

TRIBUNAL DE JUSTICIA DE LAS COMUNIDADES EUROPEAS
SOUDNÍ DVŮR EVROPSKÝCH SPOLEČENSTVÍ
DE EUROPÆISKE FÆLLESSKABERS DOMSTOL
GERICHTSHOF DER EUROPÄISCHEN GEMEINSCHAFTEN
EUROOPA ÜHENDUSTE KOHUS
ΔΙΚΑΣΤΗΡΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ
COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH
CORTE DI GIUSTIZIA DELLE COMUNITÀ EUROPEE
EIROPAS KOPIENU TIESA



ÞPOS BENDRIJŲ TEISINGUMO TEISMAS
İRÓPAI KÖZÖSSÉGEK BÍRÓSÁGA
IL-QORTI TAL-GUSTIZZJA TAL-KOMUNITAJIET EWROPEJ
HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN
TRYBUNAŁ SPRAWIEDLIWOŚCI WSPÓLNOT EUROPEJSKICH
TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPEIAS
SÚDNY DVOR EURÓPSKÝCH SPOLOČENSTEV
SODIŠČE EVROPSKIH SKUPNOSTI
EUROOPAN YHTEISÖJEN TUOMIOISTUIN
EUROPEISKA GEMENSKAPERNAS DOMSTOL

Press and Information

PRESS RELEASE No 81/06

3 October 2006

Judgment of the Court of Justice in Case C-452/04

Fidium Finanz AG v. Bundesanstalt für Finanzdienstleistungsaufsicht

**COMMUNITY LAW DOES NOT PRECLUDE THE REQUIREMENT OF PRIOR
AUTHORISATION FOR THE GRANTING OF CREDIT ON A COMMERCIAL
BASIS BY A COMPANY ESTABLISHED IN A NON-MEMBER COUNTRY**

*Such rules fall within the provisions on the freedom to provide services, a freedom that
companies established in non-member countries are not entitled to rely on*

German legislation provides that any person intending to engage commercially in banking activities or provide financial services in Germany is to obtain written authorisation from the Bundesanstalt für Finanzdienstleistungsaufsicht (the BaFin). Such authorisation is to be refused, in particular, to companies that do not have their central administration or a branch in that country.

Fidium Finanz is a company incorporated under Swiss law that has its registered office and central administration in Switzerland. It grants credit of EUR 2 500 or EUR 3 500, at an actual rate of annual interest of 13.94 %, to clients established abroad. Approximately 90% of the credit that it grants is to persons resident in Germany. That credit is offered on an internet site run from Switzerland. Fidium Finanz grants the credit in dispute without first obtaining information about the clients from the German central credit-reporting agency (the Schufa).

At the time of the facts in the main case, Fidium Finanz did not have the authorisation required to carry on those activities in Germany. Consequently, the BaFin prohibited that company, in 2003, from carrying on lending activities on a commercial basis that target customers established in Germany. Considering that that decision constitutes a restriction on the free movement of capital, Fidium Finanz brought an action before the Verwaltungsgericht.

That court made a reference for a preliminary ruling to the Court of Justice seeking to know whether the activity of granting credit on a commercial basis constitutes a provision of services or whether it falls within the free movement of capital. That question plays an important role for the outcome of the main case given that the provisions of the EC Treaty on the freedom to provide services and those governing the free movement of capital do not

have the same personal scope. Unlike the free movement of capital, the freedom to provide services can be relied on only by Community citizens. In order to determine which provisions of the EC Treaty are applicable in the circumstances of the case the Court examined the relationship between the two freedoms.

The Court points out that Fidium Finanz is established in a non-member State. Therefore, it can rely only on the Community provisions governing the free movement of capital.

The Court acknowledges that the activity of granting credit on a commercial basis concerns, in principle, both the freedom to provide services and the free movement of capital. Consequently, it considers to what extent the German rules affect the exercise of those two freedoms.

The Court considers that the requirement of approval and the fact that it is impossible to get such approval if the company does not have its main administration or a branch in Germany effectively impede access to the German financial market for companies established in non-member countries. Such rules affect primarily the freedom to provide services. A company established in a non-member country is not entitled, however, to rely on that freedom.

The Court acknowledges that it is certainly possible that by making financial services offered by companies established in non-member countries less accessible for clients established in Germany, the German legislation effectively reduces cross-border financial traffic relating to those services. However, that restrictive effect on the free movement of capital is merely an unavoidable consequence of the restriction imposed as regards the provision of services. In such circumstances, it is not necessary to examine the compatibility of those rules with the provisions of the EC Treaty governing the free movement of capital.

The Court concludes that a company such as Fidium Finanz is not entitled, in the circumstances of the case, to rely on the fundamental freedoms of the Treaty.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: FR, CS, DE, EL, EN, HU, IT, NL, PL, SK, SL

*The full text of the judgment may be found on the Court's internet site
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-452/04>*

It can usually be consulted after midday (CET) on the day judgment is delivered.

*For further information, please contact Christopher Fretwell
Tel: (00352) 4303 3355 Fax: (00352) 4303 2731*