

JUDGMENT OF THE COURT  
31 JANUARY 1984<sup>1</sup>

**Graziana Luisi and Giuseppe Carbone  
v Ministero del Tesoro  
(references for a preliminary ruling  
from the Tribunale di Genova)**

(Invisible transactions — National control requirements)

Joined Cases 286/82 and 26/83

1. *Freedom to provide services — Provisions of the Treaty — Scope — Recipients of services*  
(EEC Treaty, Arts 59 and 60)
  2. *Balance of payments — Liberalization of payments — Current payments and movements of capital — Concepts — Physical transfer of bank notes — Classification*  
(EEC Treaty, Arts 67 and 106)
  3. *Balance of payments — Liberalization of payments — Currency covered thereby*  
(EEC Treaty, Art. 106)
  4. *Balance of payments — Liberalization of payments — Transfers of foreign currency in connection with the provision of services — Restrictions — Abolition — Controls by Member States — Whether permissible — Limits*  
(EEC Treaty, Art. 106)
1. The freedom to provide services includes the freedom, for the recipients of services, to go to another Member State in order to receive a service there, without being obstructed by restrictions, even in relation to payments. Tourists, persons receiving medical treatment and

<sup>1</sup> — Language of the Case: Italian.

persons travelling for the purposes of education or business are to be regarded as recipients of services.

2. The general scheme of the Treaty shows, and a comparison between Articles 67 and 106 confirms, that the current payments covered by Article 106 are transfers of foreign exchange which constitute the consideration within the context of an underlying transaction, whilst the movements of capital covered by Article 67 are financial operations essentially concerned with the investment of the funds in question rather than remuneration for a service. For that reason movements of capital may themselves give rise to current payments, as is implied by Articles 67 (2) and 106 (1).

The physical transfer of bank notes may not therefore be classified as a movement of capital where the transfer in question corresponds to an obligation to pay arising from a transaction involving the movement of goods or services.

3. Article 106 compels Member States to authorize the payments referred to in that provision in the currency of the Member State in which the creditor or beneficiary resides. Payments made in the currency of a third country are not therefore covered by that provision.
4. Article 106 of the Treaty must be interpreted as meaning that:

Transfers in connection with tourism or travel for the purposes of business, education or medical treatment constitute payments and not movements of capital, even where they are effected by means of the physical transfer of bank notes;

Any restrictions on such payments are abolished as from the end of the transitional period;

Member States retain the power to verify that transfers of foreign currency purportedly intended for liberalized payments are not in reality used for unauthorized movements of capital;

Controls introduced for that purpose may not have the effect of limiting payments and transfers in connection with the provision of services to a specific amount for each transaction or for a given period, or of rendering illusory the freedoms recognized by the Treaty or of subjecting the exercise thereof to the discretion of the administrative authorities;

Such controls may involve the fixing of flat-rate limits below which no verification is carried out, whereas in the case of expenditure exceeding those limits proof is required that the amounts transferred have actually been used in connection with the provision of services, provided however that the flat-rate limits so determined are not such as to affect the normal pattern of the provision of services.