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Judgment of the Court of Justice in Case C-452/01

Margarethe Ospelt and Schlössle Weissenberg Familienstiftung

**THE FREE MOVEMENT OF CAPITAL DOES NOT PRECLUDE ACQUISITION OF
AGRICULTURAL LAND BEING MADE SUBJECT TO THE GRANTING OF A
PRIOR AUTHORISATION SUCH AS THAT INTRODUCED BY THE
VORARLBERGER GRUNDVERKEHRSGESETZ**

However, it does preclude refusal of such authorisation in every case where the acquirer does not himself use the land in question as part of an agricultural holding and is not resident there.

Ms Ospelt, a national of the Principality of Liechtenstein, owns land measuring approximately 43,500 m², on which she resides, in the *Land* of Vorarlberg (Austria). Most of the plots making up that property are agricultural plots which have been leased to farmers.

In April 1998, the entire property was notarially authenticated with the purpose of transferring it to a foundation established in the Principality of Liechtenstein and whose first beneficiary is Ms Ospelt. The foundation intended to continue leasing the agricultural plots to the same farmers as before. The application to the *Land* authorities for the authorisation required by the Vorarlberg Land Transfer Law (VGVG) was rejected on the ground that the conditions for acquisition by foreigners had not been met.

On appeal, the Vorarlberg Unabhängiger Verwaltungssenat also refused to grant the prior authorisation on the ground that neither the foundation nor Ms Ospelt pursued an agricultural activity or intended to do so in the future and that such a transaction was therefore contrary to the requirements and public-interest objectives referred to in the VGVG as regards the preservation and creation of economically viable medium and small-scale agricultural holdings.¹

¹ Article 5 of the VGVG provides that acquisition of title is to be authorised only in the case of agricultural plots, where it is consistent with the preservation of an effective agricultural community and the acquirer himself cultivates the plot as part of an agricultural establishment and also has his place of residence there or, where that

The Verwaltungsgerichtshof, to which the matter was referred at last instance, has made a reference to the Court of Justice seeking a ruling on whether the provisions of the EC Treaty concerning free movement of capital preclude a system of prior authorisation such as that provided for in the VGVG for transactions relating to agricultural land.

The Court finds that **the conditions laid down in the VGVG restrict the free movement of capital**. However it considers that the VGVG pursues public-interest objectives which are, in principle, such as to justify such restrictions.

The prior supervision carried out by the competent authorities is aimed at ensuring that the transfer of agricultural plots does not result in their ceasing to be farmed. The Court points out that any supervision carried out by national authorities after such plots were transferred would not provide the same guarantee and concludes that **the very principle underlying a system of prior authorisation cannot be disputed**.

However, prior authorisation for the transaction between Ms Ospelt and the foundation was refused on the ground that neither the latter nor Ms Ospelt pursued a farming activity. The Court considers that that goes beyond what is necessary in order to achieve the public-interest objectives which the VGVG pursues.

According to the Court, a measure placing specific obligations, such as long-term leasing, on the transfer of agricultural plots would be less restrictive of free movement of capital.

The Court states that if the **VGVG were to be interpreted by the national authorities as meaning that the prior authorisation must be granted to persons who are not farmers resident on the plots in question but who are able to provide the necessary assurances that those plots would remain in agricultural use, the VGVG would not restrict the free movement of capital beyond what is necessary to achieve its objectives**.

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Available languages: DA, DE, EN, FR.

The full text of the judgment can be found on the internet (www.curia.eu.int).

In principle it will be available from midday CET on the day of delivery.

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