

## Opinion of Advocate General Bot delivered on 28 June 2007

### Commission of the European Communities v Federal Republic of Germany

#### Failure of a Member State to fulfil obligations - Articles 18 EC, 39 EC and 43 EC - National legislation - Conditions for the grant of a subsidy for the construction or purchase of a dwelling for personal occupation - Dwelling required to be situated in the territory of the Member State concerned

#### Case C-152/05

*European Court reports 2008 Page I-00039*

1. These infringement proceedings lead me to examine whether a German law on a subsidy for real property constitutes an obstacle to freedom of movement of persons, to freedom of movement for workers and to freedom of establishment, by making receipt of this subsidy subject to the condition that the subsidised property should be situated in Germany.

2. The question also arises whether the need to ensure the existence of sufficient housing stock in Germany may be regarded as an overriding reason in the public interest and whether the measure in question may be justified on that ground.

3. Having first explained that Article 18 EC does not apply to the situations at issue in this case, I shall propose that the Court should declare that the Federal Republic of Germany has failed to fulfil its obligations under Articles 39 EC and 43 EC.

#### I – Legal background

##### A – Community law

4. Since the Maastricht Treaty came into force, Article 18 EC has given every citizen of the Union the right to move and reside freely in the territory of the Member States.

5. According to settled case-law, Article 18 EC finds specific expression in Article 39 EC with regard to freedom of movement for workers and in Article 43 EC with regard to freedom of establishment. (2)

6. Under Article 39 EC, workers have the right to move freely within the Community. Under Article 39(2), freedom of movement 'shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment'.

7. In this regard, I should point out that 'other conditions of work and employment' extend to a broad range of advantages, even those not directly linked to employment but granted to people who have the status of worker. (3) Among those advantages not directly linked to employment, the Court has held in general terms that any restriction placed not only on the right of access to housing but also on the various facilities granted to nationals in order to alleviate the financial burden must be regarded as an obstacle to the pursuit of the occupation itself. (4)

8. Similarly, the first subparagraph of Article 43 EC prohibits such restrictions of the freedom of establishment of nationals of one Member State in the territory of another Member State.

##### B – National law

9. In Germany, under Paragraph 1 of the Eigenheimzulagengesetz (Law on subsidies for owner-occupied dwellings (5)), persons liable to unlimited German income tax for the purposes of the Einkommensteuergesetz (Law on income tax (6)), are entitled to a property subsidy in order to purchase or build a dwelling.

10. Under Paragraph 1 of the EStG, the following are considered to be liable to unlimited German income tax:

- persons who have their domicile or habitual residence in Germany,
- German nationals who do not have either their domicile or habitual residence in Germany but work for a legal person governed by public law,
- at their own request, persons who, although they have neither their domicile nor habitual residence in Germany, receive income arising in Germany, on condition that at least 90% of their income during the calendar year is subject to German income tax or who receive income of no more than EUR 6 136 per calendar year not subject to German tax.

11. In order to attract the home ownership subsidy, the subsidised property must be situated in Germany and must be used by the owner for his own occupation. Occupation of the subsidised property free of charge by a member of the family is considered to be use by the owners for their own occupation.

12. Under Paragraph 2 of the law on the real property subsidy, immovable property used as a holiday home or a second home does not give rise to entitlement to the subsidy.

## II – The pre-litigation procedure

13. In its letter of formal notice of 4 April 2000, the Commission of the European Communities informed the Federal Republic of Germany of its doubts about the compatibility with Community law of the law on the property subsidy. The Commission takes the view that the condition requiring the subsidised property to be situated in Germany is contrary to Articles 18 EC, 39 EC and 43 EC, since a person liable to unlimited German income tax and permanently resident abroad could not qualify for the subsidy for the purpose of purchasing a property abroad.

14. The Federal Republic of Germany, in its letter of reply dated 30 May 2000, disputes the Commission's contentions. It considers that the law on the property subsidy is not discriminatory, since nationals of other Member States of the Union may also be subject to unlimited German income tax and thus qualify for the grant in order to acquire a property in Germany.

15. The Federal Republic of Germany further submits that the extension of the subsidy to properties situated outside Germany would be contrary to the objective of this subsidy, which is to guarantee the existence of sufficient housing stock in Germany in the face of growing housing need.

16. Not persuaded by the answer given by the Federal Republic of Germany, on 16 December 2003 the Commission addressed to the latter a reasoned opinion in which it repeated its claims. According to the Commission, the law on the property subsidy may have the effect of preventing employed or self-employed workers working in Germany from going to live on the other side of the border.

17. Moreover, the Commission takes the view that the objective put forward by the Federal Republic of Germany to justify restricting the grant of the subsidy is not valid since, according to the Commission, pressure on the German housing market would be reduced if a person working in Germany were to become an owner-occupier abroad.

18. The Federal Republic of Germany, in a letter of 17 February 2004, maintained its point of view that limiting the property subsidy to immovable property situated in Germany is not contrary to Articles 18 EC, 39 EC and 43 EC.

19. Likewise, the Federal Republic of Germany continues to maintain that the limitation contained in the law on the property subsidy responds to the legitimate objective of protecting the German property market.

20. The Commission, being of the opinion that this reply from the Federal Republic of Germany did nothing to support the conclusion that the latter had complied with its obligations under Articles 18 EC, 39 EC and 43 EC, decided to bring this action.

## III – The action

21. In support of its action, the Commission puts forward the complaint that it is impossible for a person liable to unlimited German income tax and residing abroad to receive the property subsidy for the purchase of a property situated in any Member State other than Germany.

22. On the basis of that complaint, the Commission claims that the Court should:

- declare that by excluding, in the first sentence of Paragraph 2(1) of the law on the property subsidy, properties situated in other Member States from eligibility for the property subsidy granted to persons liable to unlimited German income tax, the Federal Republic of Germany has failed to fulfil its obligations under Articles 18 EC, 39 EC and 43 EC;
- order the Federal Republic of Germany to pay the costs.

23. The Federal Republic of Germany contends that the Court should dismiss the action and order the Commission to pay the costs.

### A – Main arguments of the parties

24. I note that the Commission maintains that, by limiting the grant of the property subsidy to properties situated in Germany, German law operates to the detriment of persons liable to unlimited German income tax and permanently resident outside Germany.

25. Three categories of people are thus unjustly excluded from eligibility for the subsidy. These are people, permanently resident abroad, who are employed and paid by a legal person governed by German public law and are subject to limited taxation in their country of residence; frontier workers, at least 90% of whose incomes are subject to German income tax or whose incomes received abroad are no more than EUR 6 136 per calendar year; and, finally, German nationals who are officials or employees of the European Communities with their domicile or habitual residence abroad.

26. The Federal Republic of Germany disputes the complaint.

27. It considers, first of all, that the action is inadmissible. In its opinion, the Commission has extended the subject-matter of the proceedings to the situation of workers of foreign nationality, although in its letter of formal notice, its complaint was limited to the exclusion from eligibility for the subsidy solely of people of German nationality. The Federal Republic of Germany relies on paragraph 3 of this letter, in which the Commission refers to the 'German taxpayer'. (7)

28. In addition, the Federal Republic of Germany maintains that the factual situations mentioned by the Commission are not covered by Community law, at the very least for frontier workers, and that the principles set out by the Court of Justice in *Werner* (8) apply.

29. Next, it acknowledges that the Member State of origin is obliged to observe the principle of freedom of movement for workers in relation to its own nationals. However, it considers that this principle applies only to restrictions that are capable of limiting access to employment. *Bosman* (9) and *Graf* (10) show that only an obstacle affecting the access of workers to the employment market constitutes an obstacle to freedom of movement for workers.

30. In this case, the Federal Republic of Germany takes the view that the property subsidy has no influence on the access of workers to the labour market of another Member State.

31. It also maintains that the law on the property subsidy does not operate to the greater detriment of migrant workers in particular. Although it is true that the subsidy is granted only to persons liable to unlimited German income tax who acquire a property in Germany, the Federal Republic of Germany considers that the existence of adverse treatment cannot be deduced from this merely because, naturally, most persons liable to unlimited German income tax reside in Germany.

32. Further, the Federal Republic of Germany considers that there is no discrimination on grounds of nationality, since migrant workers liable to unlimited German income tax are entitled to the subsidy for a property situated in Germany. However, whether German nationals or migrant workers are involved, a property situated abroad cannot be subsidised. Thus, according to the Federal Republic of Germany, the nationality of the person subject to taxation matters little: the conditions for obtaining this grant are identical, whether the person is a migrant worker or a German national.

33. In any event, the Federal Republic of Germany considers that, if the Court were to accept that there is a breach of Articles 18 EC, 39 EC and 43 EC, the limitation of the property subsidy would be justified by an overriding reason relating to the public interest.

34. The objective of such a grant is to promote house building in Germany. According to the Federal Republic of Germany, extending the grant of the subsidy to properties situated in another Member State would in effect fail to have regard to that objective.

35. Further, the Federal Republic of Germany alone is competent to guarantee an appropriate supply of housing in Germany, since housing policy is an unharmonised field.

## **B – Assessment**

### **1. Admissibility**

36. The Federal Republic of Germany asserts that the Commission has, in this action, extended the subject-matter of the proceedings. For this, it refers to the letter of formal notice, in which the Commission's subject is the situation of the 'German taxpayer', (11) whereas the complaint has now been extended to the exclusion of people of foreign nationality from eligibility for the property subsidy.

37. In that regard, it is important to note that, according to settled case-law, the purpose of the pre-litigation procedure is to give the Member State concerned an opportunity to comply with its obligations under Community law or to avail itself of its right to defend itself against the complaints made by the Commission. (12) More specifically, the purpose of the letter of formal notice in the pre-litigation procedure is to delimit the subject-matter of the dispute and to indicate to the Member State, which is invited to submit its observations, the factors enabling it to prepare its defence. (13)

38. In this case, although the Commission used the expression 'German taxpayer' in its letter of formal notice, the fact remains that it clearly referred to persons taxable in Germany under Paragraph 1(2) and (3) of the EstG. (14) Under this paragraph, persons liable to unlimited German income tax may equally well be of German or of foreign nationality.

39. Further, it is also apparent from the operative part of the reasoned opinion that the Commission criticises the Federal Republic of Germany for restricting the grant of the property subsidy to persons liable to unlimited German income tax who acquire a property in Germany.

40. I think that, as the Commission has rightly stated, the use of the expression 'German taxpayer' was intended to designate all persons subject to unlimited German income tax, whatever their nationality.

41. Therefore, the Federal Republic of Germany was properly able to submit its grounds of defence against the complaint.

42. Consequently, I consider the action to be admissible.

### **2. The complaint deriving from the breach of Articles 18 EC, 39 EC and 43 EC**

43. A preliminary point to be noted here is that on 11 January 2006 the Federal Republic of Germany mentioned the entry into force of the Law abolishing the subsidy for owner-occupied dwellings (Gesetz zur Abschaffung der Eigenheimzulage) of 22 December 2005.

44. It is, however, to be borne in mind that it is settled case-law that the question of whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in that Member State at the end of the period laid down in the reasoned opinion. (15)

45. In this case, it is apparent from the reasoned opinion that the period prescribed for the Federal Republic of Germany to comply with Community law expired on 16 February 2004.

46. Consequently, the amendment has no relevance to this action.

47. It must now be determined whether the complaint put forward by the Commission is well founded.

48. By this complaint, the Commission criticises the Federal Republic of Germany for having failed to comply with its obligations under Articles 18 EC, 39 EC and 43 EC by excluding non-residents liable to unlimited German income tax from eligibility for the property subsidy.

49. I note that, according to settled case-law, Article 18 EC, which sets out in general terms the right of every citizen of the Union to move and reside freely within the territory of the Member States, finds specific expression in Article 39 EC with regard to freedom of movement for workers and in Article 43 EC with regard to freedom of establishment. (16)

50. That is why the Court is to examine first the compatibility of the national rule in question with these two provisions, and it is only if these more particular provisions do not apply that it will go on to examine the compatibility of that national rule with citizens' general freedom of movement.

51. Therefore the merit of the complaint should first of all be examined in the light of Articles 39 EC and 43 EC.

52. First of all, as the Commission rightly points out, the decisive factor conferring entitlement to the property subsidy is unlimited liability to German income tax. Eligibility for the property subsidy therefore concerns only taxpayers liable to German income tax.

53. Although direct taxation falls within their competence, the Member States must none the less exercise that competence consistently with Community law. (17) Therefore the Member States, in the exercise of their competence, must not contravene the fundamental freedoms guaranteed by the EC Treaty, such as freedom of movement for workers and freedom of establishment.

54. In this regard, according to the Court's settled case-law, the equal treatment rule enshrined in both Article 39 EC and Article 43 EC prohibits not only overt discrimination on grounds of nationality but also all covert forms of discrimination which, by the application of other distinguishing criteria, lead in fact to the same result. (18)

55. Accordingly, conditions imposed by national law must be regarded as indirectly discriminatory where, although applicable irrespective of nationality, they affect essentially migrant workers or the great majority of those affected are migrant workers, where they are applicable without distinction but can more easily be satisfied by national workers than by migrant workers or where there is a risk that they may operate to the particular detriment of the latter. (19)

56. The same applies to national provisions which prevent or deter a national of a Member State from leaving his country of origin in order to exercise his right to freedom of movement and freedom of establishment. (20)

57. However, discrimination can arise only through the application of different rules to comparable situations or the application of the same rule to different situations. (21)

58. In relation to direct taxes, the Court has held that the situations of non-residents and of residents are generally not comparable, because the income received in the territory of a State by a non-resident is in most cases only a part of his total income, which is concentrated at his place of residence, and because a non-resident's personal ability to pay tax, determined by reference to his aggregate income and his personal and family circumstances, is easier to assess at the place where his personal and financial interests are centred, which in general is the place where he has his usual abode. (22)

59. The position is different, however, when a non-resident taxpayer, whether employed or self-employed, receives all or almost all his income in the State where he works. (23)

60. In that case, the non-resident is objectively in the same situation in so far as concerns income tax as a resident of that State who does the same work there. Both are taxed in that State alone and their taxable income is the same. (24)

61. In the present case, under Paragraph 1 of the EStG and Article 14 of the Protocol on the Privileges and Immunities of the European Communities, (25) the income of non-residents, exactly like that of residents, is liable to unlimited German taxation.

62. Therefore, from the point of view of the factor giving rise to the property subsidy, namely unlimited liability to German income tax, German residents and non-residents are in a comparable situation.

63. However, the three categories of non-residents are treated differently from residents in Germany.

64. Although they are liable to unlimited German income tax, persons permanently resident abroad and who are employed by a legal person governed by German public law, frontier workers and German officials or employees of the European Communities resident abroad are denied eligibility for the subsidy because, under the law on the property subsidy, the subsidised property must be situated in Germany.

65. Here, therefore, we are faced with differentiated treatment that disadvantages non-residents liable to unlimited German income tax.

66. This differentiated treatment could deter those non-residents from making use of the freedoms conferred on them by the Treaty.

67. That is the case, firstly, for non-residents employed by a legal person governed by German public law. These persons, because they reside and work abroad, are denied a financial advantage, namely, the property subsidy. The denial of this advantage has the effect of deterring them from leaving their State of origin, Germany, to work in another Member State which, in the light of the aforementioned case-law, constitutes an obstacle to freedom of movement for workers.

68. Secondly, the Commission considers that the law on the property subsidy also constitutes discrimination against frontier workers.

69. In this regard, the Federal Republic of Germany considers that the situation of non-resident German nationals working in Germany and liable to unlimited German income tax is not covered by Articles 39 EC and 43 EC.

70. Even though in *Werner* the Court ruled that Article 52 of the Treaty did not apply to a situation in which a national of a Member State who works in that Member State and receives all or almost all his income there has his residence in another Member State, it abandoned that interpretation in *Ritter-Coulais*. (26)

71. In that judgment, the Court accepted that the situation of a couple, both German nationals, who were working in Germany and were subject to taxation in that State but were residing in another Member State, was covered by Article 48 of the EEC Treaty (after amendment, Article 48 of the EC Treaty, now Article 39 EC). It took the view that 'any Community national who, irrespective of his place of residence and his nationality, has exercised the right to freedom of movement for workers and who has been employed in a Member State other than that of residence falls within the scope of Article 48 EC'. (27)

72. In its judgment in *N*, (28) the Court reached the same decision in respect of freedom of establishment.

73. Consequently, I take the view that the situation of German frontier workers non-resident in Germany who work in that Member State and are liable to German income tax is also covered by Articles 39 EC and 43 EC.

74. Those frontier workers, even though they are liable to unlimited German income tax and thus contribute to German tax revenues, are denied a form of financial support funded from those revenues solely because they reside on the other side of the border.

75. I think that this financial disadvantage may have the effect of deterring these frontier workers from establishing their main residence in a Member State other than Germany.

**76.** Yet, for an employed or self-employed worker, the right to reside in another Member State is the corollary of the right, enshrined in Article 18 EC, for any citizen of the Union to stay and reside in the Member States.

**77.** I do not see why a non-working person, whose situation is covered by Article 18 EC, qualifies for this right to stay and reside in the Member States, while a worker is denied it because of his status. As we have seen, all the rights arising from Article 18 EC find specific expression in Articles 39 EC and 43 EC.

**78.** Any exclusion of a worker from a financial advantage that he derives from his status as worker, like the property subsidy, which deters him from residing wherever in the Community he wishes to must be regarded as an obstacle to Articles 39 EC and 43 EC. (29)

**79.** Finally, the same holds true for German nationals who are agents or officials of the European Communities.

**80.** These people are denied a financial advantage because they reside abroad. The conditions imposed by the law on the property subsidy therefore have the effect of deterring agents or officials of the European Communities from leaving their State of origin to work in another Member State, which also constitutes an obstacle to freedom of movement for workers.

**81.** The application of the law on the property subsidy therefore clearly amounts to an exclusion of non-residents liable to unlimited German income tax from eligibility for a financial advantage and constitutes indirect discrimination, as a rule contrary to Articles 39 EC and 43 EC. There is therefore no need to examine this law's compatibility with Article 18 EC.

**82.** However, is this discrimination justified by an overriding reason in the public interest?

### **3. The justification for the discriminatory measure**

**83.** The Federal Republic of Germany considers that, if the Court were to take the view that the law on the property subsidy constitutes an obstacle to freedom of movement contrary to Articles 39 EC and 43 EC, this obstacle would be justified by an overriding reason in the public interest.

**84.** It takes the view that the actual objective of this law, namely the development of sufficient housing stock in Germany by promoting construction and purchase of housing, justifies the fact that the property subsidy is paid only to persons who are residents. The Federal Republic of Germany considers that in this way a sufficient supply of housing is guaranteed.

**85.** According to well-established case-law, national measures which are liable to hinder or make less attractive the exercise of fundamental freedoms guaranteed by the Treaty may nevertheless be allowed if they pursue an objective in the public interest, are appropriate to ensuring the attainment of that objective and do not go beyond what is necessary to attain the objective pursued. (30)

**86.** First, like the Federal Republic of Germany and the Commission, I am of the opinion that the desire to increase the German housing stock may be viewed as a public interest requirement.

**87.** Moreover, I think in actual fact that the housing issue concerns all the Member States. It is at the heart of all national and Community policies. The European Parliament, in a recent report of the Committee on Regional Development, takes the view that the right to adequate housing at an affordable price is a fundamental right. (31) The Parliament also points out that this is a right recognised in several international charters and constitutions of Member States.

**88.** Second, I also believe that the law on the property subsidy is an appropriate way of ensuring that the objective pursued is achieved.

**89.** There is no doubt that encouraging house-building by the grant of a subsidy contributes to the development of the housing stock in Germany and is thus directed at ensuring a sufficient supply of housing.

**90.** I think that the subsidy for the purchase of a dwelling also leads indirectly to construction. Persons entitled to the subsidy and wishing to purchase a dwelling increase demand and therefore encourage the construction of property for letting, meeting that demand, which they will subsequently be able to acquire.

**91.** However, third, with regard to the proportionality of the law on the property subsidy, my opinion is that the Federal Republic of Germany could have achieved the intended objective by a less restrictive measure.

**92.** In my view, making the subsidy available to the three categories of non-residents referred to by the Commission would not compromise the objective of increasing the German housing stock.

**93.** Quite the opposite – the purchase or construction of a dwelling in another Member State by these non-residents and by frontier workers in particular contributes to reducing housing demand in Germany. Those non-residents would therefore not encumber the German property market and would not exert pressure on the strong demand that already exists.

**94.** Consequently, the objective of the law on the property subsidy, which is to ensure sufficient housing stock in Germany, may be achieved by measures that are less disadvantageous than the exclusion of non-residents from eligibility for the grant.

**95.** In the light of all those considerations, I consider that the complaint is well founded.

**96.** Accordingly, under the first subparagraph of Article 69(2) of the Rules of Procedure, the Federal Republic of Germany should be ordered to pay the costs.

### **IV – Conclusion**

**97.** Having regard to the above considerations, I propose that the Court should:

- (1) declare that by excluding, in the first sentence of Paragraph 2(1) of the law on the property subsidy, properties situated in other Member States from eligibility for the property subsidy granted to persons liable to unlimited German income tax, the Federal Republic of Germany has failed to fulfil its obligations under Articles 18, 39 and 43;
- (2) order the Federal Republic of Germany to pay the costs.

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- [1](#) – Original language: French.
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- [2](#) – See inter alia Case C-193/94 *Skanavi and Chryssanthakopoulos* [1996] ECR I-929, paragraph 22; Case C-100/01 *Oteiza Olazabal* [2002] ECR I-10981, paragraph 26; and Case C-345/05 *Commission v Portugal* [2006], ECR I-10633, paragraph 13).
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- [3](#) – The Court has, inter alia, in the light of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475), defined the advantages granted to workers as those which ‘are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory and the extension of which to workers who are nationals of other Member States therefore seems suitable to facilitate their mobility within the Community’ (Case 207/78 *Even and ONPTS* [1979] ECR 2019, paragraph 22).
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- [4](#) – See Case 63/86 *Commission v Italy* [1988] ECR 29, paragraphs 16 and 17.
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- [5](#) – BGBl. 1997 I, p. 734, as amended by the ancillary budget law (Haushaltsbegleitgesetz) 2004 [BGBl. 2003 I, p. 3076], or ‘the law on the property subsidy’.
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- [6](#) – BGBl. 2002 I, p. 4210, or ‘the EStG’.
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- [7](#) – See Annex I to the application.
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- [8](#) – Case C-112/91 *Werner* [1993] ECR I-429, paragraph 17. In this judgment, the Court took the view that Article 52 of the EEC Treaty (after amendment, Article 52 of the EC Treaty, now Article 43 EC) does not preclude a Member State from imposing a heavier tax burden on its non-resident nationals who carry on their professional activities within its territory and earn all or almost all of their income there.
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- [9](#) – Case C-415/93 *Bosman* [1995] ECR I-4291, paragraph 103.
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- [10](#) – Case C-190/98 *Graf* [2000] ECR I-493, paragraph 23.
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- [11](#) – See footnote on page 7.
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- [12](#) – See Case C-371/04 *Commission v Italy* [2006] ECR I-10257, paragraph 9 and the case-law cited.
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- [13](#) – *Idem*.
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- [14](#) – See Annex I to the application.
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- [15](#) – See inter alia Case C-43/05 *Commission v Germany* [2006] ECR I-15, paragraph 9 and the case-law cited.
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- [16](#) – See paragraph 5 of this Opinion.
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- [17](#) – See, inter alia, Case-209/01 *Schilling and Fleck-Schilling* [2003] ECR I-13389, paragraph 22.
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- [18](#) – See, inter alia, Case C-237/94 *O’Flynn* [1996] ECR I-2617, paragraph 17; Case C-208/05 *ITC* [2007] ECR I-181, paragraph 21, with regard to freedom of movement for workers; and Case C-383/05 *Talotta* [2007] ECR I-2555, paragraph 17, with regard to freedom of establishment.
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- [19](#) – *O’Flynn*, paragraph 18 and the case-law cited.
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- [20](#) – Case C-385/00 *De Groot* [2002] ECR I-11819, paragraphs 78 and 79, with regard to freedom of movement for workers, and Case C-9/02 *De Lasteyrie du Saillant* [2004] ECR I-2409, paragraph 42, with regard to freedom of establishment.
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- [21](#) – Case C-329/05 *Meindl* [2007] ECR I-1107, paragraph 22.
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- [22](#) – Case C-279/93 *Schumacker* [1995] ECR I-225, paragraphs 31 to 33, and Case C-234/01 *Gerritse* [2003] ECR I-5933, paragraph 43.
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- [23](#) – *Schumacker*, paragraph 36.
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- [24](#) – Case C-80/94 *Wielockx* [1995] ECR I-2493, paragraph 20.
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- [25](#) – Protocol of 8 April 1965 (OJ 1967 L 152, p. 13).
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- [26](#) – Case C-152/03 *Ritter-Coulais* [2006] ECR I-1711.
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- [27](#) – *Ritter-Coulais*, paragraphs 31 and 32.

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[28](#) – Case C-470/04 *N* [2006] ECR I-7409, paragraph 28.

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[29](#) – See footnote on page 4.

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[30](#) – Case C-104/06 *Commission v Sweden* [2007] ECR I-671, paragraph 25 and the case-law cited.

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[31](#) – See Report on Housing and Regional Policy of 28 March 2007 (A6-0090/2007).