JUDGMENT OF THE COURT
OF 26 NOVEMBER 1975 [1]

Robert Gerardus Coenen and Others v the Sociaal-Economische Raad (preliminary ruling requested by the College van Beroep voor het Bedrijfsleven)

Case 39/75

Summary

1. Services — Freedom to provide services — Restrictions — Concept (EEC Treaty, Article 59 (1))

2. Services — Freedom to provide services — Restrictions — Abolition — Obligation on the person providing the services to reside in the territory of a Member State — Unacceptable nature — Criteria

1. The restriction to be abolished pursuant to Article 59 (1) of the Treaty include all requirements which are imposed on the person providing the service by reason in particular of his nationality or of the fact that he does not habitually reside in the State where the service is provided, which do not apply to persons established within the national territory or which may prevent or otherwise obstruct the activities of the person providing the service.

2. The provisions of the EEC Treaty, in particular Articles 59, 60 and 65, must be interpreted as meaning that national legislation may not, by means of a requirement of residence in the territory, make it impossible for persons residing in another Member State to provide services, when less restrictive measures enable the professional rules to which the provision of the service is subject in that territory to be complied with.

In Case 39/75

Reference to the Court under Article 177 of the EEC Treaty by the College van Beroep voor het Bedrijfsleven for a preliminary ruling in the action pending before that court between

1. ROBERT GERARDUS COENEN, residing at Brasschaat (Belgium),

2. BESLOTEN VENNOOTSCHAP GENERALE HANDELSBANK, established at the Hague (Netherlands),

1 — Language of the Case: Dutch.

3. BESLOTEN VENNOOTSCHAP CIC, ADVIESBUREAU VOOR SCHADEVERZEKERINGEN, estabhlished at Voorburg (Netherlands),

and

SOCIAAL-ECONOMISCHE RAAD, The Hague

on the interpretation of certain provisions of the EEC Treaty concerning the freedom to provide services,

THE COURT

composed of: R. Lecourt, President, R. Monaco and H. Kutscher, Presidents of Chambers, A. M. Donner, J. Mertens de Wilmars, P. Pescatore, M. Sørensen, A. J. Mackenzie Stuart and A. O'Keeffe, Judges,

Advocate-General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The order making the reference and the written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

1. Robert Gerardus Coenen is a Netherlands national, previously residing in the Netherlands but residing in Belgium since 9 September 1973. Under 'Wet Assurantiebemiddeling' (Netherlands Law on insurance brokers and intermediaries) he carries on the business of an insurance intermediary on his own behalf and on behalf of two companies established in the Netherlands, that is:

— 'Besloten Vennootschap (BV) Generale Handelsbank' and
— 'Besloten Vennootschap CIC Adviesbureau voor Schadeverzekering (BV)',

in which he is in charge of the actual management as managing director.

Under Article 4 of this Law no person may act as an insurance broker unless his name appears on one of the registers referred to by this article. For the purposes of this registration Article 5 (1) (f) provides that 'Registration in one of

the registers ... shall only take place when it appears to the satisfaction of the Sociaal Economische Raad ... that the applicant resides in this country'.

Under paragraph (5) of the same Article, where the intermediary is not a natural person, the condition of residence in the Netherlands applies to the person responsible for the actual management of the insurance activities.

Under Article 9, the name of any person who ceases to satisfy such a condition shall be deleted from the register.

2. Having pointed out that Coenen is residing in Belgium the 'Sociaal Economische Raad' (hereinafter referred to as 'the Raad') informed him by letter of 14 March 1974 that his registration had to be deleted from the Register B referred to by Article 4 of the abovementioned Law. At the same time the Raad informed the two abovementioned companies that in principle their registration had also to be deleted from the register, by reason of Coenen's place of residence.

As their objections to these decisions were dismissed, the parties concerned brought an action on 17 May 1974 before the 'College Van Beroep voor het Bedrijfsleven' (hereinafter referred to as 'the College').

By letter of 19 December 1974 in reply to a question put by the College on 27 November 1974, Coenen confirmed that he is a Netherlands national and that he had never made any application to obtain any other nationality.

The College observed that the outcome of the action depends on the question whether the condition of residence provided for by the abovementioned Article 5 (1) (f) has lost all legal effect as a result of Articles 59 and 60 of the EEC Treaty. After pointing out, *inter alia*, that the purpose of such a condition is merely to exercise effective supervision over the intermediary and that, as regards the possibility of taking criminal or administrative proceedings against him, the absence of such requirement does not create difficulties which are peculiar to intermediaries, the College did not rule out the possibility that Articles 59 and 60 of the EEC Treaty might be interpreted as meaning that, once a Netherlands national residing in Belgium fulfils the 'other' conditions provided for by the Law, he is free to act in the Netherlands as an intermediary in insurance matters. As the College considered that a question of interpretation of Community law is involved in the present case it decided, by order dated 21 February 1975, to stay the proceedings and to refer the following question to the Court of Justice under Article 177 of the EEC Treaty:

'Should the provisions of the Treaty establishing the European Economic Community, in particular those of Articles 59 and 60, be interpreted as meaning that these should be held incompatible with them, a requirement such as that in Article 5 (1) (f) of the Wet Assurantiebemiddeling, which provides that, where a natural person wishes to be entitled to act as intermediary within the meaning of that statute law, he must reside in the Netherlands?'

3. The order making the reference was received at the Court Registry on 18 April 1975.

Written observations were submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC by Mr Coenen, the French Government represented by Georges Sidre, and the Commission of the European Communities represented by its Legal Adviser, Jean-Claude Séché, assisted by Hendrik Bronkhorst, member of the Legal Service of the Commission.

Upon hearing the report of the Judge-Rapporteur and the views of the

Advocate-General, the Court decided to open the oral procedure without holding any preparatory inquiry.

II — Written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice

A — Observations submitted by Mr Coenen

After referring to the provisions of Article 5 of the Wet Assurantiebemiddeling Agency (hereinafter referred to by the letters 'WA'), Mr Coenen maintains that paragraph (1) (f) of this provision is incompatible with Community law and inapplicable to the nationals of the Member States inasmuch as its effect is to subject the exercise of the activities of an insurance intermediary in the Netherlands to a condition of residence. For this reason the reference to Article 5 (5) of this provision has no legal effect in the Community context.

These provisions are in fact contrary to:
- Article 48 of the Treaty, since their effect is to hinder freedom of movement for workers within the Community, which is also laid down by Article 1 of Regulation No 1612/68 of the Council (OJ 1968, L 257);
- Article 52 of the Treaty, since they imply a restriction on freedom of establishment;
- Articles 59 and 60 of the Treaty, since they result in a restriction on freedom to provide services within the Community;
- the rules in the Treaty which prohibit discrimination between the persons to whom it applies.

After analysing all these articles and referring to the General Programmes adopted by the Council in 1961 for the abolition of existing restrictions on freedom of establishment and freedom to provide services (OJ 1962, No 2), Mr Coenen considers that the prohibitions which they contain are based chiefly on the principle that the Member States may 'not discriminate between the nationals of the Member States who are resident within the Community'.

Such a prohibition is not only of benefit to the nationals of the 'other' Member States. Although several provisions of Community law speak of discrimination 'on grounds of nationality' this is because the possibility of discrimination by a Member State to the detriment of its own nationals was neglected when they were drafted. As the Court itself acknowledged when interpreting Article 7 of the Treaty in Case 14/68, *Walt Wilhelm* v *Bundeskartellamt* ([1969] ECR 1), the principle of nondiscrimination contained in the Treaty does not exclude a prohibition on discrimination by a Member State in relation to its own nationals.

After adding that, in accordance with Title III of the abovementioned General Programmes which deals with 'Restrictions', the prohibited restrictions may result from provisions laid down by law, regulation or administrative action as well as from 'administrative practices', Mr Coenen specifies that the principal problems which arise in this instance, namely,
- the direct effect of the abovementioned Articles of the Treaty
- the scope of Articles 59 and 60 of the Treaty which concern the question involved in this instance,
- the scope of Article 7 of the Treaty,

have already been settled by the case-law of the Court, in particular by the judgment in Case 33/74 delivered on 3 December 1974 *(van Binsbergen* v *Bestuur van de Bedrijfsvereniging voor de Metaalnijverheid,* [1974] ECR 1299) in which, although it does not rule out the possibility of providing for a condition of residence or establishment,

the Court subjects such a possibility to the strict requirement that the condition in question be 'objectively justified' by the need to ensure the 'general good'.

This is not however, so in the present case. Mr Coenen refers to the reasons for the Netherlands Law in question and in the light of its underlying requirements maintains that both he and the two companies which he manages still satisfy all the conditions of the Article 5, apart from that concerning residence in the Netherlands. Referring to the grounds of the order making the reference Mr Coenen observes in particular that if the purpose of the condition in question is to enable effective supervision to be exercised over the intermediary, within the meaning of Article 12 of the WA, in particular through consultation of the books of account and documents relating to the business, this may be achieved even in the absence of any condition of residence. Furthermore, the difficulty pointed out by the Sociaal Raad, which maintains that it is not clear that criminal proceedings may be brought against an intermediary who is resident abroad, does not arise solely in the case of intermediaries and therefore does not justify an infringement of the abovementioned provisions of the Treaty.

On the basis of these observations Mr Coenen's conclusions are as follows:

'Mr Coenen is entitled to have his name retained on Register B. The provision in Article 5 (1) (f) of the Wet Assurantiebemiddeling which provides that the applicant must reside in the country and on which the decision to delete his name is based, is incompatible with Articles 59 and 60 of the Treaty which have direct effect. It cannot, therefore, be applied in *Mr Coenen's* case.

The companies are also entitled to have their names retained on Register B.

The provision in Article 5 (5) of the Law in question that the person responsible for the actual management of the business of an insurance intermediary carried on at the applicants' office must be resident in the country which forms the basis of the decisions to delete the names of the companies has in fact become irrelevant in this instance. Moreover, this provision is incompatible with the directly applicable prohibition on all discrimination between the nationals of Member States established in a Community country, on grounds of nationality or country of residence, which is expressly or impliedly stated in Articles 5, 7, 48, 62, 59 and 60 of the EEC Treaty and Article 1 of Regulation (EEC) no 1612/68. It is, therefore, also inapplicable as regards the companies in question.'

B — Observations submitted by the French Government

The French Government maintains that Articles 59 and 60 of the Treaty are directly applicable and may therefore be relied on by an insurance intermediary and by any other person who provides services, where no specific provision in the Treaty governs the activity in question. As, in these circumstances, the discriminatory provisions in the national legislation governing the activities of an insurance intermediary are inapplicable, a national of the EEC must be allowed to provide services in the Netherlands under the same conditions as those applying to a Netherlands national.

This is the meaning of the judgment of the Court of Justice in Case 33/74, *van Binsbergen* v *Bestuur van de Bedrijfsvereniging*. This judgment acknowledges, first, the right of the Member States to take appropriate measures in order to prevent a person who is providing services avoiding the professional rules which are applicable to him within the territory of that State. The difficulty which such measures may create for the person providing the services in carrying out his particular activity cannot be imputed to discrimination but results

from the legal rules which any Member State is entitled to lay down in order to regulate, for the general good, the exercise on its territory of a particular trade or profession. Moreover, it is also clear that in the exercise of such power the Member States are bound to limit their requirements to what is objectively justified to ensure that the activity in question is carried out under what they consider to be proper conditions and, in this way, to make sure that the rules in question do not form an obstacle to the freedom to provide services which could be avoided by the adoption of other measures capable of ensuring respect for the organization of the trade or profession in question.

The French Government concludes that:

'The obligation of residence imposed upon insurance intermediaries by the Netherlands Law is justified as regards the provisions of Articles 59 and 60 (3) of the Treaty only if no other less restrictive obligation could provide the means of exercising the effective supervision provided for in the relevant rules, which consists *inter alia* in the inspection of books and documents and the imposition of penalties in the case of infringements.'

The French Government concludes by expressing doubts as to the possibility that non-residence in the Member State in which the service is provided is likely to affect the possible deletion from the register of the name of the person providing the service, or the possibility of instituting judicial proceedings by that State.

C — Observations of the Commission of the European Communities

The Commission makes the preliminary observation that the problem in this instance concerns not only Articles 59 and 60 of the Treaty, referred to by the court making the reference, but also other provisions of Community law. In the light of all the facts set out in the order making the reference and the fact that the action also concerns two companies established in the Netherlands which are managed by Mr Coenen, it is necessary to consider the disputed condition of residence in relation to the provisions of the Treaty concerning:

- freedom of movement for workers (Articles 48 to 51),
- freedom of establishment (Articles 52 to 58),
- freedom to provide services (Articles 59 to 66).

(a) As regards the first point, the Commission points out that the provisions of Article 48 of the Treaty are relevant in the present case to the extent that those who actually manage an insurance-broking office who are obliged by virtue of the WA to reside in the Netherlands may be classified as 'workers'.

With the exception of the prohibition on all discrimination between workers on grounds of nationality, the freedom of movement for workers under Article 48 (3) of the Treaty implies the right 'to accept offers of employment actually made'. This text implies a right on the part of the nationals of the Member States to accept and exercise paid employment whatever the Member State on whose territory the worker is to be found. On this ground the duty to reside in the territory of a Member State constitutes a restriction on the freedom of movement for workers within the Community.

(b) As regards the second point, the Commission considers that the question of the conformity of the condition in dispute with the provisions on freedom of establishment arises just as much in the case of 'those who actually manage' an undertaking as in the case in which the managing director of a company is regarded as an independent worker. After recalling that according to the case-law

of the Court Article 52 of the Treaty is directly applicable, the Commission draws a general distinction between residence and establishment. Article 52 applies to the freedom to establish a permanent centre in a Member State in which, or from which, economic activities are carried out. As such a centre may be quite distinct and independent from the place of residence of the person who intends to set it up, establishment and residence are not necessarily the same thing.

The Commission considers that in general the use of the condition in question to impose an obligation on a company which is established in another Member State and which is considering setting up a secondary establishment in the Netherlands, to ensure that the persons who actually manage it are resident in that country, results in an unacceptable obstacle to the right of establishment, in particular in frontier areas.

This condition constitutes a more serious obstacle to the freedom of establishment in the case of a proprietor of an undertaking, other than a company or firm within the meaning of Article 58 of the Treaty, who is already active in one Member State and wishes to extend his activities to another Member State by setting up a place of business there. The Member States could prevent the achievement of such a project by stipulating a condition of residence in their territory.

The Commission maintains that the same conclusions are to be drawn in the case referred to by Article 5 (5) of the WA. In this case also the condition of residence may make it absolutely impossible for the person concerned to carry out his activities in a particular Member State if the same condition is laid down by several States.

(c) As regards the third point, the Commission refers to the judgment of the Court of Justice of 3 December 1974 in Case 33/74, *van Binsbergen* v *Bestuur van de Bedrijfsvereniging,* in which the Court not only acknowledged the direct effect of Article 59 and the third paragraph of Article 60 of the Treaty but also confirmed that the obligation on a person providing a service to be resident in the territory of the State in which the service is provided may, in certain circumstances, deprive Article 59 of all effectiveness. It is true that the Court added that certain specific obligations imposed on the person providing services cannot be regarded as incompatible with the Treaty to the extent that they are 'objectively justified' in order to prevent such person avoiding rules of law which are justified by the 'general good'. However, in saying this, the Court wished not only to attach strict conditions to these restrictions but also dealt only with the possible permissibility of an obligation imposed on a person providing a service to have a fixed centre of activity within the jurisdiction of certain courts and not with the permissibility of an obligation to reside in the territory of the State in question.

Furthermore, in the light of the facts set out in the file, the Commission rules out the possibility that the disputed condition of residence may be regarded in the present case as a 'justified' restriction either from the point of view of the professional qualifications of the intermediary or as regards the inspection of the books of account and documents concerning his activities.

On the basis of these observations the Commission suggests that the following reply must be given to the question referred:

'Articles 48, 52, 59 and 60 of the EEC Treaty must be interpreted as meaning that a condition imposing a duty to reside permanently in the territory in which the activity is carried on is incompatible with these provisions.'

III — Oral procedure

Mr R. G. Coenen and the Commission of the European Communities presented oral argument at the hearing on 29 October 1975.

The Advocate-General delivered his opinion at the hearing on 19 November 1975.

Law

1 By order of 18 April, 1975, received at the Court Registry on 21 April 1975, the College van Beroep voor het Bedrijfsleven referred, under Article 177 of the EEC Treaty, a question on the interpretation of the provisions of the EEC Treaty, and in particular on Articles 59 and 60 concerning the freedom to provide services within the Community.

2 This question has been raised within the context of an action concerning the application to a Netherlands national who resides in Belgium and has an office in the Netherlands, where he acts as an insurance intermediary, of the provisions of Article 5 (1) (f) of the Wet Assurantiebemiddeling which provides that a natural person who intends to act as an intermediary within the meaning of this Law shall be bound to reside in the Netherlands.

3 The grounds of the order making the reference state that the abovementioned provision must be understood to mean that in order to carry on the business of an insurance intermediary in the Netherlands a natural person must both reside in that country and have an office there.

4 The essential aim of the question referred is to discover whether the provisions of the Treaty, in particular Articles 59 and 60, must be interpreted in such a way as to prevent rules of internal law within the Member States subjecting the provision of a service to a condition of residence such as that referred to by Wet Assurantiebemiddeling.

5 The first paragraph of Article 59 of the Treaty provides that restrictions on the freedom to provide services within the Community, as defined in the first and second paragraphs of Article 60 of the Treaty, 'shall be progressively abolished during the transitional period in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended'.

6 The restrictions to be abolished pursuant to this provision include all requirements imposed on the person providing the service by reason in particular of his nationality or of the fact that he does not habitually reside in the State where the service is provided, which do not apply to persons established within the national territory or which may prevent or otherwise obstruct the activities of the person providing the service.

7 In particular, a requirement that the person providing the service must be habitually resident within the territory of the State where the service is to be provided may, according to the circumstances, have the result of depriving Article 59 of all effectiveness, in view of the fact that the precise object of that Article is to abolish restrictions on freedom to provide services imposed on persons who do not reside in the State where the service is to be provided.

8 It must be recalled in this respect that as regards the period during which the restrictions on the freedom to provide services were not yet abolished Article 65 already stated that each Member State shall apply such restrictions 'without distinction on grounds of ... residence' to all persons providing services within the meaning of the first paragraph of Article 59.

9 Although, in the light of the special nature of certain services, it cannot be denied that a Member State is entitled to adopt measures which are intended to prevent the freedom guaranteed by Article 59 being used by a person whose activities are entirely or chiefly directed towards his territory in order to avoid the professional rules which would apply to him if he resided in that State, the requirement of residence in the territory of the State where the service is provided can only be allowed as an exception where the Member State is unable to apply other, less restrictive, measures to ensure respect for these rules.

10 In particular, where a person providing services who is residing abroad has, in the national territory in which the service is provided, a place of business for the purposes of providing it, then, if such place of business is *bona fide,* the Member State in question normally has effective means at its disposal for carrying out the necessary supervision of the activities of that person and to ensure that the service is provided in accordance with the rules issued under its national legislation.

11 In that case, the additional requirement that a person providing services in the territory of a State must also have a permanent private residence in that State is a restriction on the freedom to provide services which is incompatible with the provisions of the Treaty.

12 On these grounds it must be concluded that the provisions of the EEC Treaty, in particular Articles 59, 60 and 65, must be interpreted as meaning that national legislation may not, by means of a requirement of residence in the territory, make it impossible for persons residing in another Member State to provide services when less restrictive measures enable the professional rules to which provision of the service is subject in that territory to be complied with.

Costs

13 The costs incurred by the French Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

14 As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT

in answer to the question referred to it by the College van Beroep voor het Bedrijfsleven, by decision of that court of 18 April 1975, hereby rules:

The provisions of the EEC Treaty, in particular Articles 59, 60 and 65, must be interpreted as meaning that national legislation may not, by means of a requirement of residence in the territory, make it impossible for persons residing in another Member State to provide services, when less restrictive measures enable the professional rules to which provision of the service is subject in that territory to be complied with.

Lecourt Monaco Kutscher Donner Mertens de Wilmars

Pescatore Sørensen Mackenzie Stuart O'Keeffe

Delivered in open court in Luxembourg on 26 November 1975.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL WARNER DELIVERED ON 19 NOVEMBER 1975

My Lords,

On 18 January 1952 there was enacted in the Netherlands a statute, the 'Wet Assurantiebemiddeling' or 'WAB', concerning insurance brokers and others carrying on business as intermediaries in the insurance field. This case, which comes to the Court by way of a reference for a preliminary ruling by the College van Beroep voor het Bedrijfsleven, raises a question as to the compatibility of a provision of that statute with Community law, and in particular with Articles 59 and 60 of the EEC Treaty. The provision in question is one requiring persons who act as insurance intermediaries in the Netherlands to reside there.

Article 4 of the WAB forbids anyone (with immaterial exceptions) from acting as such an intermediary unless registered in one of the registers therein mentioned. There are four registers, A, B, C and D, the qualifications for entry into which differ. The registers are kept by the Sociaal-Economische Raad, which is the Respondent in the proceedings before the College.

Article 5 (1) provides that, in order to be entered in one of those registers, a person must show to the satisfaction of the Sociaal-Economische Raad that

(a) he does not carry on any business incompatible with that of an insurance intermediary;
(b) there is no reason to fear his bringing the profession into disrepute;
(c), (d) and (e) he is not a minor or otherwise under disability and has not been adjudicated bankrupt;
(f) he has an abode in the Netherlands.

The College states in its Order for Reference that Article 5 (1) (f) must, in the light of other provisions of the WAB, be interpreted as meaning that the person in question must be established in the Netherlands, in the sense of having an office there, and must also reside there.

Article 5 (5) of the WAB lays down the conditions that must be satisfied where the person wishing to carry on business as an insurance intermediary is other than a natural person. These include a requirement that the individuals in