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Judgment of the Court of Justice in Cases C-346/02 and C-347/02

Commission of the European Communities v Grand Duchy of Luxembourg and Commission of the European Communities v French Republic

THE COURT OF JUSTICE DOES NOT DECLARE UNLAWFUL THE *BONUS-MALUS* SYSTEMS ESTABLISHED IN FRANCE AND LUXEMBOURG FOR MOTOR-VEHICLE INSURANCE CONTRACTS

French and Luxembourg legislation laying down systems under which policyholders are placed on a premium scale according to their accident record (bonus-malus systems) is not contrary to the freedom to set premium rates that is established by Community legislation.

Since the European Commission took the view that the *bonus-malus* systems in force in France and in Luxembourg for motor-vehicle insurance contracts infringe the principle of freedom to set premium rates established by the 1992 directive relating to direct insurance[1] and are contrary to the objective of that directive (the securing of freedom to market insurance products within the Community), it brought infringement proceedings against those two Member States. In the Commission's view the national rules, **which require insurance companies to integrate into motor-vehicle insurance contracts a system under which policyholders are placed on a premium scale according to their accident record**, are contrary to the directive since they result in the establishment of systems having automatic and compulsory effects on premium rates.

France contended that the directive contains no provision establishing an absolute principle of freedom to set rates which would extend to the manner in which the cost of insurance is calculated, and that nothing therefore precludes the inclusion in the method of calculating insurance premiums of a mandatory coefficient which has no effect on the initial level of the premiums and affects their alteration in a very small part only, since there is still overall

[1] The principle is established by Articles 6(3), 29 and 39 of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) (OJ 1992 L 228, p. 1).

freedom to set the final price.

The French Government also stated that application of a *bonus-malus* coefficient does not allow the national authorities to control either the initial level of premiums or their alteration.

The Luxembourg Government contended that the Grand-Ducal Regulation at issue is consistent with the principle of freedom to set rates as it does not require the premium scales of insurance companies to be notified in advance to a supervisory or monitoring authority, or that authority to approve the scales prior to their use. The *bonus-malus* system is rather a means of subsequent personalisation of the premium which concerns only variation of the insurance premium and leaves insurers absolutely free to determine all the components in the price calculation for the vehicle insurance.

Referring to its case-law[2], the Court of Justice recalls that the principle of freedom to set rates implies the prohibition of any system of prior or systematic notification or approval of the rates which an insurance undertaking intends to use in its dealings with policyholders. However, the Court finds that while the *bonus-malus* systems introduced in both France and Luxembourg have effects on changes in the amount of premiums, **they nevertheless do not result in the direct setting of premium rates by the State, since insurance companies remain free to set the amount of the basic premium.** Neither the French nor the Luxembourg *bonus-malus* scheme can therefore be equated with a system of approving premium rates that is contrary to the principle of freedom to set rates.

Full harmonisation in the field of non-life insurance rates precluding any national measure liable to have effects on rates cannot be presumed in the absence of a clearly expressed intention to this effect on the part of the Community legislature.

It is accordingly not possible to uphold the Commission's line of argument founded on the basis that, although the basic premium may be set entirely freely, the French and Luxembourg *bonus-malus* systems are contrary to the principle of freedom to set rates on the sole ground that they have effects on the alteration of that premium.

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[2] Judgment of 25 February 2003 in Case C-59/01 *Commission* v *Italy*.