JUDGMENT OF THE COURT (First Chamber)

27 October 2005 *

In Case C-329/03,

REFERENCE for a preliminary ruling under Article 234 EC, from the Arios Pagos (Greece), made by decision of 31 March 2003, received at the Court on 28 July 2003, in the proceedings

Trapeza tis Ellados AE

v

Banque Artesia,

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, N. Colneric, K. Schiemann, E. Juhász and M. Ilešič (Rapporteur), Judges,

* Language of the case: Greek.

Advocate General: F.G. Jacobs,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 3 February 2005,

after considering the observations submitted on behalf of:

— Trapeza tis Ellados AE, by I. Soufleros, K. Christodoulou and T. Kontovazainitis, dikigoroi,

— the Banque Artesia, by F. Herbert, avocat, and G. Stefanakis and E. Papakonstantinou, dikigoroi,

— the Greek Government, by P. Mylonopoulos, M. Apessos and V. Pelekou, acting as Agents,

— the Commission of the European Communities, by H. Støvlbæk and G. Zavvos, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 April 2005,

gives the following

Judgment

1 The reference for a preliminary ruling concerns the interpretation of List B, Item IV A and List D, Item VI of Annex I to the First Council Directive of 11 May 1960 for the implementation of Article 67 of the Treaty (OJ, English Special Edition 1959-1962, p. 49) ('the First Directive').

2 That reference was made by the Arios Pagos (Supreme Court of Cassation of Greece) in proceedings between Trapeza tis Ellados AE ('the Bank of Greece') and the Banque Artesia ('Artesia') regarding the latter's application for compensation for damage suffered by it on account of the Bank of Greece's refusal to authorise an account in convertible Greek drachma to be credited with the proceeds of liquidation of bonds.

The main proceedings and the questions referred for a preliminary ruling

3 Artesia, which is established in Brussels (Belgium), had a convertible Greek drachma account at its branch in Athens (Greece).

4 In the period from 28 April 1981 to 30 July 1982, Artesia bought bonds issued by Elliniki Trapeza Viomichanikis Anaptixeos (ETVA) Anonimos Etairia (Greek Bank of Industrial Development SA; 'ETVA'), the shares of which are owned by the Greek State. Those bonds were denominated in national currency for a term of one year from their issue and were dealt in and quoted on the stock exchange. They had been paid for out of Artesia's convertible Greek drachma account. In order for the amount corresponding to those bonds to be always convertible, a special authorisation from the Bank of Greece was necessary.

5 On 24 August 1982 Artesia requested authorisation from that bank for its convertible Greek drachma account to be credited with the proceeds of liquidation of the bonds at issue so that it could repatriate those proceeds to Belgium. In the period from 25 August 1982 to 23 November 1986, the Bank of Greece repeatedly refused to grant that request. However, on 24 November 1986 it gave that authorisation. It appears that one at least of the grounds for its refusal was the fact that the use of Artesia's convertible Greek drachma account for the initial purchase of the bonds in question had not been authorised and that account was therefore no longer convertible.

6 Considering that it had suffered damage in the period from 30 September 1982 to 11 December 1986 on account of the Bank of Greece's refusals, on 28 April 1987 Artesia brought proceedings against the Bank of Greece for compensation. It claimed that the acquisition of bonds fell within List B, Item IV A of Annex I to the First Directive, so that the Member States were required to grant the authorisation requested by virtue of Article 2 of that directive. The case was heard by the Polimeles Protodikio Athinon (Court of First Instance of Athens), the Efetio Athinon (Court of Appeal of Athens), then by the Arios Pagos, which referred the case back to the Efetio. On 27 July 2001 that court ordered the Bank of Greece to indemnify Artesia, holding that the transaction at issue in the main proceedings fell within Article 2 of the First Directive and List B of Annex I thereto.

The Bank of Greece made an appeal on a point of law. The Arios Pagos decided to stay the proceedings and refer to the Court the following questions for a preliminary ruling:

'(1) Are (a) bonds issued by a bank in the form of a limited company, the shares of which are owned by the State, for a term of one year from their issue and dealt in on a stock exchange, where they are quoted, or (b) bonds issued by a bank in the form of a limited company for a term of one year from their issue which are dealt in on a stock exchange, where they are quoted, governed by List D and Item VI of the Nomenclature, which refers to Article 4 of the First Directive ..., on "Short-term investments in Treasury bills and other securities normally dealt in on the money market", according to the spirit of and the objective pursued by that provision, or according to its interpretation in the light of general practice in international trade, that is to say, that securities such as the ETVA bonds at issue for a term of one year constitute short-term investments?

(2) Further, is the use in a bank, as a credit institution, of balances on a deposit account, payments being made to that account in accordance with Decision 1097/1959 of the Monetary Committee, referred to in this judgment (by means of the proceeds of imported foreign currency, and so forth) as deposits in national currency, convertible into foreign currency, governed by List D and Item IX of the Nomenclature, which refers to Article 4 of the [First] Directive ..., which provides for "Opening and placing of funds on current or deposit accounts, repatriation or use of balances on current or deposit accounts with credit institutions", according to the spirit and the objective pursued by that provision?'

The application for reopening of the oral procedure

8 By application lodged at the Court Registry on 8 July 2005, the Bank of Greece applied for the reopening of the oral procedure.

9 The Court may order that the oral procedure be reopened, in accordance with Article 61 of its Rules of Procedure, if it considers that it lacks sufficient information, or that the case must be dealt with on the basis of an argument which has not been debated between the parties (Joined Cases C-270/97 and C-271/97 Deutsche Post [2000] ECR I-929, paragraph 30, and Case C-299/99 Philips [2002] ECR I-5475, paragraph 20).

10 The Court considers that, in this case, there is no need to order that the oral procedure be reopened. Accordingly, the application for the oral procedure to be reopened must be dismissed.

Relevant provisions

Community legislation

11 Article 67 of the EEC Treaty (subsequently Article 67 of the EC Treaty, repealed by the Treaty of Amsterdam) provides:

'1. During the transitional period and to the extent necessary to ensure the proper functioning of the common market, Member States shall progressively abolish

between themselves all restrictions on the movement of capital belonging to persons resident in Member States and any discrimination based on the nationality or on the place of residence of the parties or on the place where such capital is invested.

2. Current payments connected with the movement of capital between Member States shall be freed from all restrictions by the end of the first stage at the latest.'

12 According to the preamble to the First Directive, the attainment of the objectives of the EEC Treaty requires the greatest possible freedom of movement of capital between Member States and therefore the widest and most speedy liberalisation of capital movements.

13 Under Articles 1(1) and 3(1) of that directive, the Member States are to grant all foreign exchange authorisations required for the conclusion or performance of transactions or for transfers between residents of Member States in respect of the capital movements set out in List A and, under certain circumstances, List C of Annex I to that directive.

14 Article 2(1) of the First Directive provides that the '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'.

15 Such an obligation to grant permission is not, on the other hand, imposed in respect of the capital movements set out in List D of the same annex. The Member States remain free to maintain their restrictions in respect of those transactions.

16 Article 4 of the First Directive provides:

'The Monetary Committee shall examine at least once a year the restrictions which are applied to the capital movements set out in the lists contained in Annex I to this directive; it shall report to the Commission regarding restrictions which could be abolished.'

17 The capital movements set out in List B, Item IV A of Annex I to the First Directive concerning 'capital movements referred to in Article 2 of the directive' include, in particular, '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', which corresponds to Item IV A of the Nomenclature, which includes, in particular, under 3(i) 'acquisition of bonds ... denominated in national currency', and under 4 'repatriation of the proceeds of liquidation of bonds'.

18 The capital movements set out in List D of Annex I to the First Directive, concerning 'capital movements referred to in Article 4 of the directive' include:

— 'short-term investments in Treasury bills and other securities normally dealt in on the money market', which corresponds to Item VI of the Nomenclature, which includes, in particular, short-term investments by non-residents on a domestic money market and repatriation of the proceeds of liquidation thereof;

— the 'opening and placing of funds on current or deposit accounts, repatriation or use of balances on current or deposit accounts with credit institutions', which corresponds to Item IX of the Nomenclature, which includes, in particular, transactions by non-residents with domestic credit institutions and applies to accounts and balances in both national and foreign currency.

National legislation

19 Decision 1097 of the Monetary Committee of 23 May 1959 on the application in Greece of the system of restricted convertibility (FEK A' 109/16.6.1959) provided, at the relevant time, for two categories of deposit accounts at the Bank of Greece and in other approved banks which could be opened in the name of persons with a permanent residence abroad, namely, convertible Greek drachma accounts and accounts in foreign currency.

20 Pursuant to that decision, convertible Greek drachma accounts could be used only for certain purposes and payments made into them only in certain exhaustively defined forms. That decision provided that if the Greek drachma were used without special authorisation from the Bank of Greece for a purpose other than those prescribed they would lose their convertibility.

Consideration of the questions referred for a preliminary ruling

The first question

21 By its first question, the Arios Pagos asks, essentially, whether the acquisition of bonds denominated in national currency for a term of one year from their issue,

dealt in and quoted on a stock exchange, issued by a bank established in a Member State and belonging to that State, is an 'acquisition ... of domestic securities dealt in on a stock exchange' within the meaning of List B, Item IV A of Annex I to the First Directive or 'short-term investments in Treasury bills and other securities normally dealt in on the money market' within the meaning of List D, Item VI of that annex.

22 The parties in the main proceedings agree that, for the purposes of the First Directive, Artesia is a 'non-resident' bank which acquired the bonds in question in Greece and wished to repatriate to Belgium the proceeds of their liquidation. It is also common ground that those bonds are 'domestic securities', denominated in national currency, for a term of one year from their issue, which were dealt in and quoted on a stock exchange.

23 Artesia and the Commission of the European Communities submit that those bonds fall within List B, Item IV A of Annex I to the First Directive. By contrast, the Bank of Greece and the Greek Government maintain that they fall within List D, Item VI of that annex.

24 The main proceedings therefore arise from a difference in interpretation of the criteria relating to the bonds in question. That dispute concerns the interpretation of 'securities dealt in on a stock exchange' and 'securities normally dealt in on a money market'. It is also intended to determine whether the term of the bonds in question is a decisive factor in defining those bonds. According to the Bank of Greece and the Greek Government, the bonds in question are 'securities normally dealt in on the money market' within the meaning of List D, Item VI of Annex I to the First Directive, irrespective of the fact that they were dealt in on a stock exchange.

25 As set out in Article 67 of the Treaty, the free movement of capital entails the abolition of restrictions on the movement of capital belonging to persons resident in Member States and any discrimination based on the nationality or on the place of residence of the parties or on the place where such capital is invested. The First Directive provides, for the implementation of Article 67, for the complete liberalisation of certain capital movements and is intended to bring about the elimination of administrative obstacles which, although not taking the form of exchange authorisations or affecting the acquisition of foreign securities, none the less constitute a hindrance to the widest and swiftest liberalisation of capital movements between the Member States which, according to the preamble to the First Directive, is necessary for the attainment of the objectives of the European Community (see Case 157/85 *Brugnoni and Ruffinengo* [1986] ECR 2013, paragraphs 21 and 22).

26 In that respect, even if 'securities normally dealt in on the money market' fall within List D, Item VI of that annex, the First Directive does not lay down any definition of that term. On the other hand, the First Directive refers to 'securities dealt in on a stock exchange' in List B, Item IV A of the same annex and in the Explanatory Notes, which do lay down a definition thereof. According to those notes, which should be regarded as forming an integral part of that directive (see Case 143/86 *East and Others* [1988] ECR 625, paragraph 11), 'securities dealt in on a stock exchange' are '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, for example committees of banks (unquoted securities)'. As the Commission points out, that definition means that the Community legislature accorded importance to the rules of operation of the stock market, in particular on the basis of the provisions guaranteeing the transparency of the operation of the stock market and the publication of prices of securities dealt in.

27 As regards 'securities dealt in on a stock exchange' referred to in List B, Item IV A of Annex I to the First Directive, the Community legislature took the view that

securities dealt in in a regulated environment such as the stock exchange can, as provided for in Article 2 of the First Directive, be granted general permission by the Member State concerned for the conclusion or performance of transactions or for transfers between residents of Member States.

28 By contrast, the money market, referred to in List D, Item VI of Annex I to the First Directive, is less regulated than the stock market. Transactions on the money market are generally concluded following private negotiations in an environment which is less transparent than the stock market. That statement is also supported by the fact that the fundamental nature of 'securities normally dealt in on the money market' is that their prices are not publicly quoted, so that it may be necessary for the national authorities to carry out their own valuation to preclude any fraud arising out of fictitious pricing. That is not the case, on the other hand, in respect of 'securities dealt in on a stock exchange', as the Advocate General pointed out in point 43 of his Opinion.

29 According to the case-file, the securities, even if they were dealt in on a stock exchange, were in fact acquired from ETVA. However, that fact, contrary to the claim of the Bank of Greece at the hearing, does not change the nature of the bonds in question. As the Advocate General points out in point 40 of his Opinion, the First Directive does not require the place of dealing in and of acquisition of the securities to be the same. List B of Annex I to the First Directive includes 'acquisition ... of ... securities dealt in on a stock exchange' and it is not necessary that the acquisition of the securities took place on a stock exchange. The decisive factor is that they were dealt in there. As the Advocate General also points out in that point, that interpretation is borne out by an analysis of all the language versions of the First Directive.

30 Although the term of securities may be decisive for those which fall within List D of Annex I to the First Directive and which are, in accordance with Article 4 of that

directive, subject to restrictions, namely 'short-term investments in Treasury bills and other securities normally dealt in on the money market', that is not, however, the case for 'securities dealt in on a stock exchange'. Those are referred to only in List B, Item IV A of the same annex, and in the Explanatory Notes to the First Directive. Those notes refer expressly to Item IV and only refer to the nature of the body which issues the bonds, namely 'public or private bodies'. It is Council Directive 86/566/EEC of 17 November 1986 amending the First Directive (OJ 1986 L 332, p. 22) and Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty (OJ 1988 L 178, p. 5), which do not apply retroactively, which lay down a definition of short-term bonds. It is also apparent from the wording in List B, Item IV A of Annex I to the First Directive that the Community legislature wished to define 'securities dealt in on a stock exchange' according to criteria other than their term.

31 It follows from the foregoing that the bonds in question are 'securities dealt in on a stock exchange' within the meaning of List B, Item IV A of Annex I and the Explanatory Notes to the First Directive.

32 In those circumstances, it is not necessary to examine whether those bonds also satisfy the criteria in List D, Item VI of the same annex. Even if that were the case, that could not have an influence on the fact that the capital movements in question qualify for the liberalised system introduced by Article 2 of the First Directive by virtue of the fact that they satisfy the criteria in List B of Annex I to the First Directive. There is no provision in that directive which restricts the liberalisation to which the capital movements are entitled under Article 2 thereof only because the same capital movements also satisfy the criteria in List D of Annex I to that directive. The same conclusion follows from an interpretation of the First Directive in the light of its objective, set out in its sole recital, as 'the greatest possible freedom of movement of capital between Member States and therefore the widest and most speedy liberalisation of capital movements'.

33 It must be added that the fact that the bonds in the main proceedings are securities issued by a bank, which is a limited company owned by the State, does not alter their nature. In that regard, the Explanatory Notes annexed to the First Directive state that those bonds may be issued by public or private bodies, as pointed out in paragraph 30 of this judgment.

34 In the light of the foregoing, the answer to the first question must be that bonds denominated in national currency for a term of one year from their issue, dealt in and quoted on a stock exchange, issued by a bank established in a Member State and belonging to that State, fall within List B, Item IV A of Annex I to the First Directive. Their acquisition and the proceeds of their liquidation are governed by Article 2 of that directive, which refers to List B of Annex I to the directive, which provides for the repatriation of those proceeds.

The second question

35 By its second question, Arios Pagos asks, essentially, whether the use, for the purposes of acquiring bonds such as those referred to in its first question, of a balance on current or deposit account with a credit institution falls within the meaning of List D, Item IX of Annex I to the First Directive.

36 Capital movements must be regarded as a whole for the purposes of the First Directive and provided that the end point of a movement falls within one of the liberalised categories, the origin of that movement cannot generally, in the light of the considerations set out in paragraph 32 of this judgment, have an influence on its

classification. Moreover, the acquisition of securities falling within one of the liberalised categories would be seriously hindered if the Member States remained free to restrict the use of balances on current or deposit accounts for the purposes of such acquisitions.

37 Accordingly, the answer to the second question must be that the fact that an acquisition of bonds falling within List B, Item IV A of Annex I to the First Directive was financed using balances on current or deposit account with a credit institution, even if falling within List D, Item IX of that annex, cannot have an influence on the classification of the capital movement in question under List B, Item IV A of that annex.

Costs

38 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 (First Chamber) rules as follows:

1. **Bonds denominated in national currency for a term of one year from their issue, dealt in and quoted on a stock exchange, issued by a bank established in a Member State and belonging to that State, fall within List B, Item IV A of Annex I to the First Council Directive of 11 May 1960 for the**

implementation of Article 67 of the Treaty. Their acquisition and the proceeds of their liquidation are governed by Article 2 of that directive, which refers to List B of Annex I to the directive, which provides for the repatriation of those proceeds.

2. **The fact that an acquisition of bonds falling within List B, Item IV A of Annex I to the First Directive was financed using balances on current or deposit account with a credit institution, even if falling within List D, Item IX of that annex, cannot have an influence on the classification of the capital movement in question under List B, Item IV A of that annex.**

[Signatures]