OPINION OF ADVOCATE GENERAL JACOBS

delivered on 14 April 2005 [1]

1. 'Gentlemen prefer bonds', according to former US Treasury Secretary Andrew Mellon. [2] The Bank of Greece, however, has no such preference, or did not in 1982: the purchase of bonds from convertible drachma accounts required special authorisation. In the present case the Court is asked essentially whether that requirement was contrary to the First Capital Movements Directive. [3] The answer to that question depends on the correct classification of the bonds in question for the purposes of that directive.

Community legislation

2. The First Capital Movements Directive was adopted on 11 May 1960. Greece was required to implement the directive by 1 January 1981, the date of its accession.

3. The single recital in the preamble to the directive states:

'Whereas the attainment of the objectives of the Treaty establishing the European Economic Community requires the greatest possible freedom of movement of capital between Member States and therefore the widest and most speedy liberalisation of capital movements.'

4. Article 2(1) required Member States to grant general permission for the capital movements set out in List B of Annex I. Articles 1(1) and 3(1) have largely the same effect as regards other transactions set out in Lists A and C of Annex I, which are not in issue in the present case.

1 — Original language: English.

2 — Andrew Mellon was Treasury Secretary from 1921 to 1932, serving Presidents Harding, Coolidge and Hoover. The quote was his response when asked his opinion of investing in the 1920s stock market bubble.

3 — First Directive for the implementation of Article 67 of the Treaty (OJ, English Special Edition 1959-1962, p. 49); repealed with effect from 1 July 1990 by Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty (OJ 1988 L 178, p. 5).

5. There was no requirement to grant authorisation or permission in respect of the capital movements set out in List D of Annex I. Such movements were subject only to Article 4 of the directive, which required the Monetary Committee to examine at least annually the restrictions which were applied to all capital movements listed in Annex I and to report to the Commission regarding restrictions which could be abolished, and to Article 7, which required Member States to notify the Commission of provisions governing capital movements.

6. Annex I to the directive contains Lists A, B, C and D. Each list mentions a number of categories of transactions; against each category is a reference to one or more 'Items of nomenclature'. Annex II is headed 'Nomenclature of Capital Movements' and consists of headings which reflect the categories of capital movements listed in Lists A, B, C and D together with subcategories and further descriptions ('the Nomenclature') followed by a series of explanatory notes (the 'Explanatory Notes') which define certain expressions used in the Nomenclature. Article 10 of the directive provides that the lists in Annex I together with the Nomenclature and the Explanatory Notes 'form an integral part' of the directive.

7. The referring court considers that the capital movements at issue in the present case fall within either List B or List D in Annex I.

8. List B (capital movements for which Member States must grant general authorisation) sets out a number of transactions under the heading 'Operations in securities', including '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'. Against that description is a reference to Item IVA of the Nomenclature. Item IVA includes under 3(i) 'Acquisition of bonds ... denominated in national currency' and under 4 'Repatriation of proceeds of liquidation of bonds'.

9. 'Securities dealt in on a stock exchange' are defined in the Explanatory Notes as 'Securities the dealings in which are controlled by regulations, and prices for which are regularly published, either by official stock exchanges (quoted securities) or by other bodies attached to a stock exchange, e. g. committees of banks (unquoted securities)'. 'Bonds' are defined in the Explanatory Notes as 'Bonds issued by public or private bodies'.

10. List D in Annex I (capital movements which Member States are not required to liberalise) includes three types of capital movements which are alleged to be at issue in the present proceedings.

11. First, List D mentions 'Short-term investments in Treasury bills and other securities normally dealt in on the money market' with a reference to Item VI of the Nomenclature. That item is headed:

'Short-term investments in Treasury bills and other securities normally dealt in on the money market

1. denominated in national currency

2. denominated in foreign currency.'

12. Item VI comprises two categories of capital movements: 'A. Short-term investments by non-residents on a domestic money market and repatriation of the proceeds of liquidation thereof' and 'B. Short-term investments by residents on a foreign money market and repatriation of the proceeds of liquidation thereof', in each case in either national or foreign currency.

13. Second, List D mentions 'Opening and placing of funds on current or deposit accounts, repatriation or use of balances on current or deposit accounts with credit institutions' with a reference to Item IX of the Nomenclature, from which it is clear that the category includes transactions by non-residents with domestic credit institutions and that accounts and balances in both national and foreign currency are covered.

14. Third, List D mentions 'Granting and repayment of short-term loans and credits not related to commercial transactions' with a reference to Item VIII A(i) of the Nomenclature, from which it is clear that 'short-term loans and credits' are those of less than one year.

National provisions

15. The referring court explains that the national legislation [4] provided at the relevant time for two categories of deposit accounts in the name of permanent foreign residents, namely (a) foreign sight deposit accounts in drachma (convertible drachma account) and (b) foreign sight deposit accounts in foreign currency.

4 — Decision 1097/1959 of the Monetary Committee 'on the application in Greece of the system of restricted convertibility' (FEK 109/16.6.1959) which was adopted pursuant to Article 3 of Law 395/1945 and Articles 3 and 10 of Law 3076/1954.

16. Funds in convertible drachma accounts could be used without special authorisation for certain specified limited purposes. If convertible drachma accounts were used without special authorisation for a purpose other than those prescribed, including the purchase of bank bonds, the drachma equivalent would lose its convertibility.

The facts and the questions referred

17. At the material time Banque Artesia ('Artesia'), a Belgian bank, held in its Athens branch a convertible drachma account.

18. From 28 April 1981 to 30 July 1982 Artesia purchased bonds issued during that period by the Greek company Elliniki Trapeza Viomikhanikis Anaptuxeos AE (Greek Bank of Industrial Development Ltd) ('ETVA'). The referring court states that the bonds were for a term of one year from issue and 'were dealt in on the stock exchange, since they were quoted on the Athens Stock Exchange'. The bonds were paid for from Artesia's convertible drachma account.

19. On 24 August 1982 Artesia requested authorisation from the Bank of Greece for that account to be credited with the proceeds of liquidation of the bonds so that it could repatriate those proceeds to Belgium. The Bank of Greece repeatedly refused to grant that request until 24 November 1986 when it finally gave authorisation. It appears that one at least of the grounds for its refusal was that the use of the convertible drachma account for the initial purchase of the bonds had not been authorised; as a consequence the account was no longer convertible.

20. Artesia brought proceedings against the Bank of Greece seeking compensation for lost interest due to such refusal, alleging that its purchase of the bonds fell within List B of Annex I, and Item IVA of the Nomenclature in Annex II, to the First Capital Movements Directive so that Member States were required to authorise it by virtue of Article 2 of that directive.

21. The Polimeles Protodikio (Court of First Instance), Athens, gave judgment in Artesia's favour. The Efetio (Court of Appeal), Athens, allowed an appeal by the Bank of Greece. On further appeal on a point of law, the First Chamber of the Arios Pagos Athinon (Supreme Court of Cassation, Athens) ruled by majority in Artesia's favour. The case was referred to the Supreme Court of Cassation in plenary session, which unanimously quashed the judgment of the Court of Appeal on the basis that the acquisition of the bonds was a capital movement within the meaning of List B in

Annex I and Item IVA of the Nomenclature. The Supreme Court of Cassation accordingly referred the case back to the Court of Appeal for judgment. That court quantified the damage suffered by Artesia and confirmed the judgment of the Court of First Instance.

22. The Bank of Greece has appealed against that judgment of the Court of Appeal to the First Chamber of the Supreme Court of Cassation which has stayed proceedings and referred to the Court in substance the following questions:

(1) Were bonds issued in 1982 by a Greek bank, whether owned by the State or not, which had a maturity of one year from issue and which were dealt in and quoted on a stock exchange, 'short-term investments in Treasury bills and other securities normally dealt in on the money market' within the meaning of List D in Annex I, and Item VI of the Nomenclature in Annex II, to the First Capital Movements Directive?

(2) Did the use for the acquisition of such bonds of funds in an account held by the Belgian purchaser in Greek currency convertible into foreign currency fall within List D in Annex I, and Item IX of the Nomenclature in Annex II, to that directive?

23. Written observations have been submitted by Artesia, the Bank of Greece, the Greek Government and the Commission, all of whom were represented at the hearing.

Earlier proceedings

24. In 1985 the Commission brought infringement proceedings against Greece arising out of the same facts as those at issue in the present case. [5] The Commission alleged first that Greece had not implemented the First and Second [6] Capital Movements Directives and second that, by not authorising Artesia (then Banque Paribas) to repatriate or transfer to a convertible account the proceeds of the liquidation of funds invested in ETVA bonds, Greece had failed to fulfil its obligations under Article 2 of the First Directive, thus assuming that the transaction at issue fell within List B.

25. Greece implemented the directives after the proceedings had been brought but before the hearing. The Commission indicated at

5 — Case 132/85 *Commission* v *Greece* [1987] ECR 5293.

6 — Second Council Directive 63/21/EEC of 18 December 1962 adding to and amending the First Directive (OJ, English Special Edition 1963-64, p. 5). The amendments are not material to the present case.

the hearing that it wished none the less for the proceedings to continue to judgment, although after Advocate General Darmon had delivered his Opinion it in fact discontinued its application so that no judgment was given. [7] The paragraph of the Opinion dealing with the substance does not go into detail, simply stating as follows:

'There is no doubt that the second claim is well founded. During the proceedings the competent Greek authorities implicitly admitted as much and they finally authorised the free convertibility of all the funds resulting from the liquidation of Paribas' investment in securities. Similarly, in its rejoinder the defendant State abandoned the main line of argument which it originally set out in its defence, namely that the operations in question were not covered by the two directives; it submitted that authorisation had been issued late owing to a review of the legality and genuine nature of the transaction, a requirement which cannot excuse the alleged failure to fulfil obligations.' [8]

Assessment

26. It is common ground that for the purposes of the First Capital Movements Directive (i) Artesia is a non-resident; (ii) the bonds, if securities within List B, are domestic securities and are denominated in national currency; (iii) the amount which Artesia wished to repatriate was proceeds of liquidation of those bonds; and (iv) the bank in which Artesia's convertible drachma account was held was a domestic credit institution.

27. The principal issue is whether the bonds were 'securities dealt in on a stock exchange' within the meaning of List B and Item IVA, so that Member States were required by Article 2 of the First Capital Movements Directive to grant general permission for repatriation of the proceedings of their liquidation, or whether they were 'securities normally dealt in on the money market' and their acquisition by Artesia a 'short-term investment' within the meaning of List D and Item VI, so that none of the obligations to liberalise capital movements set out in Articles 1, 2 and 3 of the directive applied.

28. Subsidiary issues are (i) whether it makes any difference to the above analysis that the bank which issued the bonds was owned by the State and (ii) whether the balance, in national currency convertible into foreign currency, of Artesia's convertible drachma account was a balance on current or deposit account with a credit institution within the meaning of List D and Item IX.

7 — The Commission states in its written observations in the present proceedings that it discontinued its application in the earlier proceedings after Greece had implemented the two directives at issue (by Presidential Decrees 170/1986 and 207/1987) with retroactive effect from 1 January 1981.

8 — Point 8.

29. It might have been thought that 23 years after the occurrence of the facts and after one judgment at first instance, two by the Court of Appeal and two by the Court of Cassation in the national proceedings, not to mention the infringement proceedings before the Court of Justice arising out of the same facts, there would be some consensus as to the most relevant of those facts. That is unfortunately not the case.

30. First, agreement on the term of the bonds remains elusive. Although it appears to be common ground that the bonds had a nominal term of one year, the parties are not ad idem as to the significance to be accorded to the apparently uncontested facts that the bonds conferred on the holder the option on the one hand of calling for early redemption and on the other hand of extending the term for successive periods of one year up to a maximum term of four years.

31. Second, there appears to be no consensus as to whether the bonds were 'dealt in on a stock exchange' or 'normally dealt in on the money market'. The referring court and Artesia state that the bonds were quoted and dealt in on the Athens Stock Exchange. Artesia also states that they were not 'normally dealt in on the money market'. The Bank of Greece and the Greek Government in contrast suggest that the bonds were dealt in on the money market. No corroboration of that statement is offered however, and it appears from the observations that those parties are simply concluding from their descriptions of the money market and from the term of the bonds that they fell within List D and Item VI. Both also concede that the bonds may have been dealt in on a stock exchange but assert that, although it would be unusual, an instrument may be dealt in on both markets, in which case the short-term nature of the instrument is decisive for its classification in List D and Item VI.

Preliminary points

32. Artesia raises two preliminary points.

33. First, it notes that in the course of the earlier proceedings before the Court of Justice the Bank of Greece did not raise the argument that the bonds at issue fell within List D rather than List B; that argument was raised for the first time at the hearing in 1995 before the Court of First Instance, Athens, in the national proceedings for damages. Artesia submits that such conduct by the Bank of Greece, which is an organ of the Greek State, is in flagrant violation of Article 10 EC.

34. Article 10 EC requires Member States to take all appropriate measures to ensure

fulfilment of their Treaty obligations, to facilitate the achievement of the Community's tasks and to abstain from any measure which could jeopardise the attainment of the objectives of the Treaty. Although the change of tack by the Bank of Greece may seem surprising, it does not in my view amount to an infringement by Greece of Article 10 EC. In any event, I do not consider it appropriate to explore the issue further given that the national court has not asked for guidance.

35. Second, Artesia submits that the reference is inadmissible since the questions referred have already been decided by the plenary Supreme Court of Cassation.

36. It is settled case-law, however, that in general it is solely for the national court before which the dispute has been brought to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions referred concern the interpretation of Community law, the Court is, in principle, bound to give a ruling.[9] In any event, the fact that a question of Community law has already been decided by a national court, even a supreme court, does not render a reference on the question inadmissible.

9 — See for example Case C-181/00 *Flightline* [2002] ECR I-6139, paragraph 21.

The principal issue

37. By its first question the referring court asks essentially whether bonds issued by a bank which mature one year from issue and which are dealt in and quoted on the stock exchange, are (i) 'securities dealt in on a stock exchange' within the meaning of List B in Annex I to the First Capital Movements Directive or (ii) 'Short-term investments in Treasury bills and other securities normally dealt in on the money market' within the meaning of List D in Annex I.

38. Artesia and the Commission consider that the bonds in question fall under List B whereas the Bank of Greece and the Greek Government consider that they fall under List D. Artesia, the Bank of Greece and the Greek Government support their argument by reference to the term of the bonds (variously described as six months, one year and up to four years, as explained above) and to the 'fact' that they are normally dealt with on the stock exchange (according to Artesia and, it may be noted, the referring court) and on the money markets (according to the Bank of Greece and the Greek Government), although as explained above those two parties appear to deduce the 'fact' of being dealt with on the money markets solely from the alleged short-term nature of the bonds.

39. If the bonds in question may in principle fall within both categories of investment, namely those in Lists B and D, the criteria distinguishing those categories must as the Commission submits be sought in the legislation.

40. List B includes the 'acquisition by non-residents of domestic securities dealt in on a stock exchange'. It is not necessary therefore for the securities to have been acquired on a stock exchange: the decisive criterion is the fact of being *dealt in* on a stock exchange. [10] That interpretation is borne out by all the original language versions. [11]

41. The Explanatory Notes define 'Securities dealt in on a stock exchange' as 'Securities the dealings in which are controlled by regulations, and prices for which are regularly published, either by official stock exchanges (quoted securities) or by other bodies attached to a stock exchange, e.g. committees of banks (unquoted securities)'. It is clear therefore that the Community legislature considered that the fact that potential dealings in certain securities were regulated, in particular with reference to investor protection and price transparency, was a significant factor militating in favour of liberalising the acquisition of such securities.

42. The Bank of Greece objects that those factors have nothing to do with capital movements and are the subject-matter of other Community and national provisions.

43. It seems to me however that the existence of legislation, whether Community or national, regulating stock exchange transactions reinforces rather than undermines the view that such transactions should be liberalised. Indeed the Bank of Greece acknowledged at the hearing that the fact that securities were quoted on a stock exchange precluded any fraud arising out of fictitious pricing and relieved the national authorities from any obligation to carry out their own valuation of traded securities before authorising currency movements for their acquisition or for the repatriation of the proceeds of their liquidation.

44. In my view, therefore, on the basis of the wording of Item IV of the Nomenclature, the fact that securities are quoted on a stock exchange, and hence subject to regulation by that exchange, prima facie entails that their acquisition by a non-resident and repatriation of the proceeds of their liquidation fall within List B in Annex I.

10 — See M. Sarmet's contribution on 'Libre circulation des capitaux' in J. Mégret, *Le droit de la Communauté économique européenne* (1971), p. 204, also cited by the Commission.

11 — 'Acquisition par des non-résidents de titres nationaux négociés en bourse', 'Erwerb inländischer, an Börsen gehandelter Wertpapiere durch Devisenausländer', 'acquisto da parte di non residenti di titoli nazionali trattati in borsa', 'Verwerving door niet-ingezetenen van ter beurze verhandelde binnenlandse effecten'

45. There is however no suggestion in the original version of the directive (the version relevant to the present case) that the short- or long-term nature of the securities was a relevant criterion for the categorisation of bonds falling within List B. That distinction was not introduced until 1986, when the definition of 'bonds' in the Explanatory Notes was replaced by a definition specifying that the bonds have a maturity of two years or more from issue. [12]

46. List D includes 'Short-term investments in Treasury bills and [in] other securities normally dealt in on the money market'. [13] Item VI of the Nomenclature, referred to against that category, comprises solely 'Short-term investments by non-residents on a domestic money market' and 'Short-term investments by residents on a foreign money market', denominated in national or foreign currency, together with in both cases the proceeds of liquidation thereof. The principal criteria for inclusion in Item VI D thus appear to be (i) the short-term nature of the securities concerned, [14] (ii) the fact that they are dealt in on the money market and (iii) the fact that the investment was made on the money market.

47. The Bank of Greece relies on a definition of the money market from the European Central Bank's Annual Report for 2002 while Artesia refers to the definition in *Longman's Dictionary of Business English*. The European Central Bank's definition is 'the market in which short-term funds are raised, invested and traded using instruments which generally have an original maturity of up to one year'. The *Longman* definition is 'an international network of investors doing business by telephone, trading mainly in instruments issued only by governments, banks and companies of the highest creditworthiness, maturing in less than 12 months'. Given that the classification in question dates back to 1960 and the facts arose in 1982, I consider that, to the extent that a definition is useful, it may be helpful to look at earlier sources.

48. The 1973 edition of the *Encyclopædia Britannica* describes the money market as 'a set of institutions or arrangements for handling what might be called the "wholesale" transactions in money and short-term credit [which] exists for the purpose of improving the ability of the retailers of financial services — commercial banks, savings institutions, investment houses, lending agencies, and even governments — to do their jobs'. [15]

12 — By Council Directive 86/566/EEC of 17 November 1986 (OJ 1986 L 332, p. 22) which required implementation by 28 February 1987.

13 — It is clear from the Dutch, French and Italian versions, although not from the English version, that this head covers 'short-term investments' in all the securities listed.

14 — Sarmet states that List D 'comprend essentiellement des capitaux à court terme très mobiles (*hot money*)': op. cit., p. 207.

15 — Vol. 15, p. 710. The entry on money markets includes contributions by Robert Vincent Roosa, former Vice-President of the Federal Reserve Bank, New York, and Christiaan Glasz, former Royal Commissioner, De Nederlandsche Bank.

49. The *Encyclopædia* explains that money market assets 'may range from the highest form of liquidity — deposits at the central bank — through bank deposits and various forms of short-term paper such as treasury bills, dealers' loans, bankers' acceptances, and commercial paper, and including government securities of longer maturity and other kinds of credit instruments eligible for advances or rediscount at the central bank. ... So long as the institutions making use of a money market regard a particular type of credit instrument as a reasonably close substitute [for money] — that is, treat it as "liquid" — and so long as the central bank acquiesces in or approves this approach, the instrument is in practice a money market asset'.

50. That definition follows the approach of List D in essentially categorising money market assets by reference to the fact that they are in fact dealt in on the money market.

51. Money markets are different from secondary capital markets such as stock exchanges in a number of ways. Money markets are not subject to the same rules concerning price transparency and investor protection as stock exchanges. They are not physically anchored to a particular location. They consist of transactions in highly liquid assets which are essentially effected by major banks and other institutional investors dealing over the telephone. Assets such as Treasury bills, commercial paper and certificates of deposit typically have a maturity of between a few hours and a few months. By adopting List D, the Community legislature manifestly wished to allow Member States to restrict speculative capital movements ('hot money'), for example the sudden export of substantial capital, which during the period in question could have seriously compromised monetary policy and exchange rates. It may be noted that the Bank of Greece, the Greek Government and the Commission all accept that that was the objective.

52. In addition, it is clear from Item VI of the Nomenclature ('Short-term investments by non-residents on a domestic money market' and 'Short-term investments by residents on a foreign money market') that in order to fall within List D an investment must in fact have been made on the money market; that contrasts with the position under List B, which covers the acquisition, not necessarily on a stock exchange, of securities normally dealt in on a stock exchange.

53. The question what is meant by short-term securities to my mind is determined by the securities which are in fact normally dealt in on the money markets. Such markets by their nature rely on short-term finance. In the United Kingdom at the relevant time, for instance, the money markets relied principally on Treasury bills, issued every week for periods usually of 91

days, and commercial bills, which generally had a maturity of three months. [16] Active secondary markets for most money market instruments mean that they can be sold prior to maturity if the holder wishes to liquidate them even sooner.

54. That is perhaps why there is no definition of 'short-term' in either the Nomenclature or the Explanatory Notes. Artesia and the Commission rely by analogy on Items VII and VIII of the Nomenclature, where 'short-term' is defined as 'less than one year', 'medium-term' as 'from one to five years' and 'long-term' as 'five years or more'. Those definitions however are for the purpose of the classification of loans and credits, which are different in kind from money market instruments. For that reason I do not consider that they are relevant.

55. In the light of the above, it seems to me that the ETVA bonds at issue are 'domestic securities' within the meaning of List B.

56. First, according to the referring court's description they satisfy the condition that they are 'dealt in on a stock exchange' within the meaning of the directive. [17] Moreover, the Bank of Greece and the Greek Government accept that they were so dealt in, although as discussed above they draw a different conclusion from the alleged fact (not mentioned by the referring court and denied by Artesia) that they were also dealt in on the money market. Prima facie therefore the bonds fall under List B.

57. Second, there is no suggestion in the order for reference or in any of the observations submitted to the Court that the bonds were acquired on the money market; on the contrary the order for reference suggests that they were bought from ETVA. As discussed above, [18] it is clear that in order to fall within List D an investment must actually have been made on the money market.

58. I would note finally that, even if it were the case that the bonds were dealt in on both a stock exchange and the money market — a situation which the Bank of Greece and the Greek Government assert is possible albeit unusual — I would remain of the view that the acquisition of the bonds fell within List B and Item IVA. It will be recalled that the single recital in the preamble to the directive states that the attainment of the objectives of

16 — Peter Donaldson, *Guide to the British Economy* (4th ed., 1976), p. 45.

17 — The conditions of issue, which have been produced to the Court, bear this out: point 10 states that the bonds may be negotiated on the Athens Stock Exchange.

18 — See point 52.

the Treaty 'requires the greatest possible freedom of movement of capital between Member States and therefore the widest and most speedy liberalisation of capital movements'. In the light of that overriding objective, I consider that any ambiguity in the directive should be construed so as to promote such liberalisation.

The subsidiary issues

59. There remain the two subsidiary issues arising out of the reference, namely (i) whether it makes any difference to the above analysis that the bank which issued the bonds was owned by the State and (ii) whether the balance, in national currency convertible into foreign currency, of Artesia's convertible drachma account was a balance on current or deposit account with a credit institution within the meaning of List D and Item IX.

60. With regard to the first point, I agree with the Commission that it makes no difference whether the issuing bank was owned by the State: List B in Annex I refers to Item IV A of the Nomenclature, for the purpose of which 'bonds' is defined by the Explanatory Notes as 'bonds issued by public or private bodies'.

61. The second point is the substance of the second question referred.

62. Artesia and the Commission submit that the question is imprecise; the Commission adds that it does not seek interpretation of a rule of Community law but rather the application of the Community law rule to the facts and cannot therefore be the subject-matter of a preliminary reference under Article 234 EC.

63. The Bank of Greece and the Greek Government submit that, since List D and Item IX include accounts and balances both in national and in foreign currency, they must also include accounts and balances in convertible national currency. The Greek Government adds that, since Item IV (short-term investments) is more specific and more precise, the capital movements concerned fall within that latter category.

64. I agree that the second question is somewhat imprecise. However, it appears to be common ground that the capital movement referred to is the use by Artesia of funds in its convertible drachma account to buy the ETVA bonds. In my view, while that transaction clearly involved a use of funds on deposit account with a credit institution within the meaning of List D and Item IX, it was equally clearly, for the reasons given above, an acquisition of domestic securities dealt in on a stock exchange. If the transaction were to be regarded as principally governed by List D,

and hence not subject to the requirement to liberalise, the liberalisation of capital movements governed by List B (and by analogy those governed by Lists A and C) would risk being seriously compromised. Acquisitions by non-residents of domestic securities (List B, Item IVA) and by residents of foreign securities (List B, Item IVB) are presumably frequently financed by the use of balances on current or deposit accounts in national or foreign currency with credit institutions (List D, Item IX). If Member States remained free to restrict the latter transactions, the former would be seriously hindered, which would be contrary to the overriding objective of the directive.

Conclusion

65. I accordingly conclude that the questions referred by the Arios Pagos Athinon should be answered as follows:

(1) Bonds issued in 1982 by a Greek bank, whether owned by the State or not, which had a maturity of one year from issue and which were dealt in and quoted on a stock exchange were 'securities dealt in on a stock exchange' within the meaning of List B in Annex I, and Item IV A of the Nomenclature in Annex II, to the First Directive for the implementation of Article 67 of the Treaty. The acquisition of such securities by a Belgian company and the proceeds of their liquidation were accordingly governed by Article 2 of that directive.

(2) Where that acquisition was funded from an account, in Greek currency convertible into foreign currency, held by the Belgian company, the use of the balance of that account for the purposes of the acquisition did not fall within List D in Annex I and Item IX of the Nomenclature in Annex II to the directive.