

Case C-222/95

**Société Civile Immobilière Parodi**

v

**Banque H. Albert de Bary et Cie**

(Reference for a preliminary ruling  
from the French Cour de Cassation)

(Free movement of capital — Freedom to provide services —  
Credit institutions — Grant of a mortgage loan — Authorization  
requirement in the Member State in which the service is provided)

Opinion of Advocate General Elmer delivered on 10 December 1996 ..... I - 3902  
Judgment of the Court, 9 July 1997 ..... I - 3914

Summary of the Judgment

1. *Freedom to provide services — Credit institutions — Liberalization of banking services in step with the progressive liberalization of movement of capital — Grant of mortgage loans — Liberalization subject to the derogations provided for under the First Council Directive for the implementation of Article 67 of the Treaty — Consequences*  
(EC Treaty, Arts 59 and 61(2); Council Directive of 11 May 1960, as amended by Council Directive 63/21, Art. 3 and Annex I, List C)

2. *Freedom to provide services — Credit institutions — Authorization requirement — Credit institution already authorized in another Member State — Whether permissible — Conditions*

(*EC Treaty, Art. 59; Council Directives 77/780 and 89/646*)

3. *Freedom to provide services — Restrictions — Requirement that persons providing services have a permanent establishment — Not lawful*

(*EC Treaty, Art. 59*)

1. The transaction which consists, for a bank established in a Member State, in granting a mortgage loan to a borrower established in another Member State is a provision of services connected with movement of capital, the liberalization of which, in accordance with Article 61(2) of the Treaty, is to be effected in step with the progressive liberalization of movement of capital. At the period when the First Council Directive for the implementation of Article 67 of the Treaty, as amended by Second Directive 63/21, was in force, the granting of such a mortgage loan constituted a capital movement which was in principle liberalized by Article 3(1) of the first directive. It follows that, without prejudice to the exchange restrictions which a Member State could maintain or reintroduce pursuant to Article 3(2) of that directive, the rules on capital movements were not of such a kind as to restrict the freedom to conclude mortgage loan contracts in the form of provision of services under Article 59 of the Treaty.

2. With regard to the period preceding the entry into force of Second Directive 89/646 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of

the business of credit institutions, Article 59 of the Treaty must be construed as precluding a Member State from requiring a credit institution already authorized in another Member State to obtain an authorization in order to be able to grant a mortgage loan to a person resident within its territory, unless that authorization

— is required of every person or company pursuing such an activity within the territory of the Member State of destination;

— is justified on grounds of public interest, such as consumer protection; and

— is objectively necessary to ensure compliance with the rules applicable in the sector under consideration and to protect the interests which those rules are intended to safeguard, and the same result cannot be achieved by less restrictive rules.

In its assessment, the national court must, in particular, draw a distinction according to the nature of the banking activity in question and the risk incurred by the person for whom the service is intended. Thus, the conclusion of a contract for a mortgage loan presents the consumer with risks that differ from those associated with the lodging of funds with a credit institution. Furthermore, the need to protect the borrower will vary according to the nature of the mortgage loans, and there may be cases where, precisely because of the nature of the loan granted and the status of the borrower, there is no need to protect the latter by the application of the mandatory rules of his national law.

3. If the requirement of authorization constitutes a restriction on the freedom to provide services, the requirement of a permanent establishment is the very negation of that freedom. It has the result of depriving Article 59 of the Treaty of all effectiveness, a provision whose very purpose is to abolish restrictions on the freedom to provide services of persons who are not established in the State in which the service is to be provided. In order for such a requirement to be acceptable, it must constitute a condition which is indispensable for attaining the objective pursued.