



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-76/15  
Paul Vervloet and Others

## **In Advocate General Kokott's view, Belgium's guarantee for ARCO financial cooperatives infringes EU law**

*Belgium should not have incorporated financial cooperatives into the Belgian deposit-guarantee scheme*

In her Opinion delivered today, Juliane Kokott, Advocate General at the Court of Justice of the European Union, concludes that, by admitting the ARCO financial cooperatives into the Belgian deposit-guarantee scheme, Belgium infringed EU law. In so far as the procedure at issue has to be examined at the request of the Belgian Constitutional Court, the European Commission, in her view, justifiably considered this to amount to prohibited State aid.<sup>1</sup> However, while the EU directive on deposit-guarantee schemes<sup>2</sup> is in principle not opposed to that guarantee, it also does not require it.

In November 2011, the Belgian State granted the approximately 800 000 private shareholders of the three ARCO financial cooperatives Arcopar, Arcofin and Arcoplus the same protection as that provided for savings deposits or certain kinds of life insurance, that is to say, up to €100 000 per investor. The ARCO group, one of the principal shareholders of the Belgian-French Dexia Bank, was in this way protected against the imminent flight of its private investors from the three financial cooperatives. At the same time, ARCO was enabled to participate in the recapitalisation of Dexia. The latter had got into serious difficulty as a result of the worldwide financial crisis which had broken out in 2008. Since the end of 2011, the three financial cooperatives have gone into liquidation.

In 2014, the Commission classified that 'ARCO guarantee' as State aid which was unlawful (because it had not been notified in time) and incompatible with the internal market. It therefore ordered Belgium to recover the associated advantages and to make no payments under the guarantee. The three financial cooperatives and Belgium brought actions before the Court of Justice against that Commission decision.<sup>3</sup>

Those proceedings are, however, currently suspended until the Court has answered the questions submitted by the Belgian Constitutional Court in the present proceedings. In actions brought by private and institutional investors not falling under the ARCO guarantee, the Belgian Constitutional Court has been called on to examine the constitutionality of the Belgian National Bank Law in so far as that legislation provides for such guarantees for shares in certain recognised financial cooperatives. Before it does so, the Belgian Constitutional Court requests the Court to rule on whether the guarantee scheme infringes EU law.

Advocate General Kokott proposes that the Court should answer the Belgian Constitutional Court to the effect that neither the EU Directive on deposit-guarantee schemes nor the general EU-law

<sup>1</sup> Commission Decision 2014/686/EU of 3 July 2014 on State aid SA.33927 (12/C) (ex 11/NN) implemented by Belgium — Guarantee scheme protecting the shares of individual members of financial cooperatives, notified under document C(2014) 1021 (OJ 2014 L 284, p. 53).

<sup>2</sup> Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (OJ 1994 L 135, p. 5). Under that directive, the Member States are obliged to ensure that within their territory deposit-guarantee schemes are established and officially recognised.

<sup>3</sup> Case [T-664/14](#) Belgium v Commission and Case [T-711/14](#) Arcofin and Others v Commission.

principle of equal treatment obliged the Member States to include, within their respective national deposit-guarantee schemes, shares held by natural persons in recognised financial cooperatives. In her view, unlike a bank account, a share in cooperatives is not a deposit but is similar to a share representing a company's own capital. In addition, financial cooperatives are not credit institutions. However, the directive also does not prohibit their inclusion, provided that, as a consequence, the deposit guarantee is not thereby diluted or other provisions of EU law are not infringed.

In Advocate General Kokott's view, the Commission decision is valid, at least in so far as the Court has to examine this in the present case.<sup>4</sup> The Commission did not wrongly apply the concept of aid and the decision is not insufficiently substantiated.

It is also, in her view, necessary to hold that Belgium infringed both the requirement of prior notification and the standstill obligation (applicable in any event until the Commission's final assessment) and consequently awarded unlawful State aid. The guarantee scheme at issue was notified to the Commission only on 7 November 2011, the date on which the three ARCO financial cooperatives were formally admitted to the Belgian deposit guarantee scheme by way of a Royal Decree. Belgium thereby infringed the principle of preliminary review by the Commission.

Should, following her suggestion, the Court consider the Commission decision to be valid, in so far as it has to examine it, that will not have **any formal binding effect on the General Court** of the European Union in the two cases pending before it. **However**, the judgment of the Court would certainly constitute a not insignificant *de facto* **precedent** from the point of view of the outcome of those proceedings. The General Court is, of course, free to annul the Commission decision for reasons which have not been discussed in the present proceedings.

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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<sup>4</sup> Advocate General Kokott points out that, in the present proceedings, the Court is not being asked whether the guarantee scheme is in fact incompatible with the internal market.