



Reports of Cases

Case C-577/11

DKV Belgium SA

v

Association belge des consommateurs Test-Achats ASBL

(Request for a preliminary ruling from the cour d'appel de Bruxelles)

(Freedom to provide services — Freedom of establishment — Directives 73/239/EEC and 92/49/EEC — Direct insurance other than life assurance — Freedom to set rates — Health insurance contracts not linked to professional activity — Restrictions — Overriding reasons in the public interest)

Summary — Judgment of the Court (Fourth Chamber), 7 March 2013

1. *Freedom of movement for persons — Freedom of establishment — Freedom to provide services — Direct insurance other than life assurance — Directive 92/49 — Freedom to set rates — National legislation introducing a technical framework for the calculation of insurance premiums — Lawfulness*

(Council Directives 73/239, Art. 8(3), 92/49, Arts 29 and 39(2) and (3))

2. *Freedom of movement for persons — Freedom of establishment — Freedom to provide services — Restrictions — Control by the host Member State of the detailed rules for calculating insurance premiums applied by insurance undertakings established in other Member States — Justification — Consumer protection — Lawfulness*

(Arts 49 TFEU and 56 TFEU)

1. Articles 29 and 39(2) and (3) of Directive 92/49 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239 and 88/357 (Third Non-life Insurance Directive) and Article 8(3) of First Council Directive 73/239 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance, as amended by Directive 92/49, must be interpreted as not precluding legislation of a Member State which provides, with regard to health insurance contracts not linked to professional activity, provisions under which the premium, the excess payable and the benefit can be adapted annually only:

- on the basis of the consumer price index, or
- on the basis of a so-called ‘medical index’, if and in so far as the changes in that index exceed that in the consumer price index, or

- after obtaining authorisation from an administrative authority responsible for the supervision of insurance undertakings, at the request of the insurance undertaking concerned, where that authority finds that the application of the premium rate of that undertaking, notwithstanding the adaptations calculated on the basis of those two types of indices, gives rise or is likely to give rise to losses.

Since full harmonisation in the field of non-life insurance rates precluding any national measure liable to have effects on rates cannot be presumed in the absence of a clearly expressed intention to this effect on the part of the European Union legislature, national legislation introducing a technical framework governing how insurance undertakings are to calculate their premiums is not contrary to the principle of freedom to set rates on the sole ground that that technical framework affects premium rate changes. This holds true for the aforementioned legislation which, in allowing premium rate increases on the basis of two types of indices, functions as a technical framework limited to providing a structure for rate changes, under which insurance undertakings are to calculate their premiums. In those circumstances, the mere fact that the administrative authority responsible for the supervision of insurance undertakings may, at the request of an insurance undertaking, decide to authorise that undertaking to take measures in order to balance its premium rates where they give rise or are likely to give rise to losses is not sufficient to cast doubt on the nature of the technical framework for the system of premium rate increases at issue.

(see paras 22, 23, 26, 27, 48, operative part)

2. Articles 49 TFEU and 56 TFEU must be interpreted as meaning that there is a restriction on the freedom of establishment and the freedom to provide services where national legislation which provides, with regard to health insurance contracts not linked to professional activity, provisions under which the premium, the excess payable and the benefit can be adapted annually only:

on the basis of the consumer price index, or

on the basis of a so-called ‘medical index’, if and in so far as the changes in that index exceed that in the consumer price index, or

after obtaining authorisation from an administrative authority responsible for the supervision of insurance undertakings, at the request of the insurance undertaking concerned, where that authority finds that the application of the premium rate of that undertaking, notwithstanding the adaptations calculated on the basis of those two types of indices, gives rise or is likely to give rise to losses. Such a system of premium rate increases is liable to dissuade insurance undertakings having their head office in a Member State other than the one which introduced such a system from opening a branch in that Member State or to offer their products there as part of the free movement of services.

Nevertheless, that system may be allowed in so far as it is aimed at protecting consumers, which objective is an overriding requirement relating to the public interest and, in particular, at preventing policyholders from being faced with sharp, unexpected increases in insurance premium rates. It is also suitable for securing the attainment of the objective which it pursues. Lastly, since, on the one hand, the characteristics of hospitalisation insurance, including the fact that it can be offered at low rates to relatively young policyholders, mean that rates will tend to increase with the age of the policyholder along with the costs for the insurer, whilst on the other hand such a system does not prohibit insurance undertakings from setting freely the basic premium and allows the administrative authority charged with supervising insurance undertakings to authorise an insurance undertaking, at the latter’s request, to take measures to balance its rates when they are likely to give rise to losses, the system,

provided that there are no less-restrictive measures which might be used to achieve, under the same conditions, the aforementioned objective of consumer protection, does not go beyond what is necessary in order to achieve that objective.

(see paras 34, 37, 40-47, 49, operative part)