

Articles 85, 86 and 90 of the EC Treaty (now Articles 81 EC, 82 EC and 86 EC) — the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, G. Hirsch and P. Jann, Presidents of the Chambers, J.C. Moitinho de Almeida (Rapporteur), C. Gulmann, J.L. Murray, D.A.O. Edward, H. Ragnemalm, L. Sevón and M. Wathelet, Judges; F.G. Jacobs, Advocate General; D. Lousterman-Hubeau, Principal Administrator, for the Registrar, has given a judgment on 21 September 1999, in which it has ruled:

1. A decision taken by organisations representing employers and workers in a given sector, in the context of a collective agreement, to set up in that sector a single pension fund responsible for managing a supplementary pension scheme and to request the public authorities to make affiliation to that fund compulsory for all workers in that sector does not fall within the scope of Article 85 of the EC Treaty (now Article 81 EC).
2. Article 3(g) of the EC Treaty (now, after amendment, Article 3(1)(g) EC), Article 5 of the EC Treaty (now Article 10 EC) and Article 85 of the Treaty do not prohibit a decision by the public authorities to make affiliation to a sectoral pension fund compulsory at the request of organisations representing employers and workers in a given sector.
3. A pension fund charged with the management of a supplementary pension scheme set up by a collective agreement concluded between organisations representing employers and workers in a given sector, to which affiliation has been made compulsory by the public authorities for all workers in that sector, is an undertaking within the meaning of Article 85 et seq. of the Treaty.
4. Articles 86 and 90 of the EC Treaty (now Articles 82 EC and 86 EC) do not preclude the public authorities from conferring on a pension fund the exclusive right to manage a supplementary pension scheme in a given sector.

(¹) OJ No C 228 of 26.7.1997.

JUDGMENT OF THE COURT

of 21 September 1999

in Case C-307/97 (reference for a preliminary ruling from the Finanzgericht Köln): Compagnie de Saint-Gobain, Zweigniederlassung Deutschland v Finanzamt Aachen-Innenstadt (¹)

(Freedom of establishment — Taxes on companies' income — Tax concessions)

(1999/C 366/14)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-307/97: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Finanzgericht Köln, Germany, for a preliminary ruling in the proceedings pending before that court between Compagnie de Saint-Gobain, Zweigniederlassung Deutschland and Finanzamt Aachen-Innenstadt — on the interpretation of Article 52 of the EC Treaty (now, after amendment, Article 43 EC) and Article 58 of the EC Treaty (now Article 48 EC) — the Court, composed of: G.C. Rodríguez Iglesias, President, P.J.G. Kapteyn and G. Hirsch, Presidents of the Chambers, J.C. Moitinho de Almeida, C. Gulmann, J.L. Murray, D.A.O. Edward, H. Ragnemalm, L. Sevón, M. Wathelet (Rapporteur) and R. Schintgen, Judges; J. Mischo, Advocate General; L. Hewlett, Administrator, for the Registrar, has given a judgment on 21 September 1999, in which it has ruled:

Article 52 of the EC Treaty (now, after amendment, Article 43 EC) and Article 58 of the EC Treaty (now Article 48 EC) preclude the exclusion of a permanent establishment in Germany of a company limited by shares having its seat in another Member State from enjoyment, on the same conditions as those applicable to companies limited by shares having their seat in Germany, of tax concessions taking the form of:

- an exemption from corporation tax for dividends received from companies established in non-member countries (corporation tax relief for international groups), provided for by a treaty for the avoidance of double taxation concluded with a non-member country,
- the crediting, against German corporation tax, of the corporation tax levied in a State other than the Federal Republic of Germany on the profits of a subsidiary established there, provided for by German legislation, and
- an exemption from capital tax for shareholdings in companies established in non-member countries (capital tax relief for international groups), also provided for by German legislation.

(¹) OJ No C 318 of 18.10.1997.