

SUMMARY

**<p>ECJ 23 January 2014, case C-296/12
(European Commission - v - Kingdom
of Belgium), Free movement,
Pension</p>**

Facts

Contributions paid to pension funds confer a right to a reduction of Belgian income tax only if they have been paid to financial institutions established in Belgium.

Pre-litigation procedure

In 2006, the Commission gave Belgium formal notice that it should submit its observations on the compatibility of its income tax legislation with the EC Treaty. The Commission stated that the legislation restricts (i) the freedom to provide services both of the persons to whom the service (management of a pension fund), is supplied i.e. the depositors, and the freedom of non-Belgian suppliers and (ii) the free movement of capital within the EU, on the basis that Belgian depositors and insurance policy holders will be deterred from transferring pension savings to non-Belgian institutions. Belgium accepted that its pension rules constitute a restriction on providing services within the meaning of Article 56 TFEU. However, it stated that this restriction could be justified by overriding reasons in the public interest. This argument relies on (i) the internal coherence of its tax system; (ii) the need for effective fiscal supervision; and (iii) the need to protect the interests of savers in order to ensure that the pension to which they will be entitled will be paid to them.

ECJ's findings

The rules at issue are liable to dissuade Belgians liable to tax from subscribing to an individual or collective savings account or taking out savings insurance with financial institutions

established in a Member State other than Belgium. The rules equally, are likely to dissuade institutions from offering their services on the Belgian market. Given that the management of a pension fund is a service within the meaning of Article 57 TFEU, the rules at issue constitute a restriction on providing services. National measures capable of hindering the exercise of fundamental freedoms guaranteed by the TFEU or of making this less attractive may only be allowed if they pursue an objective in the public interest, are appropriate to ensuring the attainment of that objective and do not go beyond what is necessary to attain it (§ 27-32). The need to preserve the coherence of a tax system may justify a restriction on freedom of movement, provided there is a direct link between a tax advantage and a corresponding disadvantage. The factor that may adversely affect the coherence of the Belgian rules is that a person may benefit from a reduction to his Belgian taxable income and subsequently, before retiring, relocate to another Member State, in which case Belgium loses the power to tax the retirement income (at least where Belgium has entered into a double taxation agreement with that other Member State under which retirement income is taxable in the state of residence). However, there is nothing to prevent Belgium from taxing retirement income paid to one of its residents by a financial institution established in another Member State. Consequently, the rules at issue cannot be justified by the need to preserve the coherence of the Belgian tax system (§ 33-40).

Directive 77/799 empowers Member States to obtain from the competent authorities of other Member States the information necessary to enable them correctly to assess for tax. Further, there is no reason why the Belgian tax authorities should not request evidence from the person liable to pay tax so that correct assessment for tax can be made. Where appropriate, the authorities may refuse the tax reduction applied for. In those circumstances, justification of the rules at issue by the need for effective fiscal supervision cannot be accepted (§ 41-45). Belgium fails to demonstrate that there are no other means of protecting savers against non-payment of their pensions other than the general rule that payments to institutions established in other Member States and funds managed in other Member States do not qualify for a tax reduction (§ 46-49).

Ruling

The ECJ declares that the Kingdom of Belgium has failed to fulfil its obligations under Article 56 TFEU in that it offers a tax reduction in respect of pension contributions only in respect of payments to institutions established in Belgium.

Creator: European Court of Justice (ECJ)

Verdict at: 2013-01-23

Case number: C-296/12