

Summary BVerwG 6 C 20.03

Bundesverwaltungsgericht, Urteil vom 21. April 2004, - Az. 6 C 20.03 -

The plaintiff, a joint-stock company, is an authorized investment firm providing investment services in the securities field. The authorization was granted on the condition that the plaintiff become member of the investor-compensation scheme run by the defendant. The said scheme had been introduced in order to implement Directive 97/9/EC of 3 March 1997 and is financed exclusively by its member firms. From 1999 to 2001 the defendant collected annual contributions from the plaintiff which were calculated on a gross-proceeds basis.

The plaintiff challenged the invoices before the administrative court submitting that a scheme financed by investment firms only was contrary to Directives 97/9/EC (investor-compensation) and 94/19/EC (deposit-guarantees) as well as to Art. 249 (3) EC Treaty. The scheme should be extended to credit institutions in the sense of directive 94/19/EC and be co-financed by the public. Moreover, the plaintiff argued that the contribution was unlawful because it did not fulfil the constitutional requirements for "special taxes". *(In German Constitutional law "special taxes" are taxes imposed exclusively on a special group in order to finance services which are of particular importance to that group. For a special tax to be lawful the group concerned must be clearly identifiable and sufficiently homogeneous.)*

The administrative tribunal of first instance dismissed the case and the decision was upheld by the Federal Administrative Court. The Court argued that the German scheme did not infringe Community law because the above-mentioned directives left the decision on the appropriate method of financing completely to the Member States (see recitals 23 and 25 in the preamble to Directive 97/9/EC and recital 24 in the preamble to Directive 94/19/EC). Moreover, it was apparent from recital 9 of the preamble to Directive 97/9/EC that separate compensation schemes for credit institutions and investment firms were compatible with Community law as well. Finally, the contribution did not violate German Constitutional law since the group of firms which were obliged to become members of the scheme was clearly defined by Directive 93/22/EC on investment services in the securities field.