES «GROUP INTEREST» MEAN?

First and foremost, a **«corporate group law»** (especially as understood in Germany), which implies a series of legal constraints that apply to the parent companies and subsidiaries, is not to be established. The economic operators unanimously consider that such an evolution would result in an inappropriate increased rigidity of business practice. However, **the economic reality of the group should not be ignored**. Because it legitimates the fact that its economic imperatives should be taken into account and because its **aim is to facilitate management**, the group interest means the possibility for a parent company to take decisions – or to have its subsidiaries take decisions – that are first and foremost part of a global strategy of the group, which is superior to the particular interests of individual entities. However, such decision-making strategies must not endanger a subsidiary. Generally speaking, and provided other conditions are respected – especially in terms of proportionality and balance – **a standardised framework for intra-group operations in Europe would enhance legal certainty, without questioning the autonomy of the different structures.**

Substantive law in France

The concept of the «group interest» first appeared in the French *Rozenblum* case in 1985.⁹

In that system, the following conditions must be met for the leaders not to be accused of abuse of corporate assets based on the financial cooperation among the companies that belong to the same group:

- there must be a group: the legal and financial links among the companies of the group must be demonstrated, as well as the implementation of a common strategy aiming at the realisation of a common project;

(9) Cass. crim., 4 févr. 1985, Bull. crim., n° 54 ; JCP G, 1986, II, 20585, note W. Jeandidier ; D. 1985, p. 478, note D. OHL ; récemment, Cass. crim., 10 févr. 2010, n° 09-83.691, F-D : *JurisData*, n° 2010-001541 ; R. Salomon, « L'intérêt de groupe, fait justificatif de l'abus de biens sociaux », *Dr. sociétés*, n° 5, mai 2010, comm. 103. The foundation for that case was laid down as soon as 1974 by the Tribunal correctionnel de Paris in the «Agache-Willot» case: T. corr. Paris, 16 mai 1974, Gaz. Pal., 1974, 2, 886 ; *JCP E*, 1975, II, 11816, obs. Lacoste.

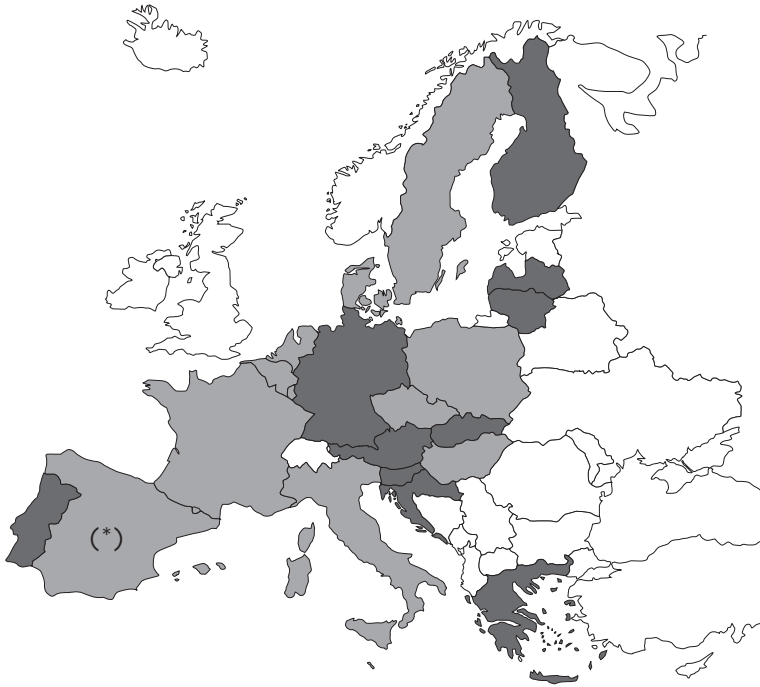
- the operation must originate in a common economic, social or financial interest, which is to be assessed in relation to a policy that has been elaborated for the whole group;
- the financial support should not come without any compensation or destabilise the balance of mutual commitments between the concerned companies;
- the support should not exceed the financial possibilities of the company that bears the charge of it.

European benchmark

In broad outline, two observations can be made:

- The first observation is that of the existence of a real patchwork among Member States: some countries do not recognise the group interest (though they sometimes have corporate law, as in Germany), while others recognise the group interest, with wide variations depending on whether their legal system is built on case law or legislation. Such a heterogeneous assessment is characteristic of the practical difficulties that the cross-border groups may encounter.
- The second observation is that there is a general tendency in the Member States where the law is evolving to move closer to the French *Rozenblum* case: this is the case for the law in the Czech Republic, and for case law in Poland. Such a movement of alignment should be encouraged, since it provides greater legal certainty.

The group interest in 24 Member States: a close-up



■ In Spain, statutory regime about the group interest being enacted.

■ States which do not recognise the group interest

A few elements of comparative law will be found in the appendices:

- the analysis of a certain number of legal systems in Europe in two comparative tables of substantive law (appendix 1);
- a table on the intra-group operations that could be considered to be part of the group interest (appendix 2).

(*) In Spain, statutory regime about the group interest being enacted.

The proposals in detail

I - Objectives

Given the companies' quest for growth and competitiveness against foreign groups in a globalised context, it is important that their needs be met to the greatest extent possible.

Needless to say, the problem of the group interest is more or less significant depending on the configuration of the groups and the nature of the subsidiaries: wholly-owned subsidiaries or subsidiaries with minority associates, subsidiaries exclusively dedicated to an intra-group activity (for example, finances), or operating subsidiaries with their own clients.

Indeed, it is especially in cross-border groups which include operating subsidiaries with minority shareholders that a European recognition of the group interest would offer three major advantages:

Reducing management costs

Today, management is made more complex for these groups by the differences in the legal systems: the question daily arises of whether the group interest is recognised or not in such and such country, and if so, under what conditions. The necessity to conduct those controls of regulations or case law – potentially in the other 27 Member States – implies high legal costs, especially for SMEs which cannot have developed legal departments. In other words, adopting a standardised solution at the European level would result in simplification and savings.

Facilitating the internal management of cross-border groups

In practice, recognition at the European level of the group interest would highlight that «there is a balance between benefits/losses which would be considered whenever a parent company gives an instruction that would protect the creditors and other stakeholders.»¹⁰

(10) Adapted from 2011 report of the Reflection Group on the future of EU Company Law.

The management of groups could thus be more efficient and their decision-making more predictable.

Making intra-group operations more secure

It would be appropriate to create a «sphere of security» under criminal and civil law for the leaders that would work in a group of societies they would consider as one entity. That evolution would give more clarity to the directors of the subsidiaries who would have to approve the transactions with the parent company.

CASE STUDY

Context:

Italy, where the concept of the group of interest is legally recognised, provides an example of the lack of legal certainty currently weighing on the groups of societies. Indeed, when a parent company exercises direction and coordination over a subsidiary, which is presumed when it controls the latter, it may take a decision that is contrary to the interest of the subsidiary provided there are compensatory advantages to it («*teoria dei vantaggi compensative*»). Traditionally speaking, those advantages are not necessarily financial ones, and it is accepted that they may result from the profit coming from the overall strategy of the group.

Facts:

A tribunal¹¹ penalised the leaders of an Italian subsidiary because they had given an advantage to the parent company, whose profit-sharing in the subsidiary was more than 80%, by signing a cash pooling contract with the group and buying a company.

Comments:

Insofar as it is only a first-instance decision, which is based on non-compliance with the procedural rules as provided by the Consob, this cannot be analysed as the Italian law moving away from recognition of the group interest. This decision nonetheless illustrates that even when such recognition does exist, legal uncertainty remains because of the lack of harmonisation at European level.

(11) Decision of the Parma Court (civil division), 28 March 2013 (not published).

II - Answers to be offered

A - Which european instrument? Not a directive, but a recommendation with a diffusion of good practices

A priori, there seems to be an alternative at European level:

Comparison of legal bases	Directive	Recommendation (and/or informal approval of good practices)
ADVANTAGES	Higher level of harmonisation due to the constraining scope of the instrument.	Less burdensome legislative process. Flexibility of the rules (application and evolution).
DRAWBACKS	Long and uncertain legislative process Difficulty to make the rules evolve over time (rigid law).	Lower level of harmonisation due to the non-constraining scope of the instrument.

The advantage of a directive, given its binding capacity on Member States, would be to provide some legal certainty. However, given the legislative process and the requirements in terms of majority, blockages may be feared, for certain countries are attached to their system.

Above all, from the perspective of the companies, the fact that **flexibility is a necessity** within the groups and the fact that it is vital **to preserve the evolutionary character of the rules** tend to promote a non-constraining support, therefore a **recommendation with a diffusion of good practices**:

- at a technical level: if the institutional path is chosen, a recommendation is the instrument that should be given priority, insofar as it is a non-constraining instrument for the Member States and would therefore more easily win their support. Moreover, it is easier for the content of a recommendation to change.

- from a perspective of opportunity and pragmatism: a recommendation could result in an evolution of the companies as well as the national courts (provided of course that it would not be contrary to their national law) towards a harmonisation of the existing laws on the group interest. Beyond that, the Member States which do not recognise the group interest yet would naturally be led to consider the possibility of implementing it. *Soft law* through parallel diffusion of good practices would usefully complete that system.

B – What content: what European regime for the group interest?

> Which scope of the group?

Out of simplicity and uniformity among the Member States, the **definition of the group should be based on the accounting consolidation exercise**, which is a concept that is already harmonised at the EU level through European directives. Thus, a company is included within the consolidation scope if an exclusive control, a joint control or a notable influence is exercised by the parent company.

> What field of application for the group interest?

> Which operations would be included?

There are three main areas of decision-making in which the group interest could usefully enhance legal certainty:

- 1) **the rules of distribution of the general costs** within the group (administrative, IT, logistics costs...);
- 2) **the strategic choices of expansion within the group**: developing such and such business line may give an advantage to a subsidiary at the expense of another. Though such orientations may be a legitimate answer to economic objectives, they should not result in the endangering of one of the group's companies, which may imply that

some measures should be adopted to protect minority shareholders and creditors;

3) **the intra-group transactions that are not made under normal market conditions.**

A (indicative) list of good practices in an appendice to the European recommendation on the group interest would be quite useful. It would be a guideline for the companies as well as, if need be, the courts of the Member States. It could, for example, target the cash or omnium agreements¹², or even the management conventions or management fees conventions.¹³

> Which areas should be included in the group interest?

In French law, the sole origin of the field of application of the group interest is the criminal liability of the company executive, since it is an evidence of abuse of corporate assets. Though that concept has not been extended to other fields yet, there is a real interest in its being extended to civil liability. Of course, this would by no means result in giving carte blanche to the leaders of companies and thereby risking abuses, and the scope of such an extension should only cover cases of mismanagement (excluding the violations of statutes, laws and regulations).

For example, mismanagement is often mentioned in cases of advances among companies or in cases of maintaining of loss-making activities. In order to avoid liability being imposed in such cases, cash agreements must be made, or a strategic choice that is in the interest of the group must be underlined.

(12) Through these conventions, the financial movements inside the group are centralised, thanks to a central company, which is usually the parent company. Each subsidiary then grants it the power to manage its treasury, which facilitates advances among companies through current accounts.

(13) Through those conventions, common services (administrative, accounting, legal, financial, IT, human resources or central purchasing services) are centralised.

> Which leaders could claim the group interest?

In French law, only the leaders of subsidiaries can benefit from the doctrine on the group interest, which seems to be too restrictive.

Within the framework of a European recommendation, all the leaders of groups of companies, be they parent companies or subsidiaries, de facto or de jure, should be included.

> *Which criteria should be chosen to identify a group interest?*

To find a balanced solution that would at the same time take into consideration the existing systems, the evolutions currently going on in several Member States and the needs of the companies, the common concept of the group interest:

- would apply to criminal as well as civil liability;
- would be based on the "Rozenblum" test that is defined by the following criteria:
 - belonging to a same group, based on the existence of structural links between the companies and the implementation of a common strategy;
 - conformity of the decision to the group interest, with no endangering of the company that bears the charge of it;
 - existence of a compensation to the benefit of the latter.

In the case of wholly-owned subsidiaries, the applicability of a simplified Rozenblum test, which would be limited to controlling that there is no endangering of the company, may be considered.

> *Which formalities?*

In the interest of flexibility and simplicity, the application of the group interest should not be conditional to the completion of specific formalities. In particular, the possibility for a group to claim a «group interest» should not depend on the signing of a specific contract, as in Germany, nor even on a statement.

However, the recognition of the group interest should be accompanied by measures of information and protection of minority shareholders and creditors, in particular so as to guarantee transparency regarding the belonging to a group. That information would be published, by the parent company and the subsidiaries, for creditors and third parties to know.

As to the support to be chosen, there could be a publication on the websites of the companies of the group, and/or, to take the French example, in the management report as provided in Article L. 233-26 of the *Code of Commerce*.

APPENDIX 1¹⁴

Summary table of comparative law

Member States	Recognition of the group interest		Declaration of membership of the group
	Law	Case law	
France		✓	
United Kingdom		✓	
Italy	✓		✓
Czech Republic	✓		✓
Spain	✓	✓	✓

(14) These tables are based on a comparative law study conducted by Professor Pierre-Henri Conac, University of Luxembourg.

Subordinate relation	Protection of the shareholders	Protection of the creditors
	Minority shareholders' withdrawal right	Specific rules other than bankruptcy law
	✓	✓
✓	✓	
	✓	✓

Member States	No recognition of the group interest		Declaration of membership of the group
	Law	Case law	
Germany <i>de jure</i> group (PLC)	✓		✓
Germany <i>de facto</i> group (PLC)	✓		
Germany Group of GmbH		✓	
Portugal	✓		✓
Austria		✓	

Subordinate relation	Protection of the shareholders	Protection of the creditors
		Specific rules other than bankruptcy law
✓	✓	✓
✓	✓	✓
	✓	✓
	✓	✓
	✓	✓

Detailed table of comparative law

	Germany
Existence of mitigations of the principle	<p>In the «<i>de jure group</i>» of public limited companies (PLC): recognition of the group interest subordinated to the existence of a «management contract» (rare in practice).</p> <p>That contract may apply to all the subsidiaries of the group or only to some of them.</p> <p>That contract has no fiscal value: only the contract of transfer of profits may result in fiscal integration.</p> <p>«<i>de facto group</i>» = when a public limited company is able to exercise an influence on a controlled company but no management contract has been signed.</p>

1 - Member States in which the group interest is not recognised (with a few exceptions quoted below)

Austria	Portugal	Slovenia
<p>Case law regime but a convention between the parent and the daughter company may be allowed.</p>	<p>Specific regime in case of a «group relation» between two companies:</p> <p>a/ if one of them completely controls the other;</p> <p>b/ or if, as independent companies, they have agreed to be submitted to a unitary and common direction (joint group);</p> <p>c/ or if, regardless of whether they are dependent or independent, a company entrusts the other with the management of its activities (subordinate relation).</p>	<p>Distinction «<i>de jure</i>» v «<i>de facto</i>» group</p>

	Germany
<p>Which substantive conditions?</p>	<p>The validity of the management contract is subordinated to the specification of an annual compensation to the minority shareholders of the subsidiary.</p> <p>The terms and the manner of redemption of the shares of the subsidiary’s minority shareholders, who have a withdrawal right, must be laid down. However, this is not a condition for the validity of the management contract.</p> <p>The existence of a «<i>de facto</i> group» creates specific obligations of compensation to the benefit of the subsidiary in case of a disadvantage.</p>
<p>Which formal conditions?</p>	<p>The conclusion of a management contract must result from a resolution by the general assembly of each of the companies involved. The statutes may include the consent of the supervisory board.</p> <p>In the «<i>de jure</i> groups», a (non-public) management report, which must mention all the disadvantages suffered by the subsidiary due to the management, must be established by the leaders of the subsidiary.</p> <p>In the «<i>de facto</i> groups», the board of directors must establish a management report, which is submitted to the supervisory board and to the auditors, and which lists the relations between the managing and the controlled companies and quantifies the detrimental measures.</p>

Austria	Portugal	Slovenia
<p>The executive board of the subsidiary can take into account the group interest, only provided this does not result in a disadvantage for the subsidiary, unless the parent company immediately promises to compensate the subsidiary in the near future.</p>	<p>In case of a «<i>de facto</i> 100% group», or of a «contractual group», the directors of the parent company can issue constraining instructions against the subsidiary in the interest of the group, provided they:</p> <p>a/ comply with the law and the subsidiary's statutes;</p> <p>b/ comply with the distribution of powers within the subsidiary.</p>	<p>Duty of care of the directors of the parent company.</p> <p>In the «<i>de facto</i> group», the parent company must compensate any disadvantage being suffered by the subsidiary within the fiscal year.</p>
		<p>In the «<i>de jure</i> group», if an order by the parent company implies a decision of the supervisory board of the subsidiary within a time limit, and that it has not been adopted within that time limit, the parent company can issue that instruction a second time, that time with the approval of its own supervisory board. When the order is issued a second time, the subsidiary must fulfill it.</p> <p>In the «<i>de facto</i> group», a dependence report, which describes the relations between the subsidiary and the parent company must be established by the leaders of the subsidiary in order to determine the amount of the compensation.</p>

	Germany
<p>Liability</p>	<p>Principle = no direct liability of the controlling company to the creditors of the dependent company.</p> <p>In the «<i>de jure</i> groups», damages may be granted if the controlling company has not respected its duty of care when issuing orders.</p> <p>In the «<i>de facto</i> groups», the leaders are liable only if damages are not compensated.</p> <p>In the groups of GmbH, the liability of the parent company to the subsidiary is admitted in case of a violation of the interest of the latter by the former.</p>

Austria	Portugal	Slovenia
	<p>In case of «<i>de facto</i> 100% groups», or «contractual groups», there is a direct, unlimited and joint liability of the parent company for the debts of its subsidiaries (not applicable to the parent companies under foreign law).</p>	<p>If there is a violation of the duty to issue careful orders to subsidiaries, the leaders of the parent company of the “<i>de jure</i> group” and the parent company are jointly liable to the subsidiary for damages inflicted to the latter.</p> <p>If the management report of the «<i>de facto</i> group» is inaccurate, the leaders of the subsidiary are jointly liable for the losses.</p> <p>The minority shareholders and creditors of the subsidiary can petition the court to order the parent company to compensate the disadvantages suffered by the subsidiary.</p>

2 - Member States in which the group interest is legally accepted

	Italy
Conditions	<p>The parent company may inflict damages to a subsidiary in the name of the «group interest» if there are actual «compensatory advantages».</p> <p>System founded on the statement of the parent’s «control and coordination».</p> <p>The existence of a «control and coordination» is a rebuttable presumption resulting from the parent exercising an important influence in the preparation of the subsidiary’s annual accounts, its definition and implementation of a commercial strategy and its financial policy.</p>

Czech republic	Hungary	Spain
<p>Possibility for the parent company to give orders to any subsidiary in the group's interest.</p> <p>The recognition of the group interest is subject to the publication of the subsidiary's belonging to the group on its website.</p> <p>The leaders of the subsidiary must establish a dependence report.</p> <p>If the order results in the subsidiary being inflicted a «disadvantage», the latter must be compensated except if the order was issued in the group's interest and the disadvantage will be compensated within the group.</p>	<p>In a «<i>de jure</i> group», the «management contract» gives the right to give orders to subsidiaries. There must be at least three subsidiaries and they may include PLCs and LLCs.</p> <p>The regime of the «<i>de facto</i> group» consists in allowing a person concerned (subsidiary's minority shareholder or creditor) to petition the court for the application of a regime of the «<i>de jure</i> group» as soon as the conditions for the creation of a «<i>de jure</i> group» have been met for three consecutive years.</p>	<p>A reform proposed in 2014 provides for a regime based on the recognition of a power to give, in the group's interest, orders that are potentially contrary to the subsidiary's interest.</p> <p>However, that power is only exercised provided it does not result in a violation either of the statutes or of the law, and does not create an insolvency risk for the subsidiary.</p> <p>Obligation to declare the belonging to a group to the Companies Registration Office, on the corporate documents and the websites of all the involved companies.</p>

	Italy
Protection of the minority and creditors of the subsidiary	<p>Information on the situation of dependence in the Companies Register.</p> <p>Withdrawal right:</p> <ul style="list-style-type: none">a/ in case of a substantial modification of the activity or structure of the subsidiary which deteriorates its situation;b/ at the beginning and end of the management and coordination activity (unlisted company);c/ in case of undue use of majority powers. <p>The loans granted by the parent to the subsidiary are subject to the loans by external creditors.</p>

Czech republic	Hungary	Spain
<p>Dependence report, accessible to the shareholders.</p> <p>The minority shareholders have a withdrawal right against the majority shareholder if there exists «an essential deterioration of the situation of the minority shareholder» or «significant damages inflicted against its legitimate interest».</p>	<p>The management contract must include a detailed description of the group relations and the methods prescribed to protect the interests of the subsidiary's minority shareholders and creditors.</p> <p>No obligation for the parent company to compensate the losses.</p> <p>However, the minority shareholders have a withdrawal right when a "de jure group" is established.</p> <p>The subsidiary's creditors may ask for an additional guarantee in case of a management contract.</p>	<p>A restrictive regime is provided for the intra-group financial guarantees that are granted by the subsidiaries, unless, for example, all the companies of the group subscribe to the same guarantee.</p> <p>Recognition of the right for minority shareholders (unlisted companies) to withdraw when the group is established (for a duration of three months), and, in unlisted companies only, in case of damages not adequately compensated, for the duration of a year starting on the date of the damage, or on the date when the shareholder should have known the damage.</p> <p>The subsidiary and the parent company are jointly liable for the payment of the shares.</p>

	Italy
Liability	<p>The leaders of the parent company who are liable for the wrongful acts which have been committed by the subsidiaries and cannot be justified by the theory of the «compensatory advantages», the leaders of the subsidiary and the parent company are jointly liable for damages.</p> <p>The burden of proof of the violation of their duty is on the claimant.</p>

Czech republic	Hungary	Spain
	<p>The leaders of the subsidiary are not liable for the execution of the instructions.</p>	<p>The assessment of the existence of damage due to the execution of the instructions of the parent company must take into consideration the advantages and drawbacks resulting from the belonging to the group.</p> <p>If the prejudice is not compensated adequately within the framework of the belonging to the group, the parent company must compensate the subsidiary within one year.</p> <p>The parent company and its managers, together with the managers of the subsidiary are jointly liable for the damage incurred.</p>

3 - Member States in which the group interest is recognised by case law

	France	United Kingdom	Ireland
Conditions	<p>The group interest as grounds for abuse of corporate assets. See «Rozenblum» case: «In order to escape the provisions of articles 425-4 and 437-3 of the 24 July 1966¹⁵ law, the financial aid provided by the leaders of a company to another company belonging to the same group, in which they have direct or indirect profit-sharing, must be dictated by an economic, social or financial common interest,</p>	<p>If an <i>in bonis</i> company is wholly owned, its board of directors can take into account the interests of the parent company when assessing the interest of a potential transaction for the company, since the parent is the shareholder for which the leaders should seek the success of the company.</p> <p>There is a higher risk of challenge if the subsidiary is in financial difficulties:</p> <p>a/ its leaders must take the creditors' interest into account and/or act in their interest;</p>	<p>Case law has admitted that the interest of the subsidiary may consist in ensuring the survival of other companies of the group by guaranteeing loans. It has then specified that the group interest could not be taken into account in case of a risk of insolvency of the subsidiary.</p>

(15) Articles L.241-3, 4° et L.242-6, 3° of the French Code de commerce.

Netherlands	Belgium	Poland	Luxembourg, Denmark and Switzerland
<p>The parent company may issue instructions to its subsidiaries: general ones if the subsidiary is listed, more specific ones otherwise (for example, orders to conclude certain intra-group transactions).</p> <p>The subsidiary's statutes must determine the authority that is competent to issue those instructions.</p> <p>The leaders of the subsidiary must follow those instructions unless they are contrary to the corporate</p>	<p>Interests of the group taken into account in the assessment of the conformity of the operation to the individual corporate interest.</p> <p>E.g. the corporate interest will be considered to be preserved when:</p> <p>a/ the subsidiary itself benefits from long-term transactions (improvement of its capacity to borrow, better financial situation);</p>	<p>Entering into a management contract is allowed.</p> <p>However, no disposition protects the subsidiary's minority shareholders and creditors.</p> <p>In case of a «<i>de facto</i> group», the subsidiary's interest prevails and the leaders of the latter are not allowed by the law to take into account the group interest.</p> <p>There is an obligation to declare the existence of such a group and to establish a dependence report.</p>	<p>In Luxembourg: proximity with the «Rozenblum» case.</p> <p>In Denmark and Switzerland: case law allows a transaction between the parent company and its daughter to be unbalanced if the latter participates in a series of mutual transactions and if, in a reasonable future, the subsidiary will also receive a profit that will correct the imbalance.</p>

	<p>to be assessed in relation to a policy that has been elaborated for the group as a whole, and must not come without compensation or destabilise the mutual commitments between the different companies concerned, nor exceed the financial possibilities of the company which bears the charge of it.»</p>	<p>b/ the intra-group transactions that were concluded when the company was already insolvent may be cancelled.</p>	
--	---	---	--

<p>interest and inflict it «disproportionate damage».</p>	<p>b/ the effort imposed on the subsidiary is proportionate to its financial means and to the benefit of the transaction it enjoys;</p> <p>c/ the subsidiary is a member of a structured group, which has a common economic interest and not only a temporary and occasional group interest.</p>	<p>In 2009, based on a text drawing from the «Rozenblum» case, the recognition in case law of the group interest however resulted in an evolution of this approach: the assessment of the subsidiary's decisions must take into account the fact that it is part of the group provided there is a consistent and sustainable policy of the group, within the framework of which the advantages and the drawbacks of belonging to the group for each of the company members are balanced.</p>	<p>It must however be established that the transaction will not inflict a certain loss to the subsidiary.</p>
---	--	--	---

	France	United Kingdom	Ireland
Liability	<p>The group interest is not taken into account in fiscal law nor in law on collective procedures:</p> <p>a/ the operation that conforms to the group interest may be described as a normal act of management;</p> <p>b/ the group interest does not allow for bankruptcy to be justified.</p>	<p>The subsidiary's leaders may be considered liable to the subsidiary and/or its creditors if the subsidiary goes bankrupt and they knew or should have known there was no reasonable perspective of avoiding it and have not done everything that was possible to limit the damage incurred by the creditors (wrongful trading).</p>	

Netherlands	Belgium	Poland	Luxembourg, Denmark and Switzerland
<p>When it gives its subsidiary instructions that go against its interest, a parent company assumes liability for violation of the legal obligation of acting in good faith and equity towards its subsidiary; that liability may be assumed to the subsidiary and its associates (especially the minority).</p> <p>The shareholders of the parent company may also assume liability to the subsidiary or its creditors if they fail in their duty of prudence.</p>	<p>Failure to respect the corporate interest may be penalised by the nullity or non-fulfillment of the obligations provided for only if the co-contracting party knew or should have known that the transaction was against the corporate interest.</p> <p>Those penalties are applicable without prejudice of the rights of the third parties acting in good faith.</p> <p>Efficiency of the limitation of liability clauses as stipulated between the parent and the subsidiary, to the benefit of the former.</p>		

APPENDIX 2

Country	Management fees
Netherlands	<p>Such conventions are frequently used in the Netherlands and generally accepted in company law.</p> <p>From a fiscal point of view, the Netherlands have consolidated the rules that are applicable in terms of transfer prices and codified the arm's-length principle. The conventions of service delivery must therefore be realised under arm's-length conditions. The transactions which are without substance or of which the terms and conditions do not seem rational from an economic point of view, as well as the transactions that are not documented by a written agreement are likely to be problematic from a fiscal point of view.</p> <p>A recent decree on the applicable regime in transfer prices has also clarified the fact that certain intra-group services (the list of which is not comprehensive) which are linked to corporate governance are not always shareholder services and may be paid at arm's length.</p>

Comparison of intra-group operations which could be considered to be part of the group interest

Tax consolidation convention	Interest-free loan
<p>Such conventions are frequently used in the Netherlands.</p> <p>There is a risk of challenge in case it is contrary to the corporate interest of the company that is liable for the tax. Thus the whole context surrounding the transaction is to be taken into consideration in order to determine if the transaction fulfills the corporate object. In any case, it is recommended that the economic interest of the transaction for the company be made explicit in the preamble to the tax consolidation convention.</p>	<p>The Netherlands law has integrated the arm's-length principle. According to that principle, free-interest loans or loans carrying interest below market conditions are considered as shareholder's loans if they are granted by a company taking part directly or indirectly in the debtor's management, control or capital or if the same persons participate, directly or indirectly, in the management, control or capital of the debtor and the company that grants the loan.</p> <p>In that case, the amount of the debt is considered as a part of the debtor's capital. In the case of an interest-free loan granted from a parent to a daughter company to buy a sub-subsidiary, the Supreme Court has even refused to consider as abuse of corporate assets the fact that the Dutch subsidiary fiscally deducted the amount of the interests that the parent did not perceived, while declaring the same amount as capital contribution. The Court considered that when a group carries out an acquisition to a third party, the trade feature of the transaction is proven, even when the acquisition is being paid for thanks to an interest-free loan by one of the group's companies, when the group could have paid for the acquisition by buying shares, or when the deduction of the interest that was not applied was not offset by the taxation of that interest in the parent company (in that case an Irish company) (Supreme Court, 17 December 2004, case No 39,080).</p>

Country	Management fees
Great Britain	<p>Such conventions are frequently used in Great Britain. The leaders assume liability when they determine the amount of the management fees which must be reasonable, proportionate, and reflect the services performed. The approval of the shareholders on that point should be sought. Indeed, there is no equivalent of the French procedure on regulated conventions; in English law, only the transactions in which the members of the board of directors or the supervisory board are interested are paid any attention, and those leaders are only obliged to give the shareholders information on their interest in the transaction but are not obliged to obtain their approval. Thus the convention that links the companies of a same group does not have to be approved by the shareholders. If the management fees which are paid by a subsidiary to the parent company are too high, there is a risk for them to be considered as principal repayment.</p> <p>In case of a collective procedure, the payment of management fees may be revoked and the leaders may incur liability on that point.</p>

Tax consolidation convention	Interest-free loan
<p>Those conventions are very little used (mainly within consortium relief, a regime of fiscal consolidation in which the consolidation is less pronounced than in the regime of group relief, the difference being justified by a different percentage of participation, either inferior or superior to 75 %).</p> <p>The transfers of intra-group fiscal deficits without compensation may raise some issues and the value of such deficits must therefore be considered prior to their transfer. Practice in this area varies.</p> <p>Certain groups demand immediate financial compensation for the deficit transfer or waiver. Others operate based on mutual assistance.</p> <p>Those issues may become quite acute if the subsidiary in question is being transferred (especially in relation to the financial assistance rules) and/or if a group changes its practice so as to facilitate a transfer.</p>	<p>Those conventions are only used occasionally due to the risk that they be requalified as capital contribution and the fiscal risk (risk of taxation as income since cross-border interest-free loans (in favour of a subsidiary within the group) may be problematic in view of the rules applicable in matters of transfer prices).</p> <p>The leaders of a company which grants such a loan must in particular check that the fact that the loan is interest-free will truly benefit the company and its shareholders. They must take into consideration the duration of the loan and the probability of its being repaid.</p> <p>Given the difficulty for the money-lender to establish their corporate interest, it is recommended that the shareholders approve that decision so as to prevent any risk of their challenging it later on.</p> <p>In cases of collective procedure, the convention providing that an interest-free loan be granted may be revoked as being undervalued and the leaders may be held liable specifically on that point.</p>

Country	Management fees
Germany	<p>Large corporate groups and private equity structures frequently use it.</p> <p>This is called «group charge», or «service charge», and it is sometimes used for tax purposes such as profits moving thanks to the transfer prices or the creation of a VAT-subject entity.</p> <p>To be fiscally valid, the intra-group transactions must comply with the arm's length principle. Generally speaking, this is the case when:</p> <ul style="list-style-type: none"> - the transaction results from written agreements concluded up front and complies with the terms and conditions provided for. - when the compensation provided for reflects the profit (i.e. the compensation must equal the price a third co-contracting party would have paid). <p>The arm's length principle also applies in company law. Public limited companies (PLC) cannot escape it; the rules are more flexible for limited liability companies («GmbH»), even though the conditions that are used outside market conditions are generally challengeable when the company is in financial difficulties or is subject to a collective procedure. The determining criterion (following the German rules of «maintaining capital levels») is to know whether the payment of the price affects the corporate capital of the limited liability company.</p> <ul style="list-style-type: none"> - The application of non-competition conditions may justify return proceedings and the leaders assuming liability.

Tax consolidation convention	Interest-free loan
<p>The tax consolidation conventions do not exist as such. However, a profit and loss pooling agreement is quite frequently made, together with a domination agreement, which makes it possible to benefit from the rules of fiscal integration when the other conditions are met (especially financial consolidation).</p> <ul style="list-style-type: none"> - The control and profit and loss pooling agreements must be approved by the shareholders, which is a difficult procedure in the case of listed companies (general assembly, obligation of substantial information). - Minority shareholders have the right to an interest, the payment of which is guaranteed, and must be granted a put option. The guaranteed interest and the exercise of the put option must be equitably valued. 	<p>The validity of the interest-free loans is debated. The public limited companies (PLC) are there again subject to stricter criteria than the limited liability companies («GmbH»).</p> <p>Long-term interest-free loans offer more difficulties than short-term loans. Moreover, the long-term loans are subject to general restrictions (which apply to interest in particular): the application for repayment must be about the whole amount and the repayment made in the year prior to the company becoming insolvent may be challenged in a collective procedure.</p> <p>Those restrictions do not apply if there is a control/ profit and loss pooling agreement since the subsidiary is protected by the loss compensation claim.</p> <p>The long- and mid-term loans at a rate inferior to the market are fiscally reclassified as dividend, which means that the lending company is liable for taxes as if it had collected an interest at the market rate (i.e. the amount of the interest at the market rate is added to the taxable result), and the shareholder is liable for taxes as if they had received a dividend of the same amount.</p>

- Moreover, the controlling shareholder of a public limited company is often sentenced to compensation for the damage incurred by the company due to non-competitive conditions with another company of the group or with a shareholder. A shareholder may also assume personal liability when he has (directly or indirectly) made the company (even if it is a public limited company) charge non-competitive prices and that that has led the company to insolvency.

When minority shareholders (especially in listed companies) challenge these agreements, whether those different conditions have been met is checked.

The drawback to a profit and loss pooling agreement is the obligation for the shareholder to compensate the subsidiary for any loss incurred during the duration of the agreement («loss compensation claim»). That obligation remains after the agreement has been terminated. Usually the creditors do not have any interest in acting but in case of a collective procedure, the receiver can act in the name of the creditors, especially by pleading the inaccuracy of the accounts.

In the case of an international transaction, the lending company is also subject to a 26.4% tax at source on the amount of the interest at the market rate, unless the foreign shareholder is subject to other obligations and thus has the right to a complete/ partial repayment of the at-source tax following a European or international fiscal convention.

Short-term loans without interest present no particular difficulty. They are not re-classified as contribution to a company since the absence of interest is not considered as a recognised asset in the balance sheet.

Country	Management fees
Belgium	<p>Frequently used.</p> <p>In principle, the payment of management fees is admitted in company law provided: (i) the parent company has performed real services; (ii) those services are in the interest of the subsidiary; and (iii) the amount paid by the subsidiary is not excessive and conforms to market prices.</p> <p>From a fiscal point of view, the companies taking part in the transaction must be able to prove that the intra-group transaction has been carried out at arm's length. Although no written document is a priori necessary for transfer prices, such means of evidence should be established so as to avoid any a posteriori challenge.</p> <p>As to the arm's-length principle, international and domestic transactions should be differentiated. Though Belgium complies with the EU and OECD directives on transfer prices in case of international transactions, the arm's-length principle is interpreted and applied with more leniency in cases of domestic intra-group transactions. In that type of transactions, the test of the abnormal or free advantage applies and, if there is no group interest, that test supposes that since each company has an individual objective of profit-making and has therefore no interest in granting abnormal or free advantages to third parties, it is the same in case of intra-group transactions. Thus the legislator has provided that some market conditions must be applied so as to prevent companies from granting such advantages to an affiliated company. In the same way, Belgian fiscal law has created anti-abuse rules in case companies received abnormal or free advantages.</p>

Tax consolidation convention	Interest-free loan
<p>No regrouping or fiscal consolidation (despite current negotiations on the application of the consolidated common tax base for company taxes among certain Member States. The concept of the group interest is not admitted in Belgian fiscal law yet. Each company must complete all the formalities and is assessed individually. Consequently, the losses, tax credits and deductions of a loss-making company cannot offset the taxable profit of other companies of the group.</p> <p>The only exception to that rule is in the Belgian general code of taxation, which complies with the OECD convention, and provides that the Belgian companies of a multinational group may benefit from downward adjustments of the tax base and from the exemption of a surplus profit when the synergies within the group allow them to reduce their tax rate in Belgium.</p>	<p>Generally speaking, a Belgian company cannot normally approve that an interest-free loan be secured in favour of another company of the group insofar as such a convention goes against its own corporate interest if it does not get any advantage from it.</p> <p>Moreover, more than a violation of the corporate interest of the company in question, such a transaction may also appear as contrary to the principle of the legal specialty of the companies according to which any transaction that does not directly or indirectly benefit the company may justify its nullity or an impossibility of implementation.</p> <p>Even if there may be such transactions, their capacity to be executed in a valid way is debatable and generally such operations should not be carried out. Only exceptional circumstances may justify an interest-free loan from the perspective of company law.</p> <p>As to fiscal matters, anti-abuse rules apply in case of a violation of the principle of market conditions. When a company grants an interest-free loan to another company in its group, the non-charged interest may be added to the tax basis of the lending company (the advantage is considered to be abnormal or free).</p>

The penalties applicable when the market conditions are not complied with are either the taxation of the abnormal or free advantage at the level of the company which grants the advantage, or the refusal of certain deductions or compensations of the advantage at the level of the company which receives the advantage.

The general rules on the tax deductibility of business expense also apply. The rules are the following:

1. expense must be incurred for the taxable result to be received or maintained;
2. expense must be paid (or payable) in the taxation period; and
3. the reality and amount of the expenses must be justified (especially with invoices).

The first condition is the most important to determine if the incurred expenses by a Belgian tax-payer are deductible. At the tax administration initiative, case law has evolved and now demands a direct link between the incurred expenses and the professional activity of the company. As a general rule, the company must prove that it had an interest in the amounts in question to be allowed to deduct them.

The third condition is assessed on a factual basis. So as to avoid any debate in case of a posteriori control, the performance of the management services (timesheet, written record, calendar) should be justified in writing. As to the amount and the assessment methods, the arm's-length principle and the EU and OECD directives must be applied.

The Belgian company must be able to prove that the surplus of profit comes at least partly from the fact that it belongs to a multinational group and that it also benefits from other resources such as reputation, synergies, economies of scale, international network, etc. The Belgian companies claiming for these dispositions to be applied must file a petition for a unilateral decision on their case.

However, if the borrowing company is Belgian, the lending company will not be imposed that way. Indeed, since the borrowing company does not pay any interest, its tax base is more important and therefore there will be no loss for the tax administration. If the borrowing company is a foreign one, the loss in taxes justifies the taxation of the lending company on the non-charged interest.

Generally speaking, a company which has concluded an interest-free loan with another company of its group cannot benefit from certain tax deductions or compensations (especially the report of losses or the deduction of notional interests) insofar as it has received that advantage. Though it is recommended to avoid interest-free loans, the latter are sometimes used in case of delivery of goods or performance of services in an intra-group context where the payment of the price is postponed. However, the circumstances in which such practice is used should be carefully distinguished. Subject to the restrictions imposed by company law, if a creditor company wishes to contribute funds by waiving debt, an interest should be applied in order to avoid any re-classification as an abnormal or free advantage.

