JUDGMENT OF THE COURT (Second Chamber)

10 February 2011 (*)

(Direct taxation – Free movement of capital – Inheritance tax – Legacies in favour of non-profit-making bodies – Refusal to apply a reduced rate where those bodies have their centre of operations in a Member State other than that in which the deceased had actually lived or worked – Restriction − Justification)

In Case C-25/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Tribunal de première instance de Liège (Belgium), made by decision of 7 January 2010, received at the Court on 15 January 2010, in the proceedings

Missionswerk Werner Heukelbach eV

v

État belge,

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues, President of the Chamber, A. Arabadjiev, U. Lõhmus (Rapporteur), A. Ó Caoimh and P. Lindh, the Judges,

Advocate General: N. Jääskinen,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 28 October 2010,

after considering the observations submitted on behalf of:

– Missionswerk Werner Heukelbach eV, by J. Roseleth, avocat,

– the Belgian Government, by M. Jacobs and J.-C. Halleux, acting as Agents, assisted by E. Jacubowitz, avocat,

– the European Commission, by R. Lyal and J.-P. Keppenne, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 18 TFEU, 45 TFEU, 49 TFEU and 54 TFEU.

2 The reference has been made in proceedings between Missionswerk Werner Heukelbach eV

('Missionswerk') and the Belgian State concerning the latter's refusal to apply at a reduced rate the succession duties payable by Missionswerk in respect of a legacy which it had received.

Legal context

European Union ('EU') legislation

3 Under Article 1 of Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty (Article repealed by the Treaty of Amsterdam) (OJ 1988 L 178, p. 5):

'1. Without prejudice to the following provisions, Member States shall abolish restrictions on movements of capital taking place between persons resident in Member States. To facilitate application of this Directive, capital movements shall be classified in accordance with the Nomenclature in Annex I.

2. Transfers in respect of capital movements shall be made on the same exchange rate conditions as those governing payments relating to current transactions.'

4 Among the capital movements listed in Annex I to Directive 88/361 are, under Heading XI, 'Personal capital movements', which include inheritances and legacies.

National legislation

5 Article 59(2) of the Belgian Code of Succession Duties established by Royal Decree No 308 of 31 March 1936 (*Moniteur belge* of 7 April 1936, p. 2403), confirmed by the Law of 4 May 1936 (*Moniteur belge* of 7 May 1936, p. 3426) ('the Code'), provides that succession duties and duty on the transfer of property *mortis causa* are to be reduced 'to 7% for legacies to non-profit-making associations, friendly societies or national unions of friendly societies, professional unions and international non-profit-making associations, private foundations and public-interest foundations'.

6 Under Article 60(1) of the Code, as amended by the *décret-programme* of the Walloon Government of 18 December 2003, laying down various measures with regard to regional taxation, public finances and debt, the organisation of the energy markets, the environment, agriculture, local and subordinate powers, heritage, housing and the public service (*Moniteur belge* of 6 February 2004, p. 7196), the reduced rate provided for in Article 59(2) of that Code is to be applicable only to bodies and institutions which fulfil the following conditions:

'a. the body or institution must have a centre of operations:

– either in Belgium;

– or in the Member State of the European Community in which, at the time of death, the deceased actually resided or had his place of work, or in which he had previously actually resided or had his place of work;

b. the body or institution must, at the time when the process for settling the estate commences, pursue at that centre of operations, as its principal activity and for a purpose other than its own benefit, objectives of an environmental, philanthropic, philosophical, religious, scientific, artistic, pedagogical, cultural, sporting, political, trade-union, professional, humanitarian, patriotic or civic nature, or of an educational nature or involving care for persons or animals, or the provision of social assistance or social inclusion for persons;

c. the body or institution must have its seat, its place of central administration or its principal

place of business within the territory of the European Union.'

The dispute in the main proceedings and the question referred for a preliminary ruling

7 Missionswerk is a religious association with its seat in Germany. By a holograph will dated 5 November 2003, Missionswerk was named as residuary legatee by Madame Renardie, a Belgian national. Madame Renardie, who resided in Belgium throughout her life, died in Malmedy (Belgium) on 12 June 2004.

8 On 14 June 2005, Missionswerk filed a statement of succession in the name of the deceased with the Malmedy office of the Administration de l'enregistrement et des domaines (the Belgian administrative authority which deals with property taxes, land registration, death duties, VAT and other indirect taxes) ('the Tax Authority') and subsequently paid succession duties at the marginal rate of 80%, as claimed by the Tax Authority, in the amount of EUR 60 038.51.

9 By letter of 1 December 2005, Missionswerk asked the Tax Authority to apply to it the reduced rate for succession duties, provided for in Article 59(2) of the Code. That request was refused on the ground that Missionswerk did not fulfil the conditions laid down in Article 60(1) of the Code.

10 On 7 August 2006, Missionswerk applied to the Tax Authority for a refund of the difference between the duty applied at the marginal rate and the duty applied at the reduced rate. Its application was refused by the Tax Authority on the ground that there was insufficient evidence that the deceased had resided or worked in Germany.

11 In its application initiating proceedings before the national court, Missionswerk seeks restitution of the amount paid by way of succession duties in excess of the amount which would be payable on application of the reduced rate, which Missionswerk claims should be applied. Missionswerk maintains that Articles 59(2) and 60(1) of the Code discriminate against residents of the Walloon Region who bequeath their property to charitable associations or bodies in Member States of the European Union in which they have never lived or worked.

12 In those circumstances, the Tribunal de première instance de Liège (Court of First Instance, Liège) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Must Articles 18 [TFEU], 45 [TFEU], 49 [TFEU] and 54 [TFEU] be interpreted as precluding the legislature of a Member State from adopting or maintaining a rule the purpose of which is to reserve the benefit of taxation at the reduced rate of 7% to non-profit-making associations, friendly societies or national unions of friendly societies, professional unions and international non-profit-making associations, private foundations and public-interest foundations which are established in a Member State in which, at the time of death, the deceased – a resident of Wallonia – actually resided or had her place of work, or in which she had previously actually resided or had her place of work?'

Consideration of the question referred

Identification of the relevant provisions of EU law

13 The national court has framed the question referred for a preliminary ruling in terms of Articles 18 TFUE, 45 TFEU, 49 TFEU and 54 TFEU. The European Commission argues, however, that the situation at issue in the main proceedings falls within the scope of the free movement of capital.

14 In that respect, it should first be observed that, in the case of a question concerning the

compatibility with EU law of provisions of national law relating to succession duties, neither the free movement of workers (Article 45 TFEU) nor freedom of establishment (Articles 49 and 54 TFEU) is relevant.

15 Next, as regards the free movement of capital, it should be borne in mind that, in the absence of a definition in the FEU Treaty of the concept of 'movement of capital', the Court has recognised the Nomenclature annexed to Directive 88/361 as having indicative value, even though that directive was adopted on the basis of Articles 69 and 70(1) of the EEC Treaty (Articles 67 to 73 of the EEC Treaty were replaced by Articles 73b to 73g of the EC Treaty, which in turn became Articles 56 EC to 60 EC), it being understood that, in accordance with its introduction, the list set out therein is not exhaustive (see Case C-513/03 *van Hilten-van der Heijden* [2006] ECR I-1957, paragraph 39; Case C-386/04 *Centro di Musicologia Walter Stauffer* [2006] ECR I-8203, paragraph 22; Case C-11/07 *Eckelkampand Others* [2008] ECR I-6845, paragraph 38; Case C-43/07 *Arens-Sikken* [2008] ECR I-6887, paragraph 29; and Case C-510/08 *Mattner* [2010] ECR I-0000, paragraph 19).

16 In that regard, the Court – noting, in particular, that inheritances consisting in the transfer to one or more persons of assets left by a deceased person fall under heading XI of Annex I to Directive 88/361, entitled 'Personal capital movements' – has held that an inheritance is a movement of capital for the purposes of Article 63 TFEU, except in cases where its constituent elements are confined within a single Member State (see, to that effect, *Eckelkamp and Others*, paragraph 39 and the case-law cited). However, a situation such as that in the case before the referring court, in which a person residing in Belgium has left a legacy to a non-profit-making body with its seat in Germany, in no way constitutes a purely internal situation.

17 It follows that the provisions of the FEU Treaty on the free movement of capital apply in a case such as that before the referring court.

18 Lastly, as regards the relevance of the reference made in the question to Article 18 TFEU, which lays down a general prohibition of all discrimination on grounds of nationality, it should be noted that that provision applies independently only to situations governed by EU law for which the TFEU lays down no specific rules of non-discrimination (Case C-311/08 *SGI* [2010] ECR I-0000, paragraph 31 and the case-law cited, and Case C-97/09 *Schmelz* [2010] ECR I-0000, paragraph 44).

19 Accordingly, since the provisions on the free movement of capital are applicable and provide specific rules on non-discrimination, Article 18 TFEU does not apply.

20 It should therefore be held that, by its question, the national court is asking, in essence, whether Article 63 TFEU is to be interpreted as precluding legislation of a Member State under which succession duties may be applied at the reduced rate only in the case of non-profit-making bodies which have their centre of operations in that Member State or in the Member State in which, at the time of death, the deceased actually resided or had his place of work, or in which he had previously actually resided or had his place of work.

The existence of a restriction on the free movement of capital

21 Article 63(1) TFEU lays down a general prohibition on restrictions on the movement of capital between Member States.

22 It is settled law that the measures prohibited by Article 63(1) TFEU as being restrictions on the movement of capital include, in the case of inheritances, those which have the effect of reducing the value of the inheritance of a resident of a State other than the Member State in which the assets concerned are situated and which taxes the inheritance of those assets (*van Hilten-van der Heijden*,

paragraph 44 and the case-law cited).

23 In the case before the referring court, the national legislation at issue provides that the reduced rate for succession duties may be applied only in the case of non-profit-making bodies which have their centre of operations in Belgium or in the Member State in which, at the time of death, the deceased actually resided or had his place of work, or in which he had previously actually resided or had his place of work.

24 Thus, that legislation leads a legacy to be taxed more heavily where the beneficiary is a non-profit-making body which has its centre of operations in a Member State in which the deceased neither actually resided nor worked and, as a consequence, has the effect of restricting the movement of capital by reducing the value of that inheritance (see, by analogy, *Eckelkamp and Others*, paragraph 45).

25 Furthermore, as the Commission has stated, the application to certain cross-border capital movements of a higher rate of tax than that applied to movements within Belgium is liable to make those cross-border capital movements less attractive, by dissuading Belgian residents from naming as beneficiaries persons established in Member States in which those Belgian residents have not actually resided or worked (see, to that effect, Case C-318/07 *Persche* [2009] ECR I-359, paragraph 38).

26 Such national legislation therefore constitutes a restriction on the free movement of capital for the purposes of Article 63(1) TFEU.

The justification of the restriction on the free movement of capital

27 According to the Belgian Government, the difference in treatment which arises as a result of the Walloon legislation at issue in the main proceedings is justified since, in relation to the objective sought by the Belgian legislation, non-profit-making bodies like Missionswerk are not in a situation which is objectively comparable to that of bodies whose centre of operations is in Belgium. According to the Belgian Government, Member States are entitled to require, for the purposes of granting certain tax benefits, that there be a sufficiently close link between non-profit-making bodies and the activities in which they are engaged and to determine which interests of the community at large they wish to promote by granting tax benefits to those bodies. In the present case, the Belgian community at large benefits from that legislation.

28 In that respect, it should be noted that, in accordance with Article 65(1)(a) and (3) TFUE, Article 63 TFEU is without prejudice to the right of Member States to apply the relevant provisions of their tax law which distinguish between taxpayers who are not in the same situation with regard to their place of residence or the place where their capital is invested, provided, however, that those provisions do not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments as defined in Article 63.

29 The Court has consistently held that, for national tax legislation to be capable of being regarded as compatible with the provisions of the FEU Treaty on the free movement of capital, the difference in treatment must concern situations which are not objectively comparable or it must be justified by an overriding reason in the public interest (Case C-35/98 *Verkooijen* [2000] ECR I-4071, paragraph 43; Case C-319/02 *Manninen* [2004] ECR I-7477, paragraph 29; Case C-512/03 *Blanckaert* [2005] ECR I-7685, paragraph 42; and Case C-182/08 *Glaxo Wellcome* [2009] ECR I-8591, paragraph 68).

30 According to the Court, whilst it is lawful for a Member State to require, for the purposes of

granting certain tax advantages, that there be a sufficiently close link between the bodies which that Member State recognises as pursuing some of its charitable purposes and the activities pursued by those bodies (see, to that effect, *Centro di Musicologia Walter Stauffer*, paragraph 37), that Member State cannot grant such advantages only to bodies which are established in its territory and whose activities are capable of relieving that State of some of its responsibilities (see, to that effect, *Persche*, paragraph 44).

31 In particular, the possibility that a Member State may be relieved of some of its responsibilities does not mean that it is free to introduce a difference in treatment between, on the one hand, national bodies which are recognised as pursuing charitable purposes and, on the other, bodies established in another Member State which are recognised as pursuing charitable purposes, on the ground that legacies left to the latter cannot, even though the activities of those bodies reflect the same objectives as the legislation of the former Member State, have compensatory effects for budgetary purposes. It is settled law that the need to prevent the reduction of tax revenues is neither among the objectives stated in Article 65 TFEU nor an overriding reason in the public interest capable of justifying a restriction on a freedom instituted by the Treaty (see, to that effect, *Persche*, paragraph 46).

32 The Court has also held that, where a body recognised as pursuing charitable purposes in one Member State satisfies the conditions laid down for that purpose in the legislation of another Member State and where its object is to promote the very same interests of the community at large, so that it would be likely to be recognised in the latter Member State as pursuing charitable purposes – a matter which it is for the national authorities of that Member State, including its courts, to determine – the authorities of the latter Member State cannot deny that body the right to equal treatment solely on the ground that it is not established in the territory of that Member State (see, to that effect, *Persche*, paragraph 49).

33 A body which is established in one Member State but satisfies the conditions laid down in another Member State for the grant of tax advantages, is, as regards the grant by the latter Member State of tax advantages intended to encourage the charitable activities concerned, in a situation which is comparable to that of the bodies established in the latter Member State which are recognised as having charitable purposes (see, to that effect, *Persche*, paragraph 50).

34 In the present case, it must be concluded that the Walloon legislation at issue in the main proceedings takes as its criterion the location of the non-profit-making body's centre of operations, which must be either in Belgium or in a Member State in which the deceased had resided or had his place of work, in order to determine whether succession duties should be applied at a reduced rate. Accordingly, in conformity with the case-law referred to in paragraphs 31 to 33 above, where, apart from the condition relating to the location of the centre of operations, the charitable body at issue fulfils the conditions imposed by the Walloon legislation for the grant of tax advantages in relation to succession rights, a matter which it is for the national court to determine, the authorities of that Member State cannot refuse that body the right to equal treatment on the ground that it does not have its centre of operations in that Member State or in the Member State where the deceased had worked or resided.

35 In any event, it must be held that the Belgian legislation at issue in the main proceedings does not enable the objective pursued – the provision of tax advantages only to bodies whose activities benefit the Belgian community at large – to be achieved.

36 By taking the centre of operations of the body concerned as the criterion for establishing the existence of a close link with the Belgian community at large, not only does the legislation at issue in the main proceedings treat bodies which have their seat in Belgium differently from those which

do not, even where the latter have a close link with that community, it also treats all bodies which have their centre of operations in Belgium in the same way, whether or not they have established a close link with that community.

37 It follows from all the foregoing that the answer to the question referred is that Article 63 TFEU precludes legislation of a Member State which reserves application of succession duties at the reduced rate to non-profit-making bodies which have their centre of operations in that Member State or in the Member State in which, at the time of death, the deceased actually resided or had his place of work, or in which he had previously actually resided or had his place of work.

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 (Second Chamber) hereby rules:

Article 63 TFEU precludes legislation of a Member State which reserves application of succession duties at the reduced rate to non-profit-making bodies which have their centre of operations in that Member State or in the Member State in which, at the time of death, the deceased actually resided or had his place of work, or in which he had previously actually resided or had his place of work.

[Signatures]

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* Language of the case: French.