

Case C-364/01

The heirs of H. Barbier

v

**Inspecteur van de Belastingdienst Particulieren/Ondernemingen
buitenland te Heerlen**

(Reference for a preliminary ruling
from the Gerechtshof te 's-Hertogenbosch (Netherlands))

(Interpretation of Articles 48 and 52 of the EEC Treaty (subsequently Articles 48 and 52 of the EC Treaty, now, after amendment, Articles 39 EC and 43 EC), Article 67 of the EEC Treaty (subsequently Article 67 of the EC Treaty, repealed by the Treaty of Amsterdam), Articles 6 and 8a of the EC Treaty (now, after amendment, Articles 12 EC and 18 EC) — Directives 88/361/EEC and 90/364/EEC — Inheritance tax — Requirement of cross-border economic activity — Prohibition of discrimination on the basis of Member State of residence)

Opinion of Advocate General Mischo delivered on 12 December 2002 . . . I-15015

Judgment of the Court (Fifth Chamber), 11 December 2003 I-15032

Summary of the Judgment

1. *Free movement of capital — Liberalisation of capital movements — Directive 88/361 — Scope*
(Council Directive 88/361, Art. 1(1))
2. *Free movement of capital — Restrictions — National legislation concerning the assessment of inheritance tax on properties excluding from the assessment of their value the fact that non-resident owners were, before their death, under an obligation to transfer legal title to the financial owner — Not permissible*

1. The mere fact that the result of a national provision is to restrict movements of capital by an investor who is a national of a Member State on the basis of his place of residence is sufficient for Article 1(1) of Directive 88/361 for the implementation of Article 67 of the Treaty (repealed by the Treaty of Amsterdam), which requires the Member States to abolish all restrictions on such movements of capital, to apply without the rights conferred by that directive being subject to the existence of other cross-border elements.
2. Community law precludes national legislation concerning the assessment of tax due on the inheritance of immovable property situated in the Member State concerned according to which, in order to assess the property's value, the fact that the person holding legal title was under an unconditional obligation to transfer it to another person who has financial ownership of that property may be taken into account if, at the time of his death, the former resided in that Member State, but may not be taken into account if he resided in another Member State.

Similarly, it is not relevant that the provision in question was adopted by the Member State of origin of the person concerned.

(see paras 59, 61)

(see para. 76, operative part)