



Court of Justice of the European Union

PRESS RELEASE No 57/13

Luxembourg, 8 May 2013

Judgment in Joined Cases C-197/11 and C-203/11
Eric Libert, Christian Van Eycken, Max Bleeckx, Syndicat national des
propriétaires et copropriétaires ASBL, Olivier de Clippele v Gouvernement
Flamand

Press and Information

The Flemish Decree on land and real estate policy is contrary to EU law

The condition that there exists a 'sufficient connection' between the prospective buyer of immovable property and the target commune constitutes an unjustified restriction on fundamental freedoms

In Belgium, a decree of the Flemish Region of 27 March 2009 on land and real estate policy links the transfer of immovable property in certain Flemish communes to the condition that there exists a sufficient connection between the prospective buyer or tenant and the relevant commune. The decree also imposes an obligation on subdividers and developers entailing the delivery of social housing units, while providing for tax incentives and subsidy mechanisms.

As regards, in particular, the requirement that there exist a sufficient connection with the target commune, the Flemish Decree on land and real estate policy sets out three conditions, any one of which must be met for that requirement to be satisfied. The first condition is that a person to whom the immovable property is to be transferred has been resident in the target commune for at least six years prior to the transfer. In accordance with the first condition, the prospective buyer or tenant must, at the date of the transfer, carry out activities in the commune in question. The third condition requires the prospective buyer or tenant to have a professional, family, social or economic connection with the commune in question as a result of a significant circumstance of long duration. It is for a provincial assessment committee to ascertain whether the prospective buyer or tenant of the immovable property satisfies one or more of those conditions.

The Constitutional Court (Belgium), before which several applications for annulment of that decree have been brought, raises the question whether the decree is compatible with EU law, specifically the fundamental freedoms and the rules on State aid and public contracts. That question has been referred to the Court of Justice for a preliminary ruling.

In today's judgment, the Court finds that the Flemish Decree provides for a prior authorisation procedure to determine whether there is a 'sufficient connection' between the prospective buyer or tenant of immovable property and the target commune in question. In reality, such a procedure amounts to prohibiting certain persons from purchasing or leasing for more than nine years land or the buildings thereon. The Court therefore finds that those provisions constitute restrictions on the fundamental freedoms which must be justified.

In that regard, the Flemish Government has claimed that the condition that there exists a 'sufficient connection' is justified, inter alia, by the objective of responding to the housing needs of the less affluent local population in the target communes. Whilst accepting that such an objective may constitute an overriding reason in the public interest capable of justifying restrictions such as those provided for by the Flemish Decree, the Court finds however that none of those conditions directly reflects the socio-economic aspects relating to the objective of protecting exclusively the less affluent local population on the property market. Such conditions may be met not only by the less affluent local population but also by other persons with sufficient resources who, consequently, have no specific need for social protection on the property market. In addition, provision could be made for other measures, such as subsidy mechanisms specifically designed to assist less affluent

persons, in order to attain the objective put forward. The measures at issue thus go beyond what is necessary to attain the objective pursued.

Moreover, the Court considers that economic operators, such as subdividers and developers, on whom a 'social obligation' is imposed when a building or land subdivision authorisation is granted, cannot freely use the land acquired. Such a measure may therefore discourage residents of one Member State from making investments in immovable property in other Member States and thus constitutes a restriction on the free movement of capital. However, the Court observes that such a restriction, in so far as its purpose is to guarantee sufficient housing for the low-income or otherwise disadvantaged sections of the local population, may be justified by requirements relating to social housing policy in a Member State as an overriding reason in the public interest. It is for the referring court to assess whether such an obligation satisfies the principle of proportionality, that is to say, whether it is necessary and appropriate to attain the objective pursued.

Next, the Court considers that the tax incentives and subsidy mechanisms provided for in the Flemish Decree are liable to be classified as State aid. The referring court must therefore determine, in the light of the guidance given by the Court, whether those measures should be classified as State aid.

Lastly, the Court finds that the concept of 'public works contract' contained in Directive 2004/18¹ applies in the present case where the legislation makes the grant of a building or land subdivision authorisation subject to a social obligation entailing the development of social housing units which are subsequently to be sold at capped prices to a public institution, or with substitution by it, and where the criteria set out in that provision have been met, a matter which falls to be determined by the referring court.

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 judgment is published on the CURIA website on the day of delivery.

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¹ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114).