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OPINION STATEMENT

Discriminatory Gift Taxation Between Transfers to Domestic and Foreign Family Foundations: Opinion Statement ECJ-TF 1/2026 on the Decision of the CJEU of 13 November 2025 in Case C-142/24, *Familienstiftung v Finanzamt Köln-West*

Prepared by the CFE ECJ Task Force
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This is an Opinion Statement prepared by the CFE ECJ Task Force[1] on the CJEU decision of 13 November 2025 in Case C-142/24, *Familienstiftung v Finanzamt Köln-West*.[2] This judgment concerns the different treatment for gift tax purposes of transfers made to German family foundations compared to their foreign equivalents. Following Advocate General Sánchez-Bordona's Opinion,[3] the Court held that the different treatment was justified as a coherent system, in which a direct link existed between the gift tax benefit with the burden of a 'substitute inheritance tax' only imposed on domestic foundations.

I. Background, Facts, and Issues

1. *Familienstiftung v Finanzamt Köln-West* concerned the tax treatment in Germany of the transfer of assets to a newly-established family foundation in Liechtenstein. At issue was the compatibility of Germany's higher tax burden levied on such transfers compared to those made to domestic foundations with the free movement of capital under Article 40 of the EEA Agreement, which corresponds in substance to Article 63 TFEU.
2. Under the German Inheritance and Gift Tax Act ("Erbschaftsteuer- und Schenkungsteuergesetz" - ErbStG), the transfer of assets by a German-resident founder to a family foundation by way of an inter vivos act constitutes a taxable gift. Where such a foundation is established in Germany, the applicable tax class is determined by reference to the family relationship between the founder and the foundation's most distantly related beneficiary. This may allow the application of tax classes I or II, which provide for higher allowances and lower tax rates than tax class III.
3. Where the family foundation is established outside Germany, including in another EEA State, the legislation mandates the application of tax class III, irrespective of the degree of kinship between founder and beneficiaries. This can result in a significantly higher tax burden for foreign foundations at the time of their establishment.
4. Conversely, German-resident family foundations are, during their existence, subject to the *Ersatzerbschaftsteuer* (substitute inheritance tax). This tax seeks to align the taxation of wealth held in a family foundation with that of successive inheritances by treating its assets every thirty years as if they were transferred from parents to children. Non-resident foundations are not subject to the substitute inheritance tax.
5. The German tax administration rejected the claim of a violation of the EEA Agreement with the argument that the higher gift tax on transfers to foreign family foundations was justified by the requirement of fiscal coherence in light of the absence of a substitute inheritance tax imposed on them.
6. The Finanzgericht Köln, while certain on the applicability of Article 40 of the EEA agreement and the comparability of domestic and foreign family foundations, had doubts whether the tax disadvantage suffered by the latter could be justified, from the perspective of EU law, in particular by the need to ensure the coherence of the tax system.[4]

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[2] CJEU, 13 November 2025, C-142/24, *Familienstiftung v Finanzamt Köln-West*, EU:C:2025:873.

[3] Opinion AG Sánchez-Bordona, 13 March 2025, C-142/24, *Familienstiftung v Finanzamt Köln-West*, EU:C:2025:185.

[4] Opinion AG Sánchez-Bordona, 13 March 2025, C-142/24, *Familienstiftung v Finanzamt Köln-West*, EU:C:2025:185, para. 56.

7. The Finanzgericht thus sent the following question to the CJEU for a preliminary ruling:

"Must Article 40 of the [EEA Agreement] … be interpreted as precluding a Member State's national legislation on the levying of inheritance [tax] and gift tax which applies the highest tax class (III) for the taxation of an inter vivos transfer of assets to a foundation established abroad even where the foundation is established essentially in the interests of a family or certain families (family foundation), whereas for a family foundation established on national territory in an equivalent situation, the tax class depends on the relationship between the most distantly related beneficial owner under the foundation's articles of association and the donor (founder), which results, for family foundations established on national territory, in the application of the more favourable tax classes I or II?".

II. The Judgment of the CJEU

II.1 Applicable Freedom

8. The Court decided the case under the free movement of capital under Art. 40 of the EEA Agreement, stating that this provision has "the same legal scope as Article 63 TFEU".[5] It confirmed its settled case law that the tax treatment of both donations and successions falls within the provisions of the TFEU on the movement of capital insofar as it affects more than one Member State.[6] In response to Germany's argument that the analysis should be made in light of the freedom of establishment, the Court held that even if the tax treatment relating to the establishment of a family foundation might be coming within the scope of that freedom, the national legislation predominantly affected the free movement of capital.[7] It reached this result, noting that the national legislation treated the transaction in question as a gift *inter vivos*, whereby the establishment of a family foundation was merely a means to achieve this end.[8]

II.2 Restriction

9. The Court held that the German rules at issue give rise to a restriction, as they subject family foundations established abroad to less favourable tax treatment than resident foundations, enabling the latter to have greater financial means at their disposal.[9] Considering the possible impact of the tax-law carve-out from the freedom of capital movement in Article 65(1)(a) TFEU, the Court concluded, in line with its consistent jurisprudence, that that provision does not allow Member States to introduce any arbitrary discrimination or a disguised restriction in their tax laws. Instead, it only permits differences in treatment that relate to situations that are not objectively comparable or justified by an overriding reason in the public interest and proportionate to that objective.

II.3 Comparability

10. To assess the comparability of family foundations established domestically and abroad, the Court made reference to the objective of the national legislation concerned and to the purpose and content of the relevant provisions, specifying that only distinguishing criteria established by that legislation could be taken into account in the analysis.[10] Applying these principles, it rejected Germany's argument that the different tax treatment of foreign foundations, which are not subject to the substitute inheritance tax, would render asset transfers to such foundations incomparable to those made to domestic foundations. Instead, it held that the situations were objectively comparable, as the legislation concerned was the gift tax applicable to inter vivos transfers, and that law made no difference regarding liability to tax between transfers made to

[5] CJEU, 13 November 2025, C-142/24, *Familienstiftung v Finanzamt Köln-West*, EU:C:2025:873, para. 35.
[6] CJEU, 13 November 2025, C-142/24, *Familienstiftung v Finanzamt Köln-West*, EU:C:2025:873, para. 39 and 41.
[7] CJEU, 13 November 2025, C-142/24, *Familienstiftung v Finanzamt Köln-West*, EU:C:2025:873, para. 44.
[8] CJEU, 13 November 2025, C-142/24, *Familienstiftung v Finanzamt Köln-West*, EU:C:2025:873, para. 43.
[9] CJEU, 13 November 2025, C-142/24, *Familienstiftung v Finanzamt Köln-West*, EU:C:2025:873, para. 51.
[10] CJEU, 13 November 2025, C-142/24, *Familienstiftung v Finanzamt Köln-West*, EU:C:2025:873, para. 56.

domestic and foreign family foundations.[11] Accepting the different taxation of the establishment of foreign foundations on the grounds of their different recurring tax treatment as an objective difference would, according to the Court, deprive Article 63(1) TFEU, which specifically prohibits restrictions on cross-border movements of capital, of all meaning.[12]

II.4 Justification

11. In the next step, the Court considered whether the (discriminatory) restriction could be justified by the need to preserve the fiscal coherence of Germany's tax system, which had been invoked both by the referring court and the German government.[13] Referring to its long-standing jurisprudence, the Court analysed whether a direct link could be established between the tax advantage that is unavailable to the cross-border situation, with a specific tax charge imposed on the domestic situation that offsets that advantage.[14] The existence of such a direct link must be examined in light of the objective pursued by the legislation in question.

12. In its analysis of this question, the Court relied on the explanations of the referring German tax court relating to the legislative history of the differentiation, which indicated that the German legislature had intended to establish such a link between more favourable gift taxation treatment of transfers to family foundations and a subsequent regular substitute inheritance tax, in order to place the transfer of assets through a family foundation on an equal footing with ordinary inheritances. Since foreign family foundations could not be charged with the substitute inheritance tax due to Germany's limited tax jurisdiction over them, the Court accepted that the tax treatment reflected a logical symmetry, as the tax advantage is offset by a specific tax charge, relating to the same tax and the same taxpayer.[15]

13. The Court added that the specific tax charge in form of the substitute inheritance tax was not uncertain in nature but reflected the objective pursued by the legislation and the fact that family foundations generally tend to last for several generations.[16]

II.5 Proportionality

14. On the proportionality of the German measures adopted to maintain fiscal coherence, the Court noted, first, that it was ultimately for the referring Court to determine whether the conditions stemming from that principle are satisfied. It nevertheless found it useful to provide the referring court with guidance on the interpretation of that principle.[17] For this purpose, the Court separately analysed the three prongs of proportionality: appropriateness, necessity, and proportionality *stricto sensu*.

15. Regarding the appropriateness of the legislation to ensure consistency between the substitute inheritance tax on foundations and the default scenario in which the foundation does not exist, the Court analysed and rejected two possible objections, both related to the fact that the assets of a family foundation may change over time. In the Court's assessment, this does not undermine the appropriateness of the measure. First, in respect of the possibility that the substitute inheritance tax might be levied on a different base because of the fluctuation of the value of the assets, the Court found it sufficient to note that "family foundations are generally intended to guarantee long-term financial security for the family and its members, and to maintain the cohesion of the family's assets".[18] Second, with respect to the possibility that the later substitute inheritance tax imposed on domestic foundations may not be equivalent to the higher entry-level tax imposed on asset transfers to foreign family foundations, the Court concluded that,

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[11] CJEU, 13 November 2025, C-142/24, *Familienstiftung v Finanzamt Köln-West*, EU:C:2025:873, paras 58-63.

[12] CJEU, 13 November 2025, C-142/24, *Familienstiftung v Finanzamt Köln-West*, EU:C:2025:873, para. 64.

[13] In a continuation of long-standing linguistic ambiguity, AG Sánchez-Bordona (or, rather, the CJEU translation service) referred to the same ground of justification as "fiscal cohesion", while in the English version of the judgment the now more commonly used (and more appropriate) term fiscal coherence has been used.

[14] CJEU, 13 November 2025, C-142/24, *Familienstiftung v Finanzamt Köln-West*, EU:C:2025:873, para. 68.

[15] CJEU, 13 November 2025, C-142/24, *Familienstiftung v Finanzamt Köln-West*, EU:C:2025:873, para. 70.

[16] CJEU, 13 November 2025, C-142/24, *Familienstiftung v Finanzamt Köln-West*, EU:C:2025:873, para. 71.

[17] CJEU, 13 November 2025, C-142/24, *Familienstiftung v Finanzamt Köln-West*, EU:C:2025:873, para. 73.

[18] CJEU, 13 November 2025, C-142/24, *Familienstiftung v Finanzamt Köln-West*, EU:C:2025:873, para. 74.

> "Since the tax rate applied to resident family foundations, at the time when they are established, corresponds to the normal tax rate for gifts made between persons with a family relationship, in accordance with the objective of placing those foundations on an equal footing with ordinary inheritances, and since substitute inheritance tax follows the same logic, the advantage obtained when setting up a resident family foundation corresponds to the future disadvantage of having to bear the substitute inheritance tax"[19].

16. In short, the Court rejected arguments based on uncertainty as to the future existence of the foundation or the amount of tax payable, holding that such uncertainty would not undermine the internal logic of the tax system.

17. Regarding the necessity of Germany's differential taxation of foreign family foundations, the Court noted that it had already held, in *Feilen*[20], that linking an advantage to a Member State's tax jurisdiction does not go beyond what is necessary to achieve the objective pursued. Accordingly, it concluded that limiting the advantage of the preferential tax-class treatment to situations where Germany subsequently has the power to tax the assets of the family foundation does not go beyond what is necessary to attain the objective pursued.[21]

18. With respect to the proportionality *stricto sensu*, which concerns weighing the impact of the legislation against the objective it pursues, the Court reiterated that it was for the referring court to make the final decision. It nevertheless noted that two factors counted in favour of the legislation being proportionate: first, the fact that Germany "does not have powers of taxation over non-resident family foundations";[22] and, second, that the Court had no evidence that, over time, "the legislation at issue in the main proceedings would systematically give rise to a significantly higher tax burden for transfers of assets to a non-resident family foundation".[23]

II.6 Holding

19. Based on this assessment, the Court held that:

> "Article 40 of the EEA Agreement must be interpreted as not precluding national legislation which provides that, for the purposes of the taxation of a transfer of assets to a family foundation, the relationship between the most distantly related beneficiary under the foundation charter and the founder is taken into account only for resident foundations, which are subject to substitute inheritance tax, with the result that a more favourable tax class is applied to these foundations than that applied to foreign family foundations, which are not subject to that substitute inheritance tax, provided that the legislation in question complies with the principle of proportionality."[24]

III. Comments

III.1 Applicable freedom

20. The Court's decision on the correct freedom under which to examine the case is consistent with its earlier case law. One may note that the court did not assess the actual applicability of Article 31 EEA but rather considered it an unnecessary exercise given the primacy of the freedom of capital movement in light of the tax legislation's object and purpose. Unlike that case law, the Court does not explicitly refer to "purpose"[25] or "object" of the legislation to determine the primary affected freedom. Instead, in the deciding paragraph, it merely referred to it being "apparent from the request for a preliminary ruling that the aspect of the

[19] CJEU, 13 November 2025, C-142/24, *Familienstiftung v Finanzamt Köln-West*, EU:C:2025:873, para. 75.
[20] CJEU, 30 June 2016, C-123/15, *Feilen*, EU:C:2016:496, para. 40.
[21] CJEU, 13 November 2025, C-142/24, *Familienstiftung v Finanzamt Köln-West*, EU:C:2025:873, para. 77.
[22] CJEU, 13 November 2025, C-142/24, *Familienstiftung v Finanzamt Köln-West*, EU:C:2025:873, para. 78.
[23] CJEU, 13 November 2025, C-142/24, *Familienstiftung v Finanzamt Köln-West*, EU:C:2025:873, para. 79.
[24] CJEU, 13 November 2025, C-142/24, *Familienstiftung v Finanzamt Köln-West*, EU:C:2025:873, para. 80.
[25] See, e.g. 3 October 2006, C-452/04, *Fidium Finanz*, EU:C:2006:631, para. 45.

transaction relating to the transfer of assets between generations … is decisive"[26]. Given that the taxable event was the transfer of capital to the foundation and not the establishment itself, it seems certainly correct that any restriction of the establishment process was merely an inevitable consequence of the transfer of capital.

21. At first glance, the more interesting conclusion is that the Court starts to assess the case exclusively under Article 40 of the EEA Agreement and not (also) under Article 63 TFEU, which covers the facts of the case since Liechtenstein is, in the terms of the TFEU, a third country. Applying only Article 40 of the EEA Agreement could indicate a priority of that rule over Article 63 of the TFEU. The Court does not say that explicitly, however, and instead notes that Article 40 of the EEA Agreement has "the same legal scope as Article 63 TFEU".[27] How far the CJEU considers this equivalence to go despite the different wording becomes clear from its analysis of justifications:[28] Although the EEA agreement lacks an equivalent to Article 65 TFEU, which could justify certain restrictions in particular through the use of tax measures, the Court, in its analysis, saw no problem to refer to Article 65 TFEU and seemingly apply it by analogy. The Court made it explicit that from its perspective, the lack of an equivalent provision in the EEA Agreement made no difference to its analysis.[29] In this case, as in previous cases, this was ultimately immaterial as the CJEU also consistently interprets Article 65 narrowly, with the consequence that the analysis under the freedom of capital movement is congruent with that under the other freedoms.

II.2 Comparability

22. The Court held that the decisive element for establishing comparability between domestic and foreign established foundations was the taxable event itself, namely the *inter vivos* transfer of assets by a German-resident founder, and not the subsequent taxation of the foundation or the territorial scope of Germany's taxing powers. It thus treated the fact that only resident foundations are subject to substitute inheritance tax as a matter relevant to justification, not to comparability. This approach is consistent with the Court's earlier case law in inheritance and gift tax matters, where comparability was likewise assessed by reference to the immediate taxable transaction rather than downstream tax consequences.[30] It also aligns with its decision in *F.E. Familienprivatstiftung Eisenstadt*,[31] in which the Court rejected arguments that differences inherent in foundation structures could exclude comparability at the initial taxing stage.

23. It is interesting to note that the Court concluded that accepting the existence of an objective difference between domestic and foreign foundations based on their different tax treatment would deprive the provisions of the freedom of capital of all meaning; at the same time, however, it appears to accept exactly the same objective as a legitimate ground for justifying a different treatment. To explain that difference, it appears crucial to the Court that Germany would be unable to impose a similar recurring tax on foreign family foundations (on that argument, further infra). Accepting the referred objective as a legitimate ground for justification, as will be discussed below, offers the opportunity to test the German rules also in respect of appropriateness and necessity, which are not elements of the comparability test. Therefore, the justification analysis results in a more nuanced approach, which is welcomed.

III.3 Justification

24. The Court analysed the coherence of the tax system established by the German legislature as the only possible ground of justification. This follows the referring court's assessment that no other grounds of justification are conceivable.

25. In its analysis, the Court follows its usual reasoning for the justification of coherence to apply: the existence of an offsetting advantage for a more burdensome tax treatment, and the existence of a direct link between

[26] CJEU, 13 November 2025, C-142/24, *Familienstiftung v Finanzamt Köln-West*, EU:C:2025:873, para. 44.
[27] CJEU, 13 November 2025, C-142/24, *Familienstiftung v Finanzamt Köln-West*, EU:C:2025:873, para. 35.
[28] CJEU, 13 November 2025, C-142/24, *Familienstiftung v Finanzamt Köln-West*, EU:C:2025:873, para. 52-54.
[29] CJEU, 13 November 2025, C-142/24, *Familienstiftung v Finanzamt Köln-West*, EU:C:2025:873, para. 55.
[30] CJEU, 22 April 2010, C-510/08, *Mattner*, EU:C:2010:216; CJEU, 17 October 2013, C-181/12, *Welte*, EU:C:2013:662.
[31] CJEU, 17 September 2015, C-589/13, *F.E. Familienprivatstiftung Eisenstadt*, EU:C:2015:612.

the two. However, the Court appears to have substantially loosened the criteria established when the justification ground was first considered in case law starting in the early 1990s.[32] Initially, for the justification to be successful, the tax burden and tax benefit were required to affect the same taxpayer and the same tax, and the offsetting effect had to be certain rather than a mere possibility. Following the decision in *Familienstiftung*, one may conclude that it is sufficient for the Member State to show that its legislation actually intended to establish a link between a tax burden and a tax benefit that is not entirely arbitrary. Although, in the case at hand, the link existed not only with respect to different taxpayers (i.e. the donor and the foundation) but also concerned different taxes (i.e. the gift tax and the substitute inheritance tax), the Court insisted that the link in this case was still "relating to the same tax and the same taxpayer"[33]. This presents an evolution in the Court's case law on that justification ground that is nevertheless consistent with the guiding principle established in case *K*, according to which the "direct nature of that link" is "to be examined in the light of the objective pursued by the rules in question".[34] Since the German rules, as presented by the referring court, pursued the objective of consistent taxation of *inter vivos* transfers whether through a family foundation or directly among family members, the telos of that legislation explains a deviation from a strict understanding of the requirement for burden and benefit to accrue to the same taxpayer or through the exact same tax.

26. If there had been doubts in the past whether one of the criteria to accept a tax system to be justified by its coherence lies in an exact correspondence of the tax burden and tax benefit for each particular case that would lead to a true offset (except for a timing difference), the Court made it clear that it was sufficient that legislation not lead systematically to a significantly higher tax burden for cross-border cases.[35]

III.4 Proportionality 1: No right to tax foreign foundations?

27. The Court's easy acceptance of the "no right to tax" argument is interesting insofar as the Court did not engage in any analysis of whether it is actually the case that Germany had no possibility to impose the substitute inheritance tax on foreign foundations. This can be explained by the fact that also the referring court seemingly took it for granted that Germany had no right to impose a substitute inheritance tax on foreign family foundations.[36] Leaving aside tax treaty and possible customary international law limits on worldwide taxation, non-resident entities could remain within Germany's tax jurisdiction based on alternative factors: for example, where the assets held by the foreign foundation are German-based real estate.

III.5 Proportionality 2: No uncertainty as to the future offsetting burden

28. The Court regarded the link between the beneficial tax treatment of transactions establishing a foundation and the burden by the substitute inheritance tax as direct, personal and material, notwithstanding the fact that the levy is deferred for up to 30 years and may ultimately not arise. The Court noted that there was no "uncertainty" as to the tax charge, because family foundations last "generally" for several generations.[37] It is unclear what the factual basis for this assumption is. The Court makes no reference to data provided by the German government to this effect.

29. Aside from investigating the factual accuracy of the direct link in quantitative terms, the Court could also have considered whether the German legislation consistently pursued its purported aims. In the past, the Court held consistency to be an element of the proportionality analysis.[38] This would have involved

[32] For older cases in which the Court applied strict criteria, see, e.g. CJEU, 28 January 1992, C-204/90, *Bachmann*, EU:C:1992:35; CJEU, 7 September 2004, C-319/02, *Manninen*, EU:C:2004:484.

[33] CJEU, 13 November 2025, C-142/24, *Familienstiftung v Finanzamt Köln-West*, EU:C:2025:873, para. 70.

[34] CJEU, 7 November 2013, C-322/11, *K*, EU:C:2013:716, para. 66.

[35] CJEU, 13 November 2025, C-142/24, *Familienstiftung v Finanzamt Köln-West*, EU:C:2025:873, para. 79.

[36] Finanzgericht Köln 30 November 2023, 7 K 217/21, Para. 76.

[37] CJEU, 13 November 2025, C-142/24, *Familienstiftung v Finanzamt Köln-West*, EU:C:2025:873, para. 71.

[38] The Court's standard formulation is that "national legislation is appropriate for ensuring attainment of the objective pursued only if it genuinely reflects a concern to attain it in a consistent and systematic manner" – see most recently e.g. 7 September 2023,

analysing whether that legislation linked the more beneficial tax treatment granted to transfers to resident family foundations consistently to the imposition of the substitute inheritance tax. If the beneficial treatment is also granted to such foundations that are ex ante set up to cease existing after less than thirty years without a corresponding tax on their dissolution, that fact would undermine the claim of necessity of the link the German government defended in respect of foreign established family foundations. It should be noted that even if a resident family foundation exists for a period of more than thirty years, the allowances granted are so high that no substitute inheritance tax may be collected.[39]

30. The Court did not address the question whether asset transfers to foreign family foundations set up for a limited period of less than thirty years could also be justifiably treated less favourably than transfers to domestic family foundations. As such foundations ought to be compared to resident foundations that are also not subject to the substitute inheritance tax, it is difficult to see how the different treatment of such foreign foundations could be justified.

III.6. Proportionality *stricto sensu*

31. Lastly, it is notable that the Court aimed to provide insights into the analysis of proportionality *stricto sensu*. This aspect of constitutional proportionality analysis has, until some very recent instances, been completely absent from CJEU case law. Although the Court says little about the elements to be taken into account in this exercise of weighing the negative impact of restrictive legislation on the internal market against the importance of the national interest defended by the Member State, it at least makes the point that if a "significantly higher tax burden" for transfers to foreign family foundations were the systemic result of the choices made by the German legislature, the proportionality of the measures would be called into question.[40]

IV. The Statement

32. The CFE notes, first, that the judgment confirms the settled position that inheritance and gift tax measures fall within the scope of the freedom of capital, including where they concern complex legal forms such as foundations. This is consistent with earlier case law such as *F.E. Familienprivatstiftung Eisenstadt*[41] and *Welte*[42], and confirms that Member States remain subject to fundamental freedoms even in areas closely linked to national family and succession law.

33. Second, the Court's approach to comparability follows a formal and consistent line of authority. As in *Mattner*[43] and *Welte*, the Court focused on the taxable event itself rather than on downstream tax consequences which arise only as a result of the national tax system. This approach limits the ability of Member States to exclude comparability by reference to later differences which are themselves the product of domestic policy choices.

34. Third, the judgment further develops the meaning of fiscal coherence as a justification within the framework of the fundamental freedoms. While the requirement of a "direct link" between a tax advantage and a corresponding tax burden remains unchanged since its initial acceptance in *Bachmann*, the present case illustrates a flexible application of that requirement. The Court accepted a link notwithstanding a significant temporal gap and uncertainty as to whether the balancing tax will ever be levied. This represents a more accommodating approach than in certain earlier cases, such as *Meilicke*[44], where the Court was less

Nexive Commerce and others C-226/22, EU:C:2024:57, para. 48; 31 May 2018, *Confetra and Others*, C-259/16, EU:C:2018:370, para. 50, and the case law cited in those judgments.

[39] This would be the case where asset values held by the foundation do not exceed 800,000 EUR. See sec. 15(2) 2nd sentence.

[40] CJEU, 13 November 2025, C-142/24, *Familienstiftung v Finanzamt Köln-West*, EU:C:2025:873, para. 79.

[41] CJEU, 17 September 2015, C-589/13, *F.E. Familienprivatstiftung Eisenstadt*, EU:C:2015:612.

[42] CJEU, 17 October 2013, C-181/12, *Welte*, EU:C:2013:662.

[43] CJEU, 22 April 2010, C-510/08, *Mattner*, EU:C:2010:216.

[44] CJEU, 6 March 2007, C-292/04, *Meilicke and others*, EU:C:2007:132.

willing to accept indirect or uncertain connections, but is in line with more recent case law such as *Manninen*[45], *K*[46] and *Bevola*[47].

35. Fourth, although the Court did not engage in an analysis of the German legislation's consistent pursuance of its stated intent with respect to the direct link between lower gift taxation and subsequent substitute inheritance taxation of domestic family foundations, the judgment clarifies that ultimate compatibility of the legislation with the freedom of capital requires it to be *stricto sensu* proportionate. This requires that the legislation does not systematically impose greater tax burdens on transfers to foreign family foundations, which is for the referring court to consider in its own judgment.

[45] CJEU, 7 September 2004, C-319/02, *Manninen*, EU:C:2004:484.
[46] CJEU, 7 November 2013, C-322/11, *K*, EU:C:2013:716.
[47] CJEU, 12 June 2018, C-650/16, *Bevola and Jens W. Trock*, EU:C:2018:424.