Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

16 September 2020*

(Reference for a preliminary ruling – Free movement of capital – Company law – Shares admitted to trading on the regulated market – Financial investment company – National regulations limiting the shareholding in certain financial investment companies – Statutory presumption of concerted action)

In Case C-339/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania), made by decision of 20 February 2018, received at the Court on 25 April 2019, in the proceedings

SC Romenergo SA,

Aris Capital SA

v

Autoritatea de Supraveghere Financiară,

THE COURT (Ninth Chamber),

composed of S. Rodin, President of the Chamber, K. Jürimäe (Rapporteur) and N. Piçarra, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– SC Romenergo SA and Aris Capital SA, by C.C. Vasile, C. Secrieru and M. Strîmbei, avocați,

– the Romanian Government, initially by E. Gane, L. Lițu and C.-R. Canțăr, and subsequently by E. Gane and L. Lițu, acting as Agents,

– the Netherlands Government, by J.M. Hoogveld and M. Bulterman, acting as Agents,

– the European Commission, by H. Støvlbæk, L. Malferrari, J. Rius and L. Nicolae, acting as Agents,

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

* Language of the case: Romanian.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 63 to 65 TFEU, read in conjunction with Article 2(2) of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (OJ 2004 L 142, p. 12) and with Article 87 of Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities (OJ 2001 L 184, p. 1).

2 The request has been made in proceedings between SC Romenergo SA ('Romenergo') and Aris Capital SA ('Aris Capital'), of the one part, and the Autoritatea de Supraveghere Financiară (the Financial Supervisory Authority, Romania) ('the Financial Authority'), of the other, concerning an application for annulment of Article 2(3)(j) of Regulamentul Comisiei Naționale a Valorilor Mobiliare nr. 1/2006 privind emitenții și operațiunile cu valori mobiliare (National Securities Commission regulation 1/2006 on issuers and securities transactions) *(Monitorul Oficial al României*, Part I, No 312 bis of 6 April 2004, 'national regulation No 1/2006') and of the administrative decisions adopted by the Financial Authority as regards those companies.

Legal context

EU law

Directive 2004/25

3 Recitals 2, 6, 18 and 20 of Directive 2004/25 state:

'(2) It is necessary to protect the interests of holders of the securities of companies governed by the law of a Member State when those companies are the subject of takeover bids or of changes of control and at least some of their securities are admitted to trading on a regulated market in a Member State.

…

(6) In order to be effective, takeover regulation should be flexible and capable of dealing with new circumstances as they arise and should accordingly provide for the possibility of exceptions and derogations. However, in applying any rules or exceptions laid down or in granting any derogations, supervisory authorities should respect certain general principles.

…

(18) In order to reinforce the effectiveness of existing provisions concerning the freedom to deal in the securities of companies covered by this Directive and the freedom to exercise voting rights, it is essential that the defensive structures and mechanisms envisaged by such companies be transparent and that they be regularly presented in reports to general meetings of shareholders.

…

(20) All special rights held by Member States in companies should be viewed in the framework of the free movement of capital and the relevant provisions of the Treaty. Special rights held by Member States in companies which are provided for in private or public national law should be exempted from the "breakthrough" rule if they are compatible with the Treaty.'

4 Article 2 of that directive provides:

'1. For the purposes of this Directive:

(a) "takeover bid" or "bid" shall mean a public offer (other than by the offeree company itself) made to the holders of the securities of a company to acquire all or some of those securities, whether mandatory or voluntary, which follows or has as its objective the acquisition of control of the offeree company in accordance with national law;

(b) "offeree company" shall mean a company, the securities of which are the subject of a bid;

(c) "offeror" shall mean any natural or legal person governed by public or private law making a bid;

(d) "persons acting in concert" shall mean natural or legal persons who cooperate with the offeror or the offeree company on the basis of an agreement, either express or tacit, either oral or written, aimed either at acquiring control of the offeree company or at frustrating the successful outcome of a bid;

…

2. For the purposes of paragraph 1(d), persons controlled by another person within the meaning of Article 87 of [Directive 2001/34] shall be deemed to be persons acting in concert with that other person and with each other.'

Directive 2001/34

5 Article 87 of Directive 2001/34 provides:

'1. For the purposes of this Chapter, "controlled undertaking" shall mean any undertaking in which a natural person or legal entity:

(a) has a majority of the shareholders' or members' voting rights; or

(b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory body and is at the same time a shareholder in, or member of, the undertaking in question; or

(c) is a shareholder or member and alone controls a majority of the shareholders' or members' voting rights pursuant to an agreement entered into with other shareholders or members of the undertaking.

2. For the purposes of paragraph 1, a parent undertaking's rights as regards voting, appointment and removal shall include the rights of any other controlled undertaking and those of any person or entity acting in his own name but on behalf of the parent undertaking or of any other controlled undertaking.'

Romanian law

6 Article 286 bis of legea nr. 297/2004 privind piețele de capital (Law No 297/2004 on capital markets) *(Monitorul Oficial al României*, Part I, No 571 of 29 June 2004), in the version applicable to the dispute in the main proceedings ('the Law on capital markets') provides:

'1. Any person may acquire in any capacity and hold, by himself or herself or together with the persons with whom he or she is acting in concert, shares issued by financial investment companies, arising from the conversion of privately held equity funds, in an amount not exceeding 5% of those investment companies' share capital.

2. The exercise of voting rights shall be suspended in respect of the shares held by shareholders that exceed the limits laid down in paragraph 1.

3. When they reach the 5% shareholding limit, the persons referred to in paragraph 1 shall within three working days inform the financial investment company, the National Securities Commission and the regulated market on which the shares concerned are traded.

4. Within three months of the date on which the 5% limit on shareholdings in the financial investment companies is exceeded, shareholders who are in such a situation shall be required to sell the shares which exceed that limit.'

7 Article 2(1)(22) of that law defines the concept of 'involved persons' as follows:

'(a) persons who control or are controlled by an issuer or who are subject to joint control;

…

(c) natural persons within the issuing company who perform management or supervisory functions;

…'

8 Article 2(1)(23) of the Law on capital markets provides:

'Persons acting in concert: two or more persons, bound by an express or tacit agreement, for the purpose of implementing a common policy vis-à-vis an issuer. In the absence of proof to the contrary, it shall be presumed that the following persons are acting in concert:

(a) involved persons;

…

(c) a commercial company with members of its board of directors and with involved persons, as well as those persons with each other;

…'

9 National regulation No 1/2006 states:

'Under Article 2(1)(23) of Law No 297/2004, it is to be presumed, in the absence of proof to the contrary, that the following persons, inter alia, are acting in concert:

(a) persons who, in the context of economic transactions, use financial resources from the same source or from different entities which are involved persons;

…

(j) persons who have carried out or who are carrying out economic transactions together, whether related or unrelated to the capital market.'

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

10 Romenergo was a shareholder of SIF Banat Crișana SA ('Banat Crișana'), a financial investment company resulting from the privatisation process which took place in Romania and whose shares are traded on the capital market, and Romenergo held 4.55498% of the voting rights attached to the shares in Banat Crișana. Romenergo subsequently transferred all its shares in that company to Aris Capital.

11 On 18 March 2014, the Financial Authority adopted Decisions Nos A/209, A/210 and A/211 (together 'the administrative decisions at issue'), according to which:

– The shareholders XV, YW, ZX, Romenergo, Smalling Limited and Gardner Limited are presumed to be acting in concert as regards Banat Crișana, under Article 2(1)(22)(a) and (c) and (23)(a) and (c) of the Law on capital markets in conjunction with Article 2(3)(j) of national regulation No 1/2006;

– SC Depozitarul Central SA is obliged to take the necessary measures to enter in its registers the suspension of the exercise of voting rights over shares issued by Banat Crișana which exceed 5% of the voting rights and are held by XV, YW, ZX, Romenergo, Smalling Limited and Gardner Limited;

– the Board of Directors of Banat Crișana is obliged to take the measures necessary so that the group formed by the shareholders XV, YW, ZX, Romenergo, Smalling Limited and Gardner Limited, which are presumed to be acting in concert, may no longer exercise the voting rights attached to the position held in breach of Article 286 bis(1) of the Law on capital markets and Article 2(3)(j) of national regulation No 1/2006.

12 The Financial Authority therefore ordered the abovementioned shareholders, who were presumed to be acting in concert, to sell within three months a proportion of the shares held in Banat Crișana, so that their combined shares did not exceed the 5% limit imposed by the Romanian regulations.

13 Since they considered that the administrative decisions at issue were contrary to EU law, Romenergo and Aris Capital brought an action before the Curtea de Apel București (Court of Appeal, Bucharest, Romania) concerning, first, the validity of those decisions and, secondly, that of Article 2(3)(j) of national regulation No 1/2006.

14 In the course of the proceedings before the Financial Authority and then before the Curtea de Apel București (Court of Appeal, Bucharest), the applicants in the main proceedings submitted that the relevant national provisions infringe, inter alia, the provisions of EU law on the free movement of capital. They also argued that the concept of 'concerted action', as provided for in EU law, applies only in the context of a binding takeover bid, since the EU legislature presumes that persons who are controlled or who control others act in concert and that, together, they seek to assume control of the issuing company through the execution of the bid or the frustration thereof. Article 2(2) of Directive 2004/25 establishes only a presumption as regards persons controlled by another person holding the majority of voting rights.

15 Romenergo and Aris Capital submit that EU law does not provide for the possibility of establishing a presumption of concerted action based generally on 'economic' considerations and does not recognise the existence of concerted action where, in carrying out economic transactions, persons use financial resources which have the same source or come from involved persons through different entities.

16 On 4 May 2015, the Curtea de Apel București (Court of Appeal, Bucharest) dismissed the application of Romenergo and Aris Capital as unfounded. Romenergo and Aris Capital then appealed to the referring court.

17 In those circumstances the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 63 et seq. TFEU, read in conjunction with Article 2(2) of Directive 2004/25 and Article 87 of Directive 2001/34/EC, be interpreted as precluding a national legislative framework (in the present case Article 2(3)(j) of … national regulation No 1/2006) which establishes a legal presumption of concerted practice in respect of shareholdings in companies whose shares are admitted to trading on a regulated market and [which] are treated as alternative investment funds (known as "financial investment companies") with regard to:

– persons who have carried out or who are carrying out economic transactions together, whether related or unrelated to the capital market, and

– persons who, in carrying out economic transactions, use financial resources which have the same origin or which originate from different entities which are involved persons?'

Consideration of the question referred

Admissibility of the request for a preliminary ruling

18 In its observations, the Romanian Government expresses doubts as to the admissibility of the request for a preliminary ruling, inasmuch as the question referred to the Court concerns presumptions of concerted action in the context of certain economic transactions which are not the subject of the dispute in the main proceedings and are, therefore, hypothetical.

19 In that regard, it should be borne in mind that it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of a rule of EU law, the Court is in principle bound to give a ruling (judgment of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 26 and the case-law cited).

20 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 27 and the case-law cited).

21 In the present case, it is apparent from the order for reference that Romenergo and Aris Capital have, inter alia, brought actions before the Romanian courts against the administrative decisions at issue. Those decisions provide, in essence, that the combined voting rights, exceeding 5%, belonging to the persons presumed to have acted in concert, which includes Romenergo and Aris Capital, are to be suspended and that those persons must sell within three months the proportion of all the cumulative shares held by them in Banat Crișana exceeding that 5% limit.

22 The referring court's doubts concern, in essence, whether the Romanian legislation concerning the 5% limit on the shareholding in a financial investment company, such as that at issue in the main proceedings, clarified by certain presumptions of concerted action, is compatible with EU law. It cannot, therefore, be held that the question referred is hypothetical on the ground that it bears no relation to the actual facts of the main action or its purpose.

23 It follows that the request for a preliminary ruling is admissible.

Substance

24 As a preliminary point, it must be noted, in the first place, that, according to the settled case-law of the Court, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court may have to reformulate the question referred to it (judgment of 5 March 2020, *X (VAT exemption for telephone consultations)*, C-48/19, EU:C:2020:169, paragraph 35 and the case-law cited).

25 In the present case, the question referred, as formulated by the referring court, concerns whether certain presumptions of concerted action in connection with the shareholding in a financial investment company are compatible with the provisions of the FEU Treaty on the free movement of capital, Article 2(2) of Directive 2004/25 and Article 87 of Directive 2001/34.

26 First, it is apparent from the grounds of the request for a preliminary ruling that the problem faced by the referring court concerns, more broadly, the compatibility with EU law of the rule that the shareholding in a financial investment company is limited to 5%, not just the presumptions of concerted action, which, according to the information provided by the referring court, merely clarify that rule. Secondly, although Article 2(2) of Directive 2004/25, relied on by that court, does indeed provide for a presumption of concerted action, that directive governs only situations arising in the context of takeover bids, which, in the light of the information provided by the referring court and the observations submitted to the Court, subject to verification by the referring court, does not appear to be the case in the main proceedings.

27 In the second place, it must be stated that the provisions of the FEU Treaty on the free movement of capital do not apply to purely internal situations, in which movements of capital are confined within a single Member State. It is, therefore, for the referring court to determine, before any application of Article 63 TFEU, whether there is, in the main proceedings, a cross-border situation involving the exercise of the free movement of capital within the European Union (see, to that effect, order of 12 October 2017, *Fisher*, C-192/16, EU:C:2017:762, paragraph 35).

28 In the present case, Romenergo and then Aris Capital are presumed to act in concert with several companies established outside Romanian territory. Consequently, subject to verification by the referring court, it must be found that such a cross-border situation exists in the case in the main proceedings.

29 Consequently, by its question the referring court asks, in essence, whether Article 63 TFEU must be interpreted as precluding a national measure which provides for a 5% limit on the shareholding in financial investment companies.

30 In order to answer that question, it is necessary, in the first place, to determine whether the acquisition of a shareholding in a financial investment company, such as that at issue in the main proceedings, constitutes a movement of capital within the meaning of Article 63(1) TFEU.

31 According to settled case-law of the Court, that provision generally prohibits restrictions on movements of capital between Member States (judgment of 6 March 2018, *SEGRO and Horváth*, C-52/16 and C-113/16, EU:C:2018:157, paragraph 61 and the case-law cited).

32 In the absence, in the FEU Treaty, of a definition of the concept of 'movement of capital' within the meaning of Article 63(1) TFEU, the Court has previously recognised as having indicative value the nomenclature of capital movements set out in Annex I to Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the [EC] Treaty [article repealed by the Treaty of Amsterdam] (OJ 1988 L 178, p. 5). The Court has, therefore, held that movements of capital within the meaning of Article 63(1) TFEU include in particular 'direct' investments, namely investments in the form of participation in an undertaking through the holding of shares which confers the possibility of effectively participating in its management and control (judgment of 22 October 2013, *Essent and Others*, C-105/12 to C-107/12, EU:C:2013:677, paragraph 40 and the case-law cited).

33 Since direct investments serve to establish or maintain lasting and direct links between the persons providing the capital and the company to which that capital is made available, the shareholders must be able to participate effectively in the management or control of that company (see, to that effect, judgment of 10 November 2011, *Commission* v *Portugal*, C-212/09, EU:C:2011:717, paragraph 43).

34 Thus, the acquisition of a shareholding in a financial investment company, such as that at issue in the main proceedings, in particular in so far as it is accompanied by voting rights corresponding to the percentage of that shareholding acquisition, is covered by the concept of 'movement of capital' within the meaning of Article 63(1) TFEU.

35 As regards, in the second place, whether a national measure under which a shareholding in such a financial investment company is limited to 5% constitutes a restriction on the free movement of capital, the Court has stated that a national measure may be characterised as a 'restriction' within the meaning of Article 63(1) TFEU, even if it does not establish discrimination or a formal distinction between persons on the basis of their nationality, their residence or the source of their capital. It is sufficient, in order for it to be characterised as a 'restriction', if the national measure under examination is liable to prevent or limit the acquisition of shares in the undertakings concerned or to deter investors of other Member States from investing in their capital (judgment of 23 October 2007, *Commission* v *Germany*, C-112/05, EU:C:2007:623, paragraph 19 and the case-law cited). That is the case, in particular, with regard to national legislation which provides for the suspension of voting rights linked to shareholdings in certain undertakings.(see, to that effect, judgment of 2 June 2005, *Commission* v *Italy*, C-174/04, EU:C:2005:350, paragraph 30).

36 It follows that, similarly, a national measure providing for a 5% limit on the shareholding in a financial investment company has the effect of deterring investments in the form of a participation in an undertaking by the holding of shares. Those shares are likely to give the opportunity of effective participation in the management and control of that undertaking, since, in particular, the holding of shares is associated with voting rights proportionate to the shares held. Such a national measure therefore constitutes a restriction on the free movement of capital for the purposes of Article 63(1) TFEU.

37 In the third place, according to the Court's settled case-law, the free movement of capital may be restricted by national measures if they are justified on one of the grounds set out in Article 65 TFEU or by overriding reasons in the public interest, to the extent that there are no EU harmonising measures providing for measures necessary to ensure the protection of the legitimate interests concerned (judgment of 23 October 2007, *Commission* v *Germany*, C-112/05, EU:C:2007:623, paragraph 72 and the case-law cited).

38 In the absence of such harmonisation, it is in principle for the Member States to decide on the degree of protection which they wish to afford to such legitimate interests and on the way in which that protection is to be achieved. They may do so, however, only within the limits set by the Treaty, which requires that the measures adopted be appropriate to secure the attainment of the objective which they pursue and not go beyond what is necessary in order to attain it (judgment of 23 October 2007, *Commission* v *Germany*, C-112/05, EU:C:2007:623, paragraph 73 and the case-law cited).

39 A national measure limiting the shareholding in a financial investment company to 5%, such as that at issue in the main proceedings, cannot be justified on one of the grounds set out in Article 65 TFEU.

40 Such a measure does not come within the field of taxation, referred to in Article 65(1)(a) TFEU, nor is it intended to prevent infringements of national legislation, with the result that it cannot be justified on the basis of Article 65(1)(b) TFEU. In addition, in accordance with settled case-law, grounds of public policy or public security, as provided for in Article 65(1)(b) TFEU, may be relied on only if there is a genuine and sufficiently serious threat to a fundamental interest of society and, moreover, those grounds must not serve purely economic ends (see, to that effect, judgment of 7 June 2012, *VBV – Vorsorgekasse*, C-39/11, EU:C:2012:327, paragraph 29 and the case-law cited).

41 It is, therefore, necessary to determine whether a national measure limiting a shareholding in a financial investment company to 5% may be justified by an overriding reason in the public interest.

42 In the present case, the Romanian Government states that the sole purpose of financial investment companies created in 1996 in the form of limited companies is to make collective investments through investment of funds in liquid financial instruments in accordance with the principle of risk diversification and prudential administration. Those financial investment companies are, therefore, collective investment undertakings intended to ensure popular financial investments. In that sense, the high degree of dispersion of their shareholder structure is supposed to ensure that the general interest of the shareholders as a whole is protected, without any person or group of persons acting in concert being able to take control of the strategic decisions of one of those companies.

43 In that regard, it should be noted that the intention to ensure the dispersion of the shareholder structure of certain financial investment companies constitutes an economic ground which, moreover, concerns only persons holding shares in such companies. In accordance with the settled case-law of the Court, economic grounds cannot constitute an overriding reason in the public interest capable of justifying a restriction on the free movement of capital (see, to that effect, judgment of 8 July 2010, *Commission* v *Portugal*, C-171/08, EU:C:2010:412, paragraph 71 and the case-law cited).

44 It follows that, subject to verification by the referring court, a national measure limiting the shareholding in a financial investment company to 5%, such as that at issue in the main proceedings, constitutes a restriction on the free movement of capital which is justified neither on one of the grounds mentioned in Article 65 TFEU nor by an overriding reason in the public interest.

45 In the light of all the foregoing considerations, the answer to the question referred is that Article 63 TFEU must be interpreted as precluding a national measure which provides for a 5% limit on a shareholding in a financial investment company, if that measure is not justified by an overriding reason in the public interest, which it is for the referring court to ascertain.

Limitation of the temporal effects of the judgment

46 The Romanian Government has requested that, should the Court find that a national measure such as that at issue in the main proceedings constitutes an unjustified restriction on the free movement of capital, the effects of the present judgment be limited in time.

47 In that connection, according to settled case-law, the interpretation which the Court gives to a rule of EU law, in the exercise of the jurisdiction conferred upon it by Article 267 TFEU, clarifies and defines the meaning and scope of that rule as it must be, or ought to have been, understood and applied from the time of its coming into force. It follows that the rule as thus interpreted may and must be applied by the courts to legal relationships arising and established before the judgment ruling on the request for interpretation, provided that in other respects the conditions for bringing an action relating to the application of that rule before the courts having jurisdiction are satisfied (judgment of 3 October 2019, *Schuch-Ghannadan*, C-274/18, EU:C:2019:828, paragraph 60 and the case-law cited).

48 It is only quite exceptionally that the Court may, in application of the general principle of legal certainty inherent in the EU legal order, be moved to restrict, for any person concerned, the opportunity of relying on a provision which it has interpreted with a view to calling into question legal relationships established in good faith. Two essential criteria must be fulfilled before such a limitation can be imposed: those concerned must have acted in good faith and there must be a risk of serious difficulties (judgment of 3 October 2019, *Schuch-Ghannadan*, C-274/18, EU:C:2019:828, paragraph 61 and the case-law cited).

49 More specifically, the Court has taken that step only in quite specific circumstances, notably where there was a risk of serious economic repercussions owing in particular to the large number of legal relationships entered into in good faith on the basis of rules considered to be validly in force and where it appeared that individuals and national authorities had been led to adopt practices which did not comply with EU law by reason of objective, significant uncertainty regarding the implications of EU provisions, to which the conduct of other Member States or the European Commission may even have contributed (judgment of 3 October 2019, *Schuch-Ghannadan*, C-274/18, EU:C:2019:828, paragraph 62 and the case-law cited).

50 It is, however, for the Member State requesting that the effects of the judgment be limited in time to adduce evidence to show that there is a risk of serious difficulties (see, by analogy, judgment of 14 April 2015, *Manea*, C-76/14, EU:C:2015:216, paragraph 55).

51 In the present case, the Romanian Government merely asserts that such a risk exists, since the national legal system resulting from the implementation of Article 286 bis(2) and (4) of the Law on capital markets is called into question. In so doing, that government does not show that the present judgment is likely to cause serious difficulties, but merely states that those national provisions are capable of constituting restrictions on the free movement of capital, which could lead the national court to set them aside.

52 In those circumstances, it must be held that, in the present case, no evidence has been adduced to warrant a derogation from the principle that a ruling on interpretation produces its effects on the date on which the rule interpreted enters into force.

53 Accordingly, there is no need to limit the temporal effects of the present judgment.

Costs

54 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 (Ninth Chamber) hereby rules:

Article 63 TFEU must be interpreted as precluding a national measure which provides for a 5% limit on a shareholding in a financial investment company, if that measure is not justified by an overriding reason in the public interest, which it is for the referring court to ascertain.

[Signatures]