JUDGMENT OF THE COURT
4 February 1988 *

In Case 143/86

REFERENCE to the Court under Article 177 of the EEC Treaty by the Circuit Court of Ireland, Northern Circuit, County of Cavan, for a preliminary ruling in the proceedings pending before that court between

John Richard Alan East, Nigel Bruce Harrison and Geoffrey Michael Whittal Oakley, trading as Margetts and Addenbrooke,

and

Thomas Cuddy and **Winifred Cuddy,**

on the interpretation of Article 2 (1) of the Council Directive of 11 May 1960 for the implementation of Article 67 of the Treaty (Official Journal, English Special Edition 1959-62, p. 49) and on the validity of the Commission Decision of 3 December 1980 authorizing Ireland to continue to apply certain protective measures pursuant to Article 108 (3) of the EEC Treaty,

THE COURT

composed of: G. Bosco, President of Chamber, acting as President, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias (Presidents of Chambers), T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot, C. N. Kakouris, R. Joliet, T. F. O'Higgins and F. Schockweiler, Judges,

Advocate General: C. O. Lenz
Registrar: H. A. Rühl, Principal Administrator

* Language of the Case: English.

after considering the observations submitted on behalf of

Margetts and Addenbrook, by Messrs Cormac D. Dunne & Co., Solicitors,

Thomas Cuddy and Winifred Cuddy by Messrs F. N. Murtagh & Co., Solicitors,

the Government of Ireland by L. Dockery, Chief State Solicitor, acting as Agent,

the Commission of the European Communities, by D. R. Gilmour, acting as Agent,

having regard to the Report for the Hearing and further to the hearing on 24 November 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 24 November 1987,

gives the following

Judgment

1 By order lodged at the Court Registry on 10 June 1986, the Circuit Court of Ireland, Northern Circuit, County of Cavan, referred to the Court for a preliminary ruling pursuant to Article 177 of the EEC Treaty various questions on the scope and effects of Article 2 (1) of the Council Directive of 11 May 1960 for the implementation of Article 67 of the Treaty relating to the liberalization of capital movements (Official Journal, English Special Edition 1959-62, p. 49), as amended by Council Directive 63/21/EEC of 18 December 1962 (Official Journal, English Special Edition 1963-64, p. 5), and on the validity and scope of the Commission Decision of 3 December 1980 authorizing Ireland to apply certain protective measures pursuant to Article 108 of the EEC Treaty.

2 Those questions were raised in the course of proceedings between Messrs East, Harrison and Oakley, stockbrokers established in London and trading under the style or name of Margetts and Addenbrooke (hereinafter referred to as 'the plaintiffs'), and Thomas Cuddy and Winifred Cuddy (hereinafter referred to as 'the defendants'), Irish nationals residing in Ireland, in respect of the performance of an agreement relating to the purchase and sale of securities on the London Stock Exchange for the defendants.

3 Between 1982 and 1984 the defendants bought and sold securities on the London Stock Exchange through the plaintiffs. It appears from the documents before the Court, and it is not contested by the parties to the main proceedings, that all the transactions related to shares in Irish companies whose principal place of business is in Ireland, whose capital is expressed in Irish pounds and whose shares are quoted on the stock exchange both in Dublin and in London. In July 1984 the defendants owed the plaintiffs UKL 5 080.30 in respect of the sale at a loss of certain securities. The defendants refused to pay that sum and the plaintiffs instituted proceedings against them in the Circuit Court.

4 The defendants contended that their agreement with the plaintiffs was unenforceable because it was in violation of the Irish Exchange Control Regulations. In response to that contention the plaintiffs claimed that the Exchange Control Regulations should not be applied on the ground that they were contrary to the aforementioned Directive of 11 May 1960.

5 In those circumstances, the national court referred the following four questions to the Court of Justice for a preliminary ruling:

'(1) Does Article 2 (1) of the Council Directive of 11 May 1960 confer on individuals rights which are enforceable by them in the national courts of a Member State?

(2) If so, is the said Article 2 (1) of the said directive to be interpreted as giving individuals residing in one Member State the right to buy securities on a stock exchange in another Member State?

(3) Is the decision of the Commission of 3 December 1980 authorizing Ireland to continue to apply certain protective measures pursuant to Article 108 (3) of the EEC Treaty a valid decision?

(4) If the said decision is a valid decision, does it entitle Ireland to impose restrictions on its residents in regard to dealings in shares in companies registered in and having their principal place of business in Ireland on the stock exchange of another Member State?'

6 Reference is made to the Report for the Hearing for a fuller account of the facts, the provisions of Community law in question and the observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The second question

7 It appears appropriate to examine in the first place the second question, in which the national court asks the Court of Justice essentially whether Article 2 (1) of the Council Directive of 11 May 1960 must be interpreted as covering transactions for the purchase of securities of the type which gave rise to the main proceedings.

8 For different reasons, the parties to the main proceedings both take the view that that question should be answered in the affirmative. According to the plaintiffs the transactions in question are included by implication amongst those referred to in Article 2 (1), whereas the defendants consider that, merely by reason of the fact that the relevant Irish legislation classifies the securities which were the subject of the said transactions as foreign, those transactions should be regarded as the 'acquisition by residents of foreign securities' which is covered expressly by the directive.

9 Ireland and the Commission, on the other hand, consider that for the purposes of the Directive of 11 May 1960, as amended, transactions of the type in question constitute purchases by residents of domestic securities which are not referred to by Article 2 (1) of the directive.

10 It should be pointed out that Article 2 (1) of the Directive of 11 May 1960, as amended, provides that 'Member States shall grant general permission for the

conclusion or performance of transactions and for transfers between residents of Member States in respect of the capital movements set out in List B of Annex I to this directive'. List B covers the following transactions in respect of securities:

'Acquisition by non-residents of domestic securities dealt in on a stock exchange (excluding units of unit trusts) and repatriation of the proceeds of liquidation thereof;

Acquisition by residents of foreign securities dealt in on a stock exchange and use of the proceeds of liquidation thereof . . . '

11 In order to clarify the terms 'residents' and 'domestic' and 'foreign' securities employed in those provisions, reference should be made, not to national legislation, but to the definitions set out in the 'Explanatory Notes' annexed to the directive, which form an integral part thereof.

12 According to the Explanatory Notes, the expression 'residents or non-residents' means 'natural and legal persons according to the definitions laid down in the exchange control regulations in force in each Member State'. In that regard it is uncontested that the defendants were resident in Ireland.

13 Furthermore, again according to the Explanatory Notes, securities are domestic or foreign 'according to the country in which the issuer has his principal place of business'. It is also not contested that each of the companies in whose shares the dealings at issue took place had its principal place of business in Ireland. Consequently, for the purposes of the Directive of 11 May 1960, as amended, those securities are Irish securities.

14 It follows from the foregoing that for the purposes of the Directive of 11 May 1960, as amended, the transactions at issue in the main proceedings constitute purchases by residents of domestic securities on a foreign market. Such transactions do not appear in Table B annexed to that directive.

15 Nor can transactions of that type be regarded as being covered by the directive by implication. They differ from those referred to by the directive and were liberalized only by Council Directive 86/566/EEC of 17 November 1986 (Official Journal 1986, L 332, p. 22), which came into effect after the events which gave rise to the main proceedings.

16 The reply to the second question must therefore be that Article 2 (1) of the Council Directive of 11 May 1960, as amended, must be interpreted as meaning that it does not cover transactions for the purchase of securities of the type at issue in the main proceedings, which, in the light of that directive, constitute purchases by residents of domestic securities on a foreign market.

The remaining questions

17 It follows from the answer to the second question that transactions of the type which gave rise to the main proceedings were not liberalized by the Directive of 11 May 1960, as amended, and that therefore the Government of Ireland continued to have the power to regulate them.

18 In those circumtances the remaining questions referred by the national court relating to the possible direct effect of the Directive of 11 May 1960, as amended, and to the validity and scope of the Commission Decision of 3 December 1980 authorizing Ireland to apply protective measures by way of derogation from certain provisions of the Directive of 11 May 1960, as amended, no longer serve any purpose. There is therefore no need to answer them.

Costs

19 The costs incurred by the Government of Ireland and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings before the national court, costs are a matter for that court.

On those grounds,

THE COURT

in reply to the questions submitted to it by the Circuit Court of Ireland, Northern Circuit, County of Cavan, by order of 10 June 1986, hereby rules:

Article 2 (1) of the Council Directive of 11 May 1960, as amended, must be interpreted as meaning that it does not cover transactions for the purchase of securities of the type at issue in the main proceedings, which, in the light of that directive, constitute purchases by residents of domestic securities on a foreign market.

Bosco Moitinho de Almeida Rodríguez Iglesias

Koopmans Everling Bahlmann Galmot

Kakouris Joliet O'Higgins Schockweiler

Delivered in open court in Luxembourg on 4 February 1988.

P. Heim
Registrar

A. J. Mackenzie Stuart
President