JUDGMENT OF THE COURT

23 September 2003 *

In Case C-452/01,

REFERENCE to the Court under Article 234 EC by the Verwaltungsgerichtshof (Austria) for a preliminary ruling in the proceedings brought by

Margarethe Ospelt

and

Schlössle Weissenberg Familienstiftung,

on the interpretation of Article 6 of the EC Treaty (now, after amendment, Article 12 EC) and Articles 73b to 73d, 73f and 73g of the EC Treaty (now Articles 56 EC to 60 EC),

* Language of the case: German.

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet (Rapporteur), M. Wathelet, R. Schintgen and C.W.A. Timmermans (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, P. Jann, V. Skouris, F. Macken, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues and A. Rosas, Judges,

Advocate General: L.A. Geelhoed,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Ms Ospelt and Schlössle Weissenberg Familienstiftung, by C. Hopp, Rechtsanwalt,

— the Austrian Government, by H. Dossi, acting as Agent,

— the Government of the Principality of Liechtenstein, by A. Entner-Koch, acting as Agent,

— the Norwegian Government, by I. Holten, acting as Agent,

— the Commission of the European Communities, by G. Braun and M. Patakia, acting as Agents,

— the EFTA Surveillance Authority, by E. Wright and D. Sif Tynes, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of: Ms Ospelt and Schlössle Weissenberg Familienstiftung, represented by C. Hopp; the Austrian Government, represented by P. Kustor and H. Kraft, acting as Agents; the Norwegian Government, represented by I. Holten; the Commission, represented by G. Braun and M. Patakia; and the EFTA Surveillance Authority, represented by E. Wright and D. Sif Tynes, at the hearing on 7 January 2003,

after hearing the Opinion of the Advocate General at the sitting on 10 April 2003,

gives the following

Judgment

1 By order of 19 October 2001, received at the Court on 22 November 2001, the Verwaltungsgerichtshof referred to the Court for a preliminary ruling under Article 234 EC two questions on the interpretation of Article 6 of the EC Treaty (now, after amendment, Article 12 EC) and Articles 73b to 73d, 73f and 73g of the EC Treaty (now Articles 56 EC to 60 EC).

2 Those questions have been raised in the context of proceedings brought by Ms Ospelt and Schlössle Weissenberg Familienstiftung (hereinafter 'the Foundation') against a decision of the Grundverkehrslandeskommission des Landes Vorarlberg refusing to transfer to the Foundation land belonging to Ms Ospelt on the ground that the requirements for acquiring agricultural and forestry plots laid down by the laws of the *Land* of Vorarlberg (Austria) had not been fulfilled.

Legal background

Community law and the Agreement on the European Economic Area

3 According to the first paragraph of Article 6 of the Treaty:

'Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.'

4 Article 73b(1) of the Treaty requires that:

'Within the framework of the provisions set out in this chapter, all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited.'

5 Under Article 73c(1) of the Treaty:

'The provisions of Article 73b shall be without prejudice to the application to third countries of any restrictions which exist on 31 December 1993 under national or Community law adopted in respect of the movement of capital to or from third countries involving direct investment — including in real estate...'.

6 Article 40 of the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3, hereinafter 'the EEA Agreement') provides:

'Within the framework of the provisions of this agreement, there shall be no restrictions between the Contracting Parties on the movement of capital belonging to persons resident in EC Member States or EFTA States and no discrimination based on the nationality or on the place of residence of the parties or on the place where such capital is invested. Annex XII contains the provisions necessary to implement this article.'

7 The abovementioned Annex XII declares applicable to the European Economic Area ('the EEA') Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty (OJ 1988 L 178, p. 5). Annex I to that directive, which establishes the nomenclature in respect of movements of capital which still has the same indicative value for the purposes of defining the notion of capital movements (see Case C-222/97 *Trummer and Mayer* [1999] ECR I-1661, paragraph 21), states that that concept covers transactions by which non-residents make investments in real estate on national territory.

8 Article 6 of the EEA Agreement provides in particular that, in so far as they are identical in substance to corresponding rules of the Treaty, the provisions of that agreement 'shall, in their implementation and application, be interpreted in conformity with the relevant rulings of the Court of Justice of the European Communities given prior to the date of signature of this agreement'.

Austrian legislation

9 Under Paragraph VII of the Bundes-Verfassungsgesetznovelle (Law amending the Constitution) of 1974 (BGBl. 444), the *Länder* are authorised to introduce administrative controls on property transactions for the purpose of preserving, strengthening or creating, in the public interest, a viable agricultural community.

10 So far as concerns the *Land* of Vorarlberg, Paragraph 1 of the Vorarlberger Grundverkehrsgesetz (Vorarlberg Land Transfer Law) of 23 September 1993 (LGBl. 1993/61), as amended (LGBl. 1995/11, 1996/9, 1997/21 and 1997/85, hereinafter 'the VGVG'), provides:

'(1) This Law shall apply to transactions relating to:

(a) agricultural and forestry plots,

(b) building plots,

(c) plots to which foreigners acquire title.

...

(3) The purpose of this Law is to:

(a) preserve agricultural and forestry plots of family farming establishments in the interest of improving their structural circumstances in accordance with the natural factors prevailing in the *Land*,

...

(c) preserve the broadest possible, socially sustainable distribution of land ownership in accordance with the size of the *Land*, and

(d) place restrictions on the acquisition of land by foreigners who do not have the same status as Austrians under Community law.'

11 Paragraph 3(1) of the VGVG provides:

'Subject to Paragraph 2 and in so far as follows from the law of the European Union, the rules on the acquisition of land by foreigners shall not apply to:

...

(e) persons and companies for the purpose of direct investments, real property investments and other capital transactions.'

12 Paragraph 4(1) of the VGVG is worded as follows:

'The transfer of agricultural or forestry plots shall be subject to authorisation by the authority responsible for land transactions where it relates to one of the following rights:

(a) ownership,

(b) the right to build...,

(c) the right of use or right of usufruct,

(d) leasehold rights over agricultural holdings,

...'

13 Paragraph 5 of the VGVG provides:

'1. Acquisition of title shall be authorised only:

(a) in the case of agricultural plots, where it is consistent with the preservation of an effective agricultural community and the acquirer himself cultivates the plot as part of an agricultural establishment and also has his place of residence there or, where that is not the case, it is not contrary to the preservation and creation of an economically healthy, medium and small-scale agricultural estate,

(b) in the case of forestry plots, where it is not contrary to the interest of forestry in particular and to the general economic interest,

...

2. The conditions laid down in subparagraph (1) are not satisfied in particular where:

(a) the plot would be withdrawn from agricultural or forestry use without sufficient reason;

...

(c) it must be concluded that the plot is being acquired solely to form or extend a large estate or hunting areas;

(d) it must be concluded that cultivation by the acquirer himself is not certain in the long term or the acquirer does not have the specialist knowledge necessary to cultivate the plot himself;

(e) the favourable land ownership arrangement as a result of the restructuring of rural land holdings would be affected without compelling reason;

...'

14 Paragraph 11 of the VGVG provides a long list of transfers for which authorisation is not required, including between persons who are related by blood or by marriage or by persons inheriting as a result of testate succession or testamentary gift.

15 Under Paragraph 25 of the VGVG, where authorisation is refused, the transfer is retrospectively deprived of legal effects.

The main proceedings and the questions referred

16 Ms Ospelt, a national of the Principality of Liechtenstein, owns land measuring 43 532 m^2 on which she resides in Zwischenwasser, in the *Land* of Vorarlberg. That property includes a castle where Ms Ospelt resides. Most of the plots making up that property are agricultural plots which had been leased to farmers. Other plots are forested.

17 On 16 April 1998, the entire property was notarially authenticated with the purpose of transferring it to the Foundation, which is established in the Principality of Liechtenstein and whose first beneficiary is Ms Ospelt. The notarial act sought to prevent any division caused through inheritance of the family property. The Foundation stated its intention was to continue leasing the agricultural plots to the same farmers as before.

18 On 3 April 1998, an application was made to the Grundverkehrslandeskommission des Landes Vorarlberg for the authorisation required under Paragraph 4(1) of the VGVG ('the prior authorisation'). It was refused on the ground that the conditions for acquisition by foreigners had not been fulfilled.

19 Ms Ospelt and the Foundation appealed against that refusal to the Unabhängiger Verwaltungssenat (Austria) which, by a decision of 19 October 1998, also refused to grant prior authorisation on the ground that neither the Foundation

nor Ms Ospelt pursued an agricultural activity or intended to do so in the future and that such a transaction was contrary to the public-interest aims of the VGVG as regards preserving and creating viable medium and small-scale agricultural holdings. It took the view that that ground of refusal was applicable also where the land in question was not farmed by the person who had until then been the owner, as was the case in the main proceedings.

20 Ms Ospelt and the Foundation brought an action against that decision before the Verfassungsgerichtshof (Austria). By decision of 26 September 2000, it declined jurisdiction and remitted the case to the Verwaltungsgerichtshof.

21 In its order for reference, the Verwaltungsgerichtshof observed that the Court had held, in Case C-302/97 *Konle* [1999] ECR I-3099, which concerned building plots, that restrictions on the free movement of capital were permissible in the name of a land planning objective. It pointed out, first, however, that the Court has not yet determined whether the objectives pursued by a system of prior authorisation such as that at issue in the main proceedings, relating to agricultural and forestry plots and established in the interest of the agricultural sector, could justify restrictions on the free movement of capital. Secondly, it took the view that neither had the Court considered in *Konle*, cited above, whether such a system of prior authorisation, which had always been deemed necessary by the legislature of the *Land* of Vorarlberg and applied in a non-discriminatory manner, could be regarded as necessary having regard to the aforementioned objectives.

22 In those circumstances, the Verwaltungsgerichtshof decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

'(1) Are Article 12 EC (ex Article 6 of the EC Treaty) and Article 56 EC et seq. (ex Article 73b et seq. of the EC Treaty) to be interpreted as meaning that

rules whereby transactions in agricultural and forestry plots are subject to restrictions imposed by the administrative authorities in the public interest of preserving, strengthening or creating a viable agricultural community are also permitted in relation to Member States of the EEA as "third countries" under Article 56(1) EC... having regard to the fundamental freedoms guaranteed by an applicable law of the European Union, in particular the free movement of capital?

(2) In the event that the first question is answered in the affirmative, are Article 12 EC... and Article 56 EC et seq.... to be interpreted as meaning that the fact that the appellant must, in the case of transfers of agricultural and forestry plots, undergo an "authorisation procedure" even before the property right is entered in the land register, pursuant to the [VGVG], entails an infringement of Community law and of one of the appellant's fundamental freedoms guaranteed by the law of the European Union, which is also applicable to Member States of the EEA as "third countries" under Article 56(1) EC...?'

The first question

23 By its first question, the national court seeks to ascertain whether rules such as those laid down by the VGVG which make transactions relating to agricultural and forestry plots subject to administrative controls could, in the event that Articles 6, 73b to 73d, 73f and 73g of the Treaty do not preclude their application to such transactions as between nationals of Member States, also be accepted in respect of transactions between nationals of Member States and those of a third country under those articles. Given the facts of the dispute in the main

proceedings and of the wording of the questions referred, it would appear that the national court implicitly regards the Principality of Liechtenstein, which is a member of the European Free Trade Association ('EFTA'), as a third country for the purposes of Article 73b of the Treaty.

24 First, it should be borne in mind that, although Article 222 of the EC Treaty (now Article 295 EC) does not call into question the Member States' right to establish a system for the acquisition of immovable property which lays down measures specific to transactions relating to agricultural and forestry plots, such a system remains subject to the fundamental rules of Community law, including those of non-discrimination, freedom of establishment and free movement of capital (see, to that effect, Case 182/83 *Fearon* [1984] ECR 3677, paragraph 7, and *Konle*, cited above, paragraphs 7 and 22). In particular, the Court has held that the scope of the national measures governing the acquisition of immovable property should be assessed in the light of those provisions of the Treaty which relate to the movement of capital (see, to that effect, Joined Cases C-515/99, C-519/99 to C-524/99 and C-526/99 to C-540/99 *Reisch and Others* [2002] ECR I-2157, paragraphs 28 to 31).

25 Moreover, Article 40 of the EEA Agreement, to which the Republic of Austria, since 1 January 1994, and the Principality of Liechtenstein, since 1 May 1995, have been parties (Decision of the EEA Council No 1/95 of 10 March 1995 on the entry into force of the Agreement on the European Economic Area for the Principality of Liechtenstein, OJ 1995 L 86, p. 58) provides that, '[w]ithin the framework of the provisions of this agreement, there shall be no restrictions between the Contracting Parties on the movement of capital belonging to persons resident in EC Member States or EFTA States and no discrimination based on the nationality or on the place of residence of the parties or on the place where such capital is invested'.

26 Annex XII to the EEA Agreement, which contains the provisions necessary to implement Article 40, declares that Directive 88/361 and Annex I thereto are applicable to the EEA.

27 Article 40 of and Annex XII to the EEA Agreement are applicable to the dispute in the main proceedings which relates to a transaction between nationals of States party to that Agreement. The Court may give an interpretation of them where a reference is made by a court of a Member State with regard to the scope within that State of an agreement which forms an integral part of the Community legal system (see Case C-321/97 *Andersson and Wåkeräs-Andersson* [1999] ECR I-3551, paragraphs 26 to 31, and Case C-300/01 *Salzmann* [2003] ECR I-4899, paragraph 65).

28 However, it is apparent from those provisions that the rules laid down in them prohibiting restrictions on the movement of capital and discrimination, so far as concerns relations between the States party to the EEA Agreement, irrespective of whether they are members of the Community or members of EFTA, are identical to those under Community law with regard to relations between the Member States. National measures governing the acquisition of agricultural and forestry plots are therefore no more exempt from the abovementioned rules than under Community law.

29 Furthermore, one of the principal aims of the EEA Agreement is to provide for the fullest possible realisation of the free movement of goods, persons, services and capital within the whole European Economic Area, so that the internal market established within the European Union is extended to the EFTA States. From that angle, several provisions of the abovementioned Agreement are intended to ensure as uniform an interpretation as possible thereof throughout the EEA (see Opinion 1/92 [1992] ECR I-2821). It is for the Court, in that context, to ensure that the rules of the EEA Agreement which are identical in substance to those of the Treaty are interpreted uniformly within the Member States.

30 It would run counter to that objective as to uniformity of application of the rules relating to free movement of capital within the EEA for a State such as the Republic of Austria, which is a party to that Agreement, which entered into force

on 1 January 1994, to be able, after its accession to the European Union on 1 January 1995, to maintain legislation which restricts that freedom vis-à-vis another State party to that Agreement by basing itself on Article 73c of the Treaty.

31 Thus, since 1 May 1995, the date on which the EEA Agreement entered into force in respect of the Principality of Liechtenstein, and in the sectors covered thereby, Member States may no longer invoke Article 73c vis-à-vis the Principality of Liechtenstein. Consequently, contrary to the arguments advanced by the Austrian Government, it is not for the Court to examine, pursuant to that provision, whether the restrictions on the movement of capital between Austria and Liechtenstein as a consequence of the VGVG were already substantively in force on 31 December 1993 and thus whether they could be maintained by virtue of the same article.

32 Accordingly, the answer to the first question must be that rules such as those laid down by the VGVG making transactions relating to agricultural and forestry plots subject to administrative controls must, where a transaction is in issue between nationals of States party to the EEA Agreement, be assessed in the light of Article 40 of and Annex XII to the aforementioned Agreement, which are provisions possessing the same legal scope as that of Article 73b of the Treaty, which is identical in substance.

The second question

33 By its second question, the referring court asks whether Articles 6, 73b to 73d, 73f and 73g of the Treaty preclude a system of prior authorisation such as that established by the VGVG for transactions involving agricultural land.

34 Measures such as those in issue in the main proceedings which entail, by their very purpose, a restriction on the free movement of capital (see, to that effect, *Konle*, cited above, paragraph 39) may nevertheless be permitted provided that, first, they pursue in a non-discriminatory way an objective in the public interest and, secondly, they are appropriate for ensuring that the aim pursued is achieved and do not go beyond what is necessary for that purpose (see, to that effect, *Konle*, paragraph 40, and *Salzmann*, paragraph 42). Furthermore, where the granting of prior authorisation is concerned, such measures must be based on objective criteria which are known in advance and which allow all persons affected by a restrictive measure of that type to have a legal remedy available to them (see, to that effect, Case C-205/99 *Analir and Others* [2001] ECR I-1271, paragraph 38).

35 First, as regards the condition as to non-discrimination, it is clear from Paragraph 3 of the VGVG that the rules on the acquisition of land by foreigners do not apply, 'in so far as such is clearly required by the law of the European Union', to 'persons and companies carrying out... investments in immovable property and other transactions involving the free movement of capital'. Those provisions observe the requirement of equal treatment between Austrian acquirers of title and persons who are not of that nationality but who are resident in one of the Member States and exercise the freedoms guaranteed by the Treaty (see, to that effect, *Reisch and Others*, cited above, paragraph 34).

36 However, the abovementioned provisions refer explicitly neither to the EEA Agreement nor to the exercise of the free movement of capital by persons resident in States party to that Agreement. They thus appear to restrict treatment as nationals only to residents of Member States. It is therefore not certain that they can prevent discrimination against residents of EFTA States, which are parties to the EEA Agreement but are not members of the Community. In the absence of other evidence produced to the Court, it falls to the referring court to determine whether that legislation, in the light of the other provisions of Paragraph 3 and the VGVG as a whole, may, in that respect, be interpreted in a manner compatible with Article 40 of the EEA Agreement.

37 On the other hand, as regards the requirement as to residence laid down in Paragraph 5(1)(a) of the VGVG, it is not disputed that it was established within the framework of legislation concerning the ownership of agricultural land which is intended to achieve the specific objectives of preserving agricultural communities and viable farms. Contrary to the claims of Ms Ospelt and the Foundation, it does not make any distinction between its own nationals and nationals of other Member States of the Community or, more broadly, of States party to the EEA Agreement. It is therefore not, a priori, discriminatory in nature (see, to that effect, *Fearon*, cited above, paragraph 10).

38 Secondly, so far as concerns the condition as to the aims of the national measure in issue, there is no doubt that the VGVG pursues public-interest objectives which are such as to justify restrictions on the free movement of capital.

39 First, preserving agricultural communities, maintaining a distribution of land ownership which allows the development of viable farms and sympathetic management of green spaces and the countryside as well as encouraging a reasonable use of the available land by resisting pressure on land, and preventing natural disasters are social objectives.

40 Secondly, as the Austrian Government and the Commission maintain, those objectives are consistent with the objectives of the common agricultural policy which, according to Article 39(1)(b) of the EC Treaty (now Article 33(1)(b) EC), aims 'to ensure a fair standard of living for the agricultural community' in the working-out of which, according to Article 33(2)(a), account must be taken 'of the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions'.

41 Thirdly, so far as concerns the condition as to proportionality, it must be borne in mind that a system of prior authorisation may, in certain circumstances, be necessary and proportionate to the aims pursued, if the same objectives cannot be attained by less restrictive measures, in particular by a system of declarations (see, to that effect, Joined Cases C-163/94, C-165/94 and C-250/94 *Sanz de Lera and Others* [1995] ECR I-4821, paragraphs 23 to 28; *Konle*, cited above, paragraph 44; and Case C-483/99 *Commission* v *France* [2002] ECR I-4781, paragraph 46).

42 That is the case where national authorities seek to control the development of agricultural land ownership by laying down objectives such as those in the VGVG.

43 Indeed, the objective of sustaining and developing viable agriculture on the basis of social and land planning considerations entails keeping land intended for agriculture in such use and continuing to make use of it under appropriate conditions. In that context, prior supervision by the competent authorities does not merely reflect a need for information but is intended to ensure that the transfer of agricultural land will not lead to their ceasing to be used as intended or to a use which might be incompatible with their long-term agricultural use.

44 Any supervision by national authorities which was subsequent to transfer of such land would not provide the same guarantee. It could not prevent a transfer which ran counter to that function of continued agricultural use, and would thus not be appropriate to the objective. Furthermore, action taken a posteriori, such as measures to annul the transfer, sanctions or evictions, could only be decided by the courts and would lead to delays inconsistent with the requirements of continuity of use and sound land management. Legal certainty, which is of fundamental importance for any system of land transfer, would thus be undermined.

45 Thus, unlike supervision measures aimed at preventing construction of secondary residences after the transfer of building plots, which may be subsequent to the transaction without detracting from that objective (see, to that effect, *Reisch and Others*, cited above, paragraphs 37 to 39), national provisions such as the VGVG can achieve their objectives only if the agricultural use for which the plots were intended is not irretrievably impaired. In those circumstances, the very principle underlying a system of prior authorisation cannot be disputed. The Court has in any event previously held that such a system in connection with the acquisition of property ownership is not necessarily contrary to Community law (see *Konle*, cited above, paragraph 45).

46 None the less, the rules and the substantive conditions laid down by the prior authorisation mechanism chosen must not go beyond what is necessary in order to achieve the objective pursued.

47 One of the conditions laid down by the VGVG does not fully meet those requirements.

48 Although the VGVG is based on criteria which enable the investors concerned to be aware of the specific, objective circumstances in which their application will be granted (see, to that effect, *Commission* v *France*, cited above, paragraph 50), Paragraph 5(1)(a) thereof subjects the acquisition of agricultural land to a restrictive condition which is not in every case necessary with regard to the objectives which it pursues.

49 In the main proceedings, the transaction between Ms Ospelt and the Foundation was rejected, pursuant to Paragraph 5(1)(a) of the VGVG, on the ground that the Foundation did not pursue an agricultural activity, that furthermore it did not

have the intention of so doing and that acquisition of agricultural land in order to lease it again to farmers was contrary to the objective of the VGVG aimed at ensuring that acquirers of agricultural land should be farmers themselves. The Unabhängiger Verwaltungssenat stated that those grounds were also applicable where the land concerned was farmed prior to the transaction by persons other than the owner, as is the case in the main proceedings. In making such a finding, the competent authority appears to have based itself on the fact that the condition laid down in Paragraph 5(1)(a) of the VGVG, according to which the acquirer must himself farm the land as part of a holding in which he is moreover resident, was not fulfilled.

50 However, if the national authorities were to interpret the VGVG as meaning that the grant of the authorisation prior to the transfer of real property is subject, in all cases, to observance of that condition, it would go beyond what is necessary in order to achieve the public-interest objectives which it pursues and should, to that extent, be regarded as incompatible with the free movement of capital.

51 Thus, where, in a case such as that in the main proceedings, the land concerned by the transfer is, at the moment of sale, farmed by a tenant farmer rather than the landowner, such a condition precludes a transfer to a new owner who would additionally not farm the property and who would not be resident on the land but who has undertaken to continue to have the land farmed by the same tenant. By reserving the possibility of acquiring and farming property to farmers who have the resources to own the land concerned, that condition thus reduces the possibility of leasing the land to farmers who do not have such resources. It has the further effect of precluding legal persons, including those whose object is farming, from acquiring farmland. It therefore constitutes an obstacle to planned transactions which do not in themselves affect the agricultural use and the continued farming of the land by farmers or legal persons such as farming associations.

52 Moreover, as the Government of the Principality of Liechtenstein points out, other measures which are less restrictive of the free movement of capital could contribute towards achievement of the same objective of maintaining a viable farming community. The transfer of agricultural land to a legal person could, for instance, be made subject to particular obligations, such as that it be let on a long lease. Mechanisms could also be put in place giving a right of first refusal to tenants which would make it possible, where the latter did not acquire the property, for title to be acquired by non-farming owners who would undertake to keep the land in agricultural use.

53 However, Paragraph 5(1)(a) of the VGVG provides that acquisition may be permitted, even where the condition referred to in paragraphs 48 to 52 of the present judgment is not met, when such acquisition 'is not contrary to the preservation and creation of an economically healthy, medium and small-scale agricultural estate'. If, in view of that provision, the national authorities were to interpret the VGVG as meaning that prior authorisation may be granted, depending on the circumstances, to persons who are not farmers resident on the land concerned but who can give the necessary assurances that the abovementioned land will be kept in agricultural use, the VGVG would not fetter the free movement of capital beyond what is necessary in order to achieve its objectives.

54 The answer to the second question must therefore be that Articles 73b to 73d, 73f and 73g of the Treaty do not preclude the acquisition of agricultural land being made subject to the grant of prior authorisation such as that established by the VGVG. However, they do preclude such authorisation being refused in every case in which the acquirer does not himself farm the land concerned as part of a holding and on which he is not resident.

Costs

55 The costs incurred by the Austrian Government, the Principality of Liechtenstein, the Norwegian Government, the Commission and the EFTA Surveillance Authority, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Verwaltungsgerichtshof by order of 19 October 2001, hereby rules:

1. Rules such as those of the Vorarlberger Grundverkehrsgesetz (Vorarlberg Land Transfer Law) of 23 September 1993, as amended, making transactions relating to agricultural and forestry plots subject to administrative controls must, where a transaction is in issue between nationals of States party to the

Agreement on the European Economic Area of 2 May 1992, be assessed in the light of Article 40 of and Annex XII to the aforementioned Agreement, which are provisions possessing the same legal scope as that of Article 73b of the EC Treaty (now Article 56 EC), which is identical in substance.

2. **Article 73b of the Treaty in conjunction with Articles 73c, 73d, 73f and 73g of the EC Treaty (now Articles 57 EC to 60 EC) do not preclude the acquisition of agricultural land being made subject to the grant of prior authorisation such as that established by the VGVG. However, they do preclude such authorisation being refused in every case in which the acquirer does not himself farm the land concerned as part of a holding and on which he is not resident.**

Rodríguez Iglesias	Puissochet	Wathelet
Schintgen	Timmermans	Gulmann
Edward	La Pergola	Jann
Skouris	Macken	Colneric
von Bahr	Cunha Rodrigues	Rosas

Delivered in open court in Luxembourg on 23 September 2003.

R. Grass — Registrar

G.C. Rodríguez Iglesias — President