JUDGMENT OF THE COURT (Grand Chamber)

5 October 2004 *

In Case C-442/02

REFERENCE for a preliminary ruling under Article 234 EC from the Conseil d'État (France), made by decision of 6 November 2002, received at the Court on 5 December 2002, in the proceedings brought by

Caixa-Bank France

against

Ministère de l'Économie, des Finances et de l'Industrie,

interveners:

Banque fédérale des banques populaires and Others,

* Language of the case: French.

THE COURT (Grand Chamber),

composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans, C. Gulmann, J.-P. Puissochet and J.N. Cunha Rodrigues (Rapporteur), Presidents of Chambers, R. Schintgen, N. Colneric, S. von Bahr, R. Silva de Lapuerta and K. Lenaerts, Judges,

Advocate General: A. Tizzano,

Registrar: M. Múgica Arzamendi, Principal Administrator,

having regard to the written procedure and further to the hearing on 19 November 2003,

after considering the observations submitted on behalf of:

— Caixa-Bank France, by M. Dany, avocat, and G. Castello, administrateur directeur général,

— Banque fédérale des banques populaires and Others, by A. Barav, avocat and Barrister,

— the French Republic, by R. Abraham, G. de Bergues, D. Petrausch and F. Alabrune, acting as Agents,

— the Commission of the European Communities, by M. Patakia and G. Zavvos, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 25 March 2004,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 43 EC.

The national legal background

2 Under Article L. 312-3 of the Code monétaire et financier (Monetary and Financial Code), in the version applicable in the present case:

'Notwithstanding any provisions to the contrary, it shall be prohibited for any credit establishment which receives funds from the public for sight accounts or accounts for less than five years, by any means whatever, to pay remuneration on those funds exceeding that fixed by regulation of the Committee for Banking and Financial Regulation or the minister responsible for the economy.'

3 Regulation No 86-13 of the Comité de la réglementation bancaire et financière (Committee for Banking and Financial Regulation), approved by decree of the Ministre de l'Économie et des Finances (Minister for Economic and Financial Affairs), of 14 May 1986 (JORF, 15 May 1986, p. 6330), prohibits the payment of remuneration on sight accounts.

4 That prohibition applies to accounts in euros opened by residents of France, whatever their nationality.

The main proceedings and the questions referred for a preliminary ruling

5 From 18 February 2002 Caixa-Bank France ('Caixa-Bank'), a company governed by French law with its seat in France which is a subsidiary of Caixa Holding, a company governed by Spanish law with its seat in Spain which holds the Caixa group's holdings in the credit institutions established under that name in Spain and in other countries of the European Union, marketed in France a sight account remunerated at the rate of 2% per annum on balances of at least EUR 1 500. By decision of the Committee for Banking and Financial Regulation of 16 April 2002, Caixa-Bank was prohibited from concluding new contracts with residents of France relating to remunerated sight accounts in euros and ordered to rescind the clauses in existing contracts which provided for the remuneration of such accounts.

6 Caixa-Bank appealed against that decision to the Conseil d'État, which decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

'1. As Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 is silent on the point, does the prohibition by a Member State of banking institutions duly established in its territory from remunerating sight

accounts and other repayable funds constitute an obstacle to freedom of establishment?

2. If the answer to the first question is in the affirmative, what kind of reasons of the public interest might in an appropriate case be relied on to justify such an obstacle?'

The questions referred for a preliminary ruling

7 It should be noted, as a preliminary point, that Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions (OJ 2000 L 126, p. 1) is not applicable in a case such as that at issue in the main proceedings, in particular because that directive does not refer to restrictions on the establishment of companies which, like Caixa-Bank, make use of freedom of establishment in a Member State as subsidiaries of credit institutions established in other Member States.

8 By its questions the national court essentially asks whether Article 43 EC precludes legislation of a Member State which prohibits a credit institution which is a subsidiary of a company from another Member State from remunerating sight accounts in euros opened by residents of the former Member State.

9 The freedom of establishment provided for in Article 43 EC, read in conjunction with Article 48 EC, is conferred both on natural persons who are nationals of a Member State and on legal persons within the meaning of Article 48 EC. Subject to the exceptions and conditions specified, it includes the right to take up and pursue

all types of self-employed activity in the territory of any other Member State, to set up and manage undertakings, and to set up agencies, branches or subsidiaries (see, inter alia, Case C-255/97 *Pfeiffer* [1999] ECR I-2835, paragraph 18).

10 The legal position of a company such as Caixa-Bank falls within the scope of Community law by virtue of the provisions of Article 43 EC.

11 Article 43 EC requires the elimination of restrictions on the freedom of establishment. All measures which prohibit, impede or render less attractive the exercise of that freedom must be regarded as such restrictions (see, inter alia, Case C-55/94 *Gebhard* [1995] ECR I-4165, paragraph 37, Case C-108/96 *Mac Quen and Others* [2001] ECR I-837, paragraph 26, and Case C-79/01 *Payroll and Others* [2002] ECR I-8923, paragraph 26).

12 A prohibition on the remuneration of sight accounts such as that laid down by the French legislation constitutes, for companies from Member States other than the French Republic, a serious obstacle to the pursuit of their activities via a subsidiary in the latter Member State, affecting their access to the market. That prohibition is therefore to be regarded as a restriction within the meaning of Article 43 EC.

13 That prohibition hinders credit institutions which are subsidiaries of foreign companies in raising capital from the public, by depriving them of the possibility of competing more effectively, by paying remuneration on sight accounts, with the credit institutions traditionally established in the Member State of establishment, which have an extensive network of branches and therefore greater opportunities than those subsidiaries for raising capital from the public.

14 Where credit institutions which are subsidiaries of foreign companies seek to enter the market of a Member State, competing by means of the rate of remuneration paid on sight accounts constitutes one of the most effective methods to that end. Access to the market by those establishments is thus made more difficult by such a prohibition.

15 While the French Government asserted at the hearing that there are forms of account comparable to sight accounts, such as 15-day accounts, which are not covered by the prohibition of remuneration and have helped credit institutions such as Caixa-Bank to compete with French credit institutions in raising funds from the public and increasing their market share in France, the Government conceded, however, that those accounts, unlike sight accounts, do not allow the use of bank cards or cheques. The prohibition at issue therefore entails a hindrance for credit institutions such as Caixa-Bank in their activity of raising capital from the public, which the existence of other forms of account with remunerated deposits cannot remedy.

16 The restriction on the pursuit and development of the activities of those subsidiaries resulting from the prohibition at issue is all the greater in that it is common ground that the taking of deposits from the public and the granting of credits represent the basic activities of credit institutions (see, to that effect, inter alia Article 1(1) of and Annex I to Directive 2000/12).

17 It is clear from settled case-law that where, as in the case at issue in the main proceedings, such a measure applies to any person or undertaking carrying on an activity in the territory of the host Member State, it may be justified where it serves overriding requirements relating to the public interest, is suitable for securing the attainment of the objective it pursues and does not go beyond what is necessary in order to attain it (see, inter alia, Case C-424/97 *Haim* [2000] ECR I-5123, paragraph 57, *Mac Quen*, paragraph 26, and Case C-439/99 *Commission* v *Italy* [2002] ECR I-305, paragraph 23).

18 It must therefore be examined whether the grounds put forward by the French Government meet those criteria.

19 To justify the restriction on freedom of establishment resulting from the prohibition at issue, the French Government prayed in aid both the protection of consumers and the encouragement of medium and long-term saving.

20 It submits, first, that the prohibition at issue in the main proceedings is necessary for maintaining the provision of basic banking services without charge. Introducing remuneration for sight accounts would substantially increase the operating costs of banks, which, to recover those costs, would increase charges and introduce charges for the various banking services currently provided free, in particular the issuing of cheques.

21 It must be observed, however, that while the protection of consumers is among the overriding requirements that can justify restrictions on a fundamental freedom guaranteed by the EC Treaty, the prohibition at issue in the main proceedings, even supposing that it ultimately presents certain benefits for the consumer, constitutes a measure which goes beyond what is necessary to attain that objective.

22 Even supposing that removing the prohibition of paying remuneration on sight accounts necessarily entails for consumers an increase in the cost of basic banking services or a charge for cheques, the possibility might be envisaged inter alia of allowing consumers to choose between an unremunerated sight account with certain basic banking services remaining free of charge and a remunerated sight account with the credit institution being able to make charges for banking services previously provided free, such as the issuing of cheques.

23 As regards, next, the French authorities' concern to encourage long-term saving, it must be observed that, while the prohibition of remuneration on sight accounts is indeed suitable for encouraging medium and long-term saving, it nevertheless remains a measure which goes beyond what is necessary to attain that objective.

24 In the light of the above considerations, the answer to the questions referred for a preliminary ruling must be that Article 43 EC precludes legislation of a Member State which prohibits a credit institution which is a subsidiary of a company from another Member State from remunerating sight accounts in euros opened by residents of the former Member State.

Costs

25 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 (Grand Chamber), rules as follows:

Article 43 EC precludes legislation of a Member State which prohibits a credit institution which is a subsidiary of a company from another Member State from remunerating sight accounts in euros opened by residents of the former Member State.

Signatures.