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Judgment of the Court of 14 November 1995. - Peter Svensson et Lena Gustavsson v Ministre du Logement et de l'Urbanisme. - Reference for a preliminary ruling: Conseil d'Etat - Grand Duchy of Luxemburg. - Free movement of capital - Freedom to provide services - Interest rate subsidy on building loans - Loan by a credit institution not approved in the Member State granting the subsidy. - Case C-484/93.

European Court reports 1995 Page I-03955

Summary

Parties

Grounds

Decision on costs

Operative part

Keywords

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1. Free movement of capital ° Restrictions ° Housing benefit requirement making grants to borrowers of an interest rate subsidy subject to their having taken out a loan with a credit institution established in the national territory ° Not permissible

(EC Treaty, Art. 67)

2. Freedom to provide services ° Restrictions ° Housing benefit requirement making the grant to borrowers of an interest rate subsidy subject to their having taken out a loan with a credit institution established in the national territory ° Justification on grounds of public interest or by the need to guarantee the integrity of the fiscal regime ° None

(EC Treaty, Arts 56 and 59)

Summary

1. *It is not compatible with Article 67 of the Treaty for a Member State to make the grant of a housing benefit, in particular an interest rate subsidy, subject to the requirement that the loans intended to finance the construction, acquisition or improvement of the housing which is to benefit from the subsidy have been obtained from a credit institution approved in that Member State, which implies that it must be established there.*

Such a requirement is liable to dissuade borrowers from approaching banks established in another Member State and therefore constitutes an obstacle to liberalized movement of capital, which include bank loans.

2. *It is not compatible with Article 59 of the Treaty for a Member State to make the grant of a housing benefit, in particular an interest rate subsidy, subject to the requirement that the loans intended to finance the construction, acquisition or improvement of the housing which is to benefit from the subsidy have been obtained from a credit institution approved in that Member State, which implies that it must be established there.*

That requirement leads in the case of services such as the provision of building loans by banks to discrimination against providers of such services established in other Member States, which is prohibited by that article and is not justified under the derogations authorized by Article 56 of the Treaty, which do not include economic aims, or by the need to maintain the integrity of the national fiscal regime, since there is no direct link between the grant of the interest rate subsidy to borrowers on the one hand and its financing by means of the profit tax on financial establishments on the other.

Parties

In Case C-484/93,

REFERENCE to the Court under Article 177 of the EC Treaty by the Luxembourg Conseil d' État for a preliminary ruling in the proceedings pending before that court between

Peter Svensson,

Lena Gustavsson

and

Ministre du Logement et de l' Urbanisme

on the interpretation of Articles 67 and 71 of the EC Treaty,

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, D.A.O. Edward and G. Hirsch (Presidents of Chambers), G.F. Mancini, F.A. Schockweiler, J.C. Moitinho de Almeida (Rapporteur), C. Gulmann, J.L. Murray, P. Jann, H. Ragnemalm and L. Sevón, Judges,

Advocate General: M.B. Elmer,

Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

° the plaintiffs in the main action, by Fernand Entringer, of the Luxembourg Bar,

° the Greek Government, by Panagiotis Kamarineas, State Counsel in the State Legal Service, and Christina Sitara, Legal Representative in the State Legal Service, acting as Agents,

° the Commission of the European Communities, by Marie-José Jonczy, Legal Adviser, and Hélène Michard, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the plaintiffs, represented by Fernand Entringer; the Luxembourg Government, represented by A. Rodesch, of the Luxembourg Bar; the Greek Government, represented by Panagiotis Kamarineas; and the Commission, represented by Marie-José Jonczy and Hélène Michard, at the hearing on 14 March 1995,

after hearing the Opinion of the Advocate General at the sitting on 17 May 1995,

gives the following

Judgment

Grounds

1 By judgment of 28 December 1993, which was received at the Court on 30 December 1993, the Luxembourg Conseil d' État referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question concerning the interpretation of the provisions of that Treaty, in particular Articles 67 and 71.

2 The question arose in the course of proceedings between Mr and Mrs Svensson-Gustavsson, residing in Luxembourg, and the Ministre du Logement et de l' Urbanisme, who by decision of 5 November 1992 refused to grant them an interest rate subsidy for dependent children on a loan for the construction of a dwelling in Bereldange taken out with the Comptoir d' Escompte de Belgique SA, which is established and has its head office in Liège (Belgium).

3 The refusal was based on Article 1(3) of the Grand-Ducal Regulation of 17 June 1991 laying down provisions concerning entitlement to interest rate subsidies in respect of the construction, acquisition or improvement of housing, which restricts interest rate subsidies to persons who have taken out a loan from a credit institution approved in Luxembourg, a condition which the Comptoir d' Escompte de Belgique does not fulfil.

4 The Luxembourg Conseil d' État, before whom an appeal against that decision was brought, having ascertained that the Grand-Ducal Regulation was not adopted *ultra vires* having regard to its legal basis, decided to stay the proceedings and refer the following question to the Court of Justice for a preliminary ruling:

"Do the provisions of the Treaty of Rome, in particular Articles 67 and 71, preclude a Member State from making the grant of a housing benefit, in particular an interest rate subsidy, subject to the condition that the loans intended to finance the construction, acquisition or improvement of the housing which is to benefit from the subsidy have been obtained from a credit institution approved in that Member State?"

5 As the Court has stated (see in particular Case 203/80 Casati [1981] ECR 2595, paragraphs 8 to 13), Article 67(1) of the Treaty does not have the effect of abolishing restrictions on movements of capital by the end of the transitional period. Their abolition is a matter for Council directives

adopted on the basis of Article 69.

6 It should be noted in that regard that restrictions on movements of capital were abolished by Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty (OJ 1988 L 178, p. 5) adopted pursuant to Articles 69 and 70(1), which was in force at the material time. Article 1 of that directive provides as follows:

"Without prejudice to the following provisions, Member States shall abolish restrictions on movements of capital taking place between persons resident in Member States. To facilitate application of this directive, capital movements shall be classified in accordance with the nomenclature in Annex I."

7 Heading VIII of that annex refers expressly to short-term, medium-term and long-term financial loans and credits. Movements of capital related to such transactions are therefore already liberalized.

8 It is accordingly necessary to ascertain whether rules such as that at issue in this case constitute an obstacle to the movements of capital thus liberalized.

9 It should be noted that according to Article 1 of the Grand-Ducal Regulation the interest rate subsidy may only be granted if the persons meeting certain conditions are also able to show "that they have obtained from a credit institution approved in the Grand Duchy of Luxembourg, or from social security pension agencies, a loan intended for the construction, acquisition or improvement of a dwelling situated on the territory of the Grand Duchy of Luxembourg and effectively and permanently occupied by the applicant". The reply given by the Luxembourg Government to a question put by the Court indicates that in order to obtain such approval the bank must have been constituted or established in Luxembourg, whether as an agency or as a branch.

10 Provisions implying that a bank must be established in a Member State in order for recipients of loans residing in its territory to obtain an interest rate subsidy from the State out of public funds are liable to dissuade those concerned from approaching banks established in another Member State and therefore constitute an obstacle to movements of capital such as bank loans.

11 It should also be noted that by virtue of Article 61(2) of the Treaty "the liberalization of banking and insurance services connected with movements of capital shall be effected in step with the progressive liberalization of movement of capital". Since transactions such as building loans provided by banks constitute services within the meaning of Article 59 of the Treaty, it is also necessary to ascertain whether the rule referred to by the national court is compatible with the Treaty provisions on freedom to provide services.

12 It must be noted, first, that a rule which makes the grant of interest rate subsidies subject to the requirement that the loans have been obtained from an establishment approved in the Member State in question also constitutes discrimination against credit institutions established in other Member States, which is prohibited by the first paragraph of Article 59 of the Treaty.

13 Secondly, it is necessary to consider whether Treaty provisions may justify such a rule. In that context the Luxembourg Government, supported by the Greek Government, observes that the requirement constitutes part of a social policy which has considerable financial and economic repercussions. Solely for 1994 the figure entered in the national budget for the subsidies was BFR 1 410 236 417, or nearly 1% of the total budget. However, a large portion ° approximately one half ° of the interest rate subsidies paid out are recovered by the Grand Duchy of Luxembourg by means of the profit tax on financial establishments, which enables it to pursue a social policy favourable to housing and to place large sums in a special housing fund. In the absence of the contested rule, therefore, the housing policy would be a failure, or at least could not be as generous as it is at present; the rule is therefore compatible with Article 59(1) of the Treaty.

14 That argument cannot be accepted.

15 As stated in paragraph 12 above, the rule in question entails discrimination based on the place of establishment. Such discrimination can only be justified on the general interest grounds referred to in Article 56(1) of the Treaty, to which Article 66 refers, and which do not include economic aims (see in particular Case C-288/89 Stichting Collectieve Antennevoorziening Gouda and Others v Commissariaat voor de Media [1991] ECR I-4007, paragraph 11).

16 Admittedly, the Court held in two judgments delivered in 1992 (Case C-204/90 Bachmann [1992] ECR I-249 and Case C-300/90 Commission v Belgium [1992] ECR I-305) that rules liable to restrict both free movement of workers and freedom to provide services could be justified by the need to maintain the integrity of the fiscal regime.

17 That is not the case here, however.

18 In those cases there was a direct link between the deductibility of the contributions and the tax on the sums payable by the insurers under death and old-age insurance policies, a link which had to be preserved in order to preserve the integrity of the relevant fiscal regime, whereas there is no direct link whatsoever in this case between the grant of the interest rate subsidy to borrowers on the one hand and its financing by means of the profit tax on financial establishments on the other.

19 The reply to be given to the national court should therefore be that it is not compatible with Articles 59 and 67 of the Treaty for a Member State to make the grant of a housing benefit, in particular an interest rate subsidy, subject to the requirement that the loans intended to finance the construction, acquisition or improvement of the housing which is to benefit from the subsidy have been obtained from a credit institution approved in that Member State, which implies that it must be established there.

Decision on costs

Costs

20 The costs incurred by the Luxembourg and Greek Governments and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

Operative part

On those grounds,

THE COURT,

in answer to the question referred to it by the Luxembourg Conseil d' État by judgment of 28 December 1993, hereby rules:

It is not compatible with Articles 59 and 67 of the EC Treaty for a Member State to make the grant of a housing benefit, in particular an interest rate subsidy, subject to the requirement that the loans intended to finance the construction, acquisition or improvement of the housing which is to benefit from the subsidy have been obtained from a credit institution approved in that Member State, which implies that it must be established there.