JUDGMENT OF THE COURT (Fourth Chamber)

15 October 2009*

In Case C-101/08,

REFERENCE for a preliminary ruling under Article 234 EC, by the Cour de cassation (Luxembourg), made by decision of 21 February 2008, received at the Court on 5 March 2008, in the proceedings

Audiolux SA and Others

v

Groupe Bruxelles Lambert SA (GBL) and Others,

Bertelsmann AG and Others,

* Language of the case: French.

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of the Third Chamber, acting as President of the Fourth Chamber, R. Silva de Lapuerta, G. Arestis, J. Malenovský and T. von Danwitz (Rapporteur) Judges,

Advocate General: V. Trstenjak,
Registrar: N. Nanchev, Administrator,

having regard to the written procedure and further to the hearing on 30 April 2009,

after considering the observations submitted on behalf of:

— Audiolux SA and Others, by A. Elvinger and M. Elvinger, avocats,

— Groupe Brussels Lambert SA (GBL) and Others, by J. Loesch, G. Loesch and P. Van Ommeslaghe, avocats,

— Bertelsmann AG and Others, by G. Harles and P.-E. Partsch, avocats,

— the French Government, by G. de Bergues and J.-C. Gracia, acting as Agents,

— Ireland, by D. O'Hagan, Solicitor, and by D. Barniville SC, and A. O'Neill, BL,

— the Polish Government, by M. Dowgielewicz, acting as Agent,

— the Commission of the European Communities, by G. Braun and O. Beynet, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 June 2009,

gives the following

Judgment

1 This reference for a preliminary ruling raises the question whether there is a general principle of Community law of equality of shareholders under which minority shareholders are protected by an obligation on the dominant shareholder, when acquiring or exercising control of a company, to offer to buy the minority shareholders' shares under the same conditions as those agreed when a shareholding in that company

conferring or strengthening the control of the dominant shareholder was acquired and, if so, the effects in time of such a principle.

2 The reference was made in the course of proceedings between, on the one hand, the minority shareholders in the RTL Group ('RTL') and, on the other, Groupe Bruxelles Lambert SA (GBL) ('GBL'), Bertelsmann AG ('Bertelsmann') and RTL concerning agreements concluded between GBL and Bertelsmann.

Legal context

3 According to the fifth recital in the preamble to Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (OJ 1977 L 26, p. 1):

'… it is necessary, having regard to the objectives of Article 54(3)(g), that the Member States' laws relating to the increase or reduction of capital ensure that the principles of equal treatment of shareholders in the same position and of protection of creditors whose claims exist prior to the decision on reduction are observed and harmonised'.

4 Article 20(1) of that directive provides:

‘1. Member States may decide not to apply Article 19 [subjecting the acquisition by a company of its own shares to certain conditions] to:

…

(d) shares acquired by virtue of a legal obligation or resulting from a court ruling for the protection of minority shareholders in the event, particularly, of a merger, a change in the company’s object or form, transfer abroad of the registered office, or the introduction of restrictions on the transfer of shares;

…

(f) shares acquired in order to indemnify minority shareholders in associated companies;

…’

5 Article 42 of Directive 77/91 states:

'For the purposes of the implementation of this Directive, the laws of the Member States shall ensure equal treatment to all shareholders who are in the same position.'

6 According to paragraph 6 of Commission Recommendation 77/534/EEC of 25 July 1977 concerning a European code of conduct relating to transactions in transferable securities (OJ 1977 L 212, p. 37):

'… the Commission has consulted those involved and has ascertained that there is already broad support for the principles of the code.'

7 Paragraph 11C of that recommendation states:

'The third general principle relates to equality of treatment for shareholders. Despite some criticism, the Commission has taken the view that the principle of equality of treatment should be retained, illustrating its application by two supplementary principles, with the accent mainly on a specific obligation to disclose information.

Supplementary principle 17 mentions equality of treatment for other shareholders where a controlling holding is transferred, but accepts that the protection of such shareholders could be achieved by other means; this takes account of the existence in Germany of a law limiting the powers of the dominant shareholder.

…'

8 General principles 1 and 3 of the European Code of Conduct ('the Code of Conduct'), annexed to Recommendation 77/534, provide:

'1. The objective of this code and the general principles should be observed even in cases not expressly covered by supplementary principles.

Every transaction carried out on the securities markets should be in conformity with not only the letter but also the spirit of the laws and regulations in force in each Member State, and also the principles of good conduct already applying to these markets, or recommended by this code.

…

3. Equality of treatment should be guaranteed to all holders of securities of the same type issued by the same company; in particular, any act resulting directly or

indirectly in the transfer of a holding conferring *de jure* or *de facto* control of a company whose securities are dealt in on the market, should have regard to the right of all shareholders to be treated in the same fashion.'

9 Supplementary principle 17 of the Code of Conduct states:

'Any transaction resulting in the transfer of a holding conferring control in the sense referred to in general principle 3 should not be carried out in a surreptitious fashion without informing the other shareholders and the market control authorities.

It is desirable that all the shareholders of the company whose control has changed hands should be offered the opportunity of disposing of their securities on identical conditions, unless they have the benefit of alternative safeguards which can be regarded as equivalent.'

10 According to Article 4(2) of Council Directive 79/279/EEC of 5 March 1979 coordinating the conditions for the admission of securities to official stock exchange listing (OJ 1979 L 66, p. 21), the issuers of securities admitted to official listing must fulfil the obligations set out in Schedule C to that directive.

11 Directive 79/279 contains, in its Annex, Schedule C, concerning 'obligations of companies whose shares are admitted to official listing on a stock exchange'. Paragraph 2(A) of Schedule C states that 'the company shall ensure equal treatment for all shareholders who are in the same position'.

12 That provision was reproduced in Article 65(1) of Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities (OJ 2001 L 184, p. 1), Article 111(1) of which repealed Directive 79/279.

13 However, Article 65 of Directive 2001/34 was deleted, with effect from 20 January 2007, pursuant to Article 32(5) of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ 2004 L 390, p. 38). Article 17 of Directive 2004/109, headed 'Information requirements for issuers whose shares are admitted to trading on a regulated market', provides in paragraph 1:

'The issuer of shares admitted to trading on a regulated market shall ensure equal treatment for all holders of shares who are in the same position.'

14 According to Recitals 8 and 10 in the preamble to Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (OJ 2004 L 142, p. 12):

'(8) In accordance with general principles of Community law, and in particular the right to a fair hearing, decisions of a supervisory authority should in appropriate circumstances be susceptible to review by an independent court or tribunal. …

…

(10) The obligation to make a bid to all the holders of securities should not apply to those controlling holdings already in existence on the date on which the national legislation transposing this Directive enters into force.'

15 Under Article 1(1) of Directive 2004/25, that directive is to apply to takeover bids for the securities of companies governed by the laws of Member States, where those securities are admitted to trading on a regulated market.

16 Article 3 of Directive 2004/25, headed 'General principles', provides in subparagraphs 1(a) and 2(a):

'1. For the purpose of implementing this Directive, Member States shall ensure that the following principles are complied with:

(a) all holders of the securities of an offeree company of the same class must be afforded equivalent treatment; moreover, if a person acquires control of a company, the other holders of securities must be protected;

…

2. With a view to ensuring compliance with the principles laid down in paragraph 1, Member States:

(a) shall ensure that the minimum requirements set out in this Directive are observed;'

17 Article 5 of Directive 2004/25, headed 'Protection of minority shareholders, the mandatory bid and the equitable price', provides in subparagraphs 1 and 4:

'1. Where a natural or legal person, as a result of his/her own acquisition or the acquisition by persons acting in concert with him/her, holds securities of a company as referred to in Article 1(1) which, added to any existing holdings of those securities of his/hers and the holdings of those securities of persons acting in concert with him/her, directly or indirectly give him/her a specified percentage of voting rights in that company, giving him/her control of that company, Member States shall ensure that such a person is required to make a bid as a means of protecting the minority shareholders of that company. Such a bid shall be addressed at the earliest opportunity to all the holders of those securities for all their holdings at the equitable price as defined in paragraph 4.

…

4. The highest price paid for the same securities by the offeror, or by persons acting in concert with him/her, over a period, to be determined by Member States, of not less than six months and not more than 12 before the bid referred to in paragraph 1 shall be regarded as the equitable price. …'

18 Article 16 of Directive 2004/25, headed 'The right of sell-out', provides:

'1. Member States shall ensure that, following a bid made to all the holders of the offeree company's securities for all of their securities, paragraphs 2 and 3 apply.

2. Member States shall ensure that a holder of remaining securities is able to require the offeror to buy his/her securities from him/her at a fair price under the same circumstances as provided for in Article 15(2).

3. Article 15(3) to (5) shall apply *mutatis mutandis*.'

19 Article 15(2) of Directive 2004/25, to which Article 16(3) refers, fixes the required shareholding threshold at 90% of the capital carrying voting rights. Article 15(5), to which Article 16(3) of Directive 2004/25 refers, provides that the Member States are to ensure that a fair price is guaranteed.

The dispute in the main proceedings and the questions referred for a preliminary ruling

20 Audiolux SA and the other applicants in the dispute in the main proceedings (referred to collectively as 'Audiolux') are minority shareholders in RTL, the shares of which were listed on regulated stock exchanges in Luxembourg, Brussels and London.

21 As is apparent from the file, before the events which gave rise to the dispute in the main proceedings, GBL held 30% of the shares in RTL. Bertelsmann held 80% of the shares in Bertelsmann Westdeutsche TV GmbH, the other 20% being held by Westdeutsche Allgemeine Zeitungsverlagsgesellschaft E. Brost & J Funke GmbH & Co. Bertelsmann Westdeutsche TV GmbH held 37% of the shares in RTL, the UK group Pearson Television held 22% and the remaining 11% of the shares were held by the public, including Audiolux.

22 By several transactions which took place in the first half of 2001, GBL transferred its 30% shareholding in RTL to Bertelsmann in exchange for 25% of the latter's capital.

23 Subsequently, in December 2001, Bertelsmann acquired Pearson Television's holding and RTL 'de-listed' its securities from the London Stock Exchange with effect from 31 December 2002.

24 The transfer of GBL's holding to Bertelsmann was the subject of a judgment of the Tribunal d'arrondissement (District Court) (Luxembourg) of 8 July 2003, which dismissed the claims brought by Audiolux on the ground that they were not based on any legal rule or principle recognised by Luxembourg law. Those claims concerned, inter alia, the validity of the transactions resulting in the transfer of that holding and compensation for loss caused by failure to comply with the obligation to offer the claimants the opportunity to exchange their shares in RTL for shares in Bertelsmann under the same conditions as those agreed with GBL.

25 According to that judgment, Luxembourg company law as it stands makes no provision, where one major shareholder transfers its shares to another, for any right of minority shareholders to dispose of their shares under the same conditions. Likewise, Luxembourg Stock Exchange rules cannot serve as a legal basis for the claims at issue. The judgment states, in particular, that no provision of Luxembourg law has been enacted to implement Recommendation 77/534.

26 The de-listing of RTL securities from the London Stock Exchange was the subject of a judgment of the Tribunal d'arrondissement de Luxembourg of 30 March 2004, which dismissed the claims brought by Audiolux concerning, in particular, the obligation to increase the availability of RTL's securities to the public and not to delist those securities from the London Stock Exchange.

27 The Cour d'appel (Court of Appeal) (Luxembourg), after joining the two cases, upheld those judgments stating, as regards the judgment of 8 July 2003, that the case concerned the existence of a general principle according to which minority shareholders of a Luxembourg listed company may claim the right to equal treatment by the majority shareholders when a major shareholding in that company is transferred. In that connection, the Court of Appeal considered that there was no general principle of equality of shareholders in the law as it stood, nor could such a principle serve as a legal basis for the appellants' claims.

28 The appeal in cassation lodged by Audiolux is directed solely against the parts of that judgment which uphold the judgment of 8 July 2003. In its appeal, Audiolux claims a breach of the general principle of equality of shareholders, and argues that it should be treated in the same way as GBL was when the latter's shareholding in RTL was transferred to Bertelsmann in return for a control premium.

29 In those circumstances, the Cour de cassation decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Are the references to the equality of shareholders and, more specifically, to the protection of minority shareholders,

(a) in Articles 20 and 42 of the Second Company Directive 77/91 …;

(b) in the third general principle and Supplementary principle 17 of … Recommendation [77/534];

(c) in Schedule C, point 2(A) annexed to … Directive 79/279 carried over in [D]irective [2001/34];

(d) in Article 3(1)(a) of Directive 2004/25 … in the light of recital 8 in the preamble thereto,

manifestations of a general principle of Community law?

2. If so, is that general principle of Community law to be applied only to the relations between a company and its shareholders or, to the contrary, does it also apply to the relations between majority shareholders exercising or acquiring control of a company and the minority shareholders of that company?

3. If the answer to the foregoing two questions is in the affirmative, must that general principle of Community law be regarded, having regard to the development in time of the references referred to in Question 1, as having existed and being binding on the relations between majority and minority shareholders within the meaning of Question 2 before the entry into force of the abovementioned Directive 2004/25/EC and before the facts at issue, which occurred in the first half of 2001?'

The questions referred for a preliminary ruling

Admissibility

30 Bertelsmann challenges the admissibility of the reference for a preliminary ruling, arguing that the legal and factual background relevant to the questions referred was not adequately described.

31 While it is true that a question referred for a preliminary ruling by a national court is inadmissible where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, Case C-217/05 *Confederación Española de Empresarios de Estaciones de Servicio* [2006] ECR I-11987, paragraph 28, and the case-law cited), in the present case the order for reference allows the scope of the questions referred to be determined, and did in fact enable the parties concerned to submit observations in accordance with Article 23 of the Statute of the Court of Justice, as evidenced by the content of the observations submitted in these proceedings. Therefore, the Court has sufficient information concerning the legal background and the facts of the dispute in the main proceedings to interpret the relevant Community rules and give a useful answer to the questions referred.

The first and second questions

32 By those questions, which it is appropriate to examine together, the national court asks essentially whether there is a general principle of Community law of equality of shareholders under which minority shareholders are protected by the dominant shareholder's obligation, when acquiring or exercising control of a company, to offer to buy their shares under the same conditions as those agreed when a shareholding in that company conferring or strengthening the control of the dominant shareholder was acquired.

33 In that connection, the national court refers to a number of provisions of secondary Community legislation, namely Articles 20 and 42 of Directive 77/91, General principle 3 and Supplementary principle 17 of the Code of Conduct, Paragraph 2(A) of Schedule C in the Annex to Directive 79/279 and Article 3(1)(a) of Directive 2004/25, read in the light of Recital 8 in the preamble thereto.

34 It must be observed, first of all, that the mere fact that secondary Community legislation lays down certain provisions relating to the protection of minority shareholders is not sufficient in itself to establish the existence of a general principle of Community law, in particular if the scope of those provisions is limited to rights which are well defined and certain. Therefore, in examining the provisions mentioned by the national court, the sole purpose is to ascertain whether they give any conclusive indications of the existence of such a principle. In that connection, it must be stated that only if those provisions are drafted so as to have binding effect (see, to that effect Case C-149/96 *Portugal* v *Council* [1999] ECR I-8395, paragraph 86, and Case C-189/01 *Jippes and Others* [2001] ECR I-5689, paragraph 74), will those provisions have indicative value showing the well-defined content of the principle concerned (see, to that effect, *Jippes and Others*, paragraph 73).

35 First, it is clear that the scope of the abovementioned provisions of Directives 77/91 and 79/279 is limited to well-defined situations and that they do not cover a situation such as that at issue in the case in the main proceedings.

36 The references to the protection of minority shareholders in Article 20 of Directive 77/91, far from giving an indication as to the existence of a general principle of Community law, are simply designed, as is apparent from their wording, to specify the objectives in view of which the Member States may, under certain conditions, derogate from the application of Article 19 of that directive.

37 Similarly, the obligation, laid down in Article 42 of Directive 77/91, to ensure equal treatment to all shareholders who are in the same position applies, as is clear from the

phrase 'for the purposes of the implementation of this Directive', only within the framework of that directive, that is to say, as set out in the fifth recital of its preamble, in relation to the increase or reduction of capital. Thus, that article applies to situations which are completely different from those covered by the obligation which, in the case in the main proceedings, is said to bind the dominant shareholder pursuant to the putative general principle of Community law relied on by Audiolux.

38 The finding that the Community legislature did not intend the rule of equal treatment of shareholders provided for in Article 42 of Directive 77/91 to be applied outside the framework of that directive is confirmed by the latter's purpose.

39 That directive seeks only to ensure a minimum level of protection for shareholders in all the Member States (see, Case C-441/93 *Pafitis and Others* [1996] ECR I-1347, paragraph 38; Case C-42/95 *Siemens* [1996] ECR I-6017, paragraph 13; and Case C-338/06 *Commission* v *Spain* [2008] ECR I-10139, paragraph 23).

40 Furthermore, it must be pointed out that, even in the context of Directive 77/91, Article 42 thereof cannot be considered to reflect a general principle of Community law. The Court has rejected a broad interpretation of Article 42 on the ground that it would render Article 29(4) of that directive, which relates to the conditions governing the restriction of the right of pre-emption, redundant (see, *Commission* v *Spain*, paragraphs 32 and 33).

41 As regards point 2(A) of Schedule C in the Annex to Directive 79/279, according to which the company is to ensure equal treatment for all shareholders who are in the same position, it is sufficient to observe that that provision has subsequently been repealed and replaced by Article 17 of Directive 2001/34 which applies, according to its heading, only to the obligation to provide information to the holders of securities.

42 Thus the provisions of Directive 77/91 and of Directive 79/279 referred to by the referring court apply to well-defined situations that are clearly different from those at issue in the main proceedings. Furthermore, as the Advocate General notes, in point 84 of her Opinion, those provisions are essentially limited to regulating very specific company-law situations by imposing on companies certain obligations for the protection of all shareholders. They do not therefore possess the general, comprehensive character which is otherwise naturally inherent in general principles of law.

43 Second, as regards General principle 3 and Supplementary principle 17 of the Code of Conduct and Directive 2004/25, it should be noted that neither that code nor the directive expressly mentions the existence of a general principle of Community law relating to the protection of minority shareholders.

44 As far as concerns the Code of Conduct, first, the second paragraph of General principle 1 makes a distinction between the laws and regulations in force and the principles of good conduct. In that connection, General principle 1 places the principles of good conduct already applying to the markets on an equal footing with those recommended by the Code of Conduct. It follows that, under the Code, those principles have, as sources of law, the same value as those already applying to the markets. Such a finding as to the legal nature of those principles is irreconcilable with the premiss that General principle 3 and Supplementary principle 17 of that code are underpinned by a general principle of Community law.

45 Second, neither General principle 3 nor Supplementary Principle 17 of the Code of Conduct sets out the obligation of equal treatment in absolute and binding terms. In particular, as stated in the second paragraph of Supplementary principle 17, it is merely 'desirable' to offer to all shareholders the opportunity to dispose of their securities, but only in so far as the minority shareholders do not have the benefit of equivalent safeguards.

46 Having regard to the case-law set out in paragraph 34 of this judgment, such wording precludes the possibility of inferring from those provisions that there is a general principle of Community law relating to the protection of minority shareholders. Thus, the statement in paragraph 6 of Recommendation 77/534 that there was broad support among those involved for the principles of the Code of Conduct is irrelevant.

47 As far as Directive 2004/25 is concerned, this introduces, in Article 5, a requirement that a shareholder who has acquired control of a company must launch a mandatory bid. In Article 16 it provides for the right of sell-out.

48 First, Recitals 2, 9, 10, 11 and 24 in the preamble to Directive 2004/25 relating to the mandatory bid and right of sell-out do not state either expressly or by implication that the rules introduced by that directive derive from a general principle of Community law. Furthermore, those recitals make no reference to the Code of Conduct or to Directives 77/91 and 79/279, and therefore do not enable the conclusion to be drawn that Directive 2004/25 is the culmination of a project begun by the Code of Conduct or the abovementioned directives.

49 Second, in accordance with Article 1 of Directive 2004/25, the mandatory bid and right of sell-out apply only to companies listed on the stock exchange. Moreover, the mandatory bid applies, according to Article 5(1) of that directive, only where a persons holds, as a result of an acquisition, a holding which gives him control of that company and, according to Articles 15 and 16 of that directive, the right of sell-out applies only to situations in which a shareholder acquires, in a takeover, more than 90% of the capital carrying voting rights.

50 Thus, the provisions of Directive 2004/25 apply to specific situations, so that no general principle with a specific content can be inferred from them. In addition, they do not, as was already stated with respect to the provisions of Directives 77/91 and 79/279, in paragraph 42 of this judgment, possess the general, comprehensive character which is naturally inherent in general principles of law.

51 As regards, in particular, the provisions of Directive 2004/25 to which the national court refers, it must be observed that, although Recital 8 in the preamble to that directive alludes to general principles of Community law, the fact remains that that recital refers only to procedural safeguards and does not involve any principle of equal treatment of shareholders. Similarly, it cannot be inferred from the use of the term 'general principles' in Article 3 of that directive that the Community legislature thereby intends the principles mentioned in that article to be treated in the same way as general principles of Community law. As is clear from the words 'for the purposes of implementing this Directive', they are only guiding principles for the implementation of that directive by the Member States.

52 Having regard to the foregoing, it must be held that the provisions of secondary Community law to which the national court refers do not provide conclusive evidence of the existence of a general principle of equal treatment of minority shareholders.

53 Consideration must also be given to the question whether the treatment to which Audiolux lays claim may be understood as a specific expression, in company law, of the general principle of equal treatment.

54 According to settled case-law, the general principle of equal treatment requires that comparable situations must not be treated differently and different situations must not be treated in the same way unless such treatment is objectively justified (see Case C-127/07 *Arcelor Atlantique and Lorraine and Others* [2008] ECR I-9895, paragraph 23, and the case-law cited).

55 In the present case, it is to be noted that the treatment to which Audiolux lays claim is intended to establish an obligation only on a shareholder acquiring or strengthening his control of a company. That obligation would require him to contract with all minority shareholders on the same conditions as those agreed when a shareholding conferring or

strengthening control was acquired and would entail a corresponding right of all shareholders to sell their shares to the dominant shareholder.

56 It must be ascertained whether the elements set out in the preceding paragraph of this judgment may be regarded as an expression of the general principle of equal treatment.

57 As regards the establishing of an obligation on the dominant shareholder and the fixing of the conditions governing such an obligation, it should be pointed out that the general principle of equal treatment cannot in itself either give rise to a particular obligation on the part of the dominant shareholder in favour of the other shareholders or determine the specific situation to which such an obligation relates.

58 The establishing of an obligation on dominant shareholders and the fixing of the conditions triggering such an obligation would require a decision as to whether, in the specific situation in which a shareholder acquires or strengthens his control of a company, the minority shareholders need special protection which must be ensured by the imposition of an obligation on the dominant shareholder. Such a decision would presuppose both the weighing of the interests of the minority shareholders and those of the dominant shareholder and of the not inconsiderable consequences for corporate takeovers, and would require specific expression, in accordance with the principle of legal certainty, so that those concerned could ascertain unequivocally what their rights and obligations were and take steps accordingly (see, as regards the requirements for the principle of legal certainty, Case C-345/06 *Heinrich* [2009] ECR I-1659, paragraph 44).

59 Similarly, assuming the minority shareholders do require special protection, the fact remains that various means of ensuring such protection can be envisaged and a choice between them is required.

60 In Supplementary principle 17, the Code of Conduct refers to 'equivalent protection' from which minority shareholder may benefit and Recommendation 77/534, in point 11(C), gives as an example of such equivalent protection the limitation of the powers of the dominant shareholder.

61 Therefore, the general principle of equality cannot determine the choice between various conceivable means of protection for minority shareholders, such as those recommended by those measures of secondary Community law.

62 A principle such as that proposed by Audiolux presupposes legislative choices, based on a weighing of the interests at issue and the fixing in advance of precise and detailed rules (see, by analogy, Case 41/69 *ACF Chemiefarma* v *Commission* [1970] ECR 661, paragraphs 18 to 20; Case 265/78 *Ferwerda* [1980] ECR 617, paragraph 9; and the order of 5 March 1999 in Case C-153/98 P *Guérin automobiles* v *Commission* [1999] ECR I-1441, paragraph 14 and 15) and cannot be inferred from the general principle of equal treatment.

63 The general principles of Community law have constitutional status while the principle proposed by Audiolux is characterised by a degree of detail requiring legislation to be drafted and enacted at Community level by a measure of secondary Community law. Therefore, the principle proposed by Audiolux cannot be regarded as an independent general principle of Community law.

64 Having regard to all the foregoing, the answer to the first and second questions must be that Community law does not include any general principle of law under which minority shareholders are protected by an obligation on the dominant shareholder, when acquiring or exercising control of a company, to offer to buy their shares under the same conditions as those agreed when a shareholding conferring or strengthening the control of the dominant shareholder was acquired.

65 Having regard to that answer, there is no need to reply to the third question.

Costs

66 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

Community law does not include any general principle of law under which minority shareholders are protected by an obligation on the dominant shareholder, when acquiring or exercising control of a company, to offer to buy their shares under the same conditions as those agreed when a shareholding conferring or strengthening the control of the dominant shareholder was acquired.

[Signatures]