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Court of Justice of the European Union
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Judgment in Case C-76/15
Vervloet and Others v Ministerraad

The guarantee granted by Belgium to the ARCO Group financial cooperatives infringes EU law

A guarantee scheme is not in itself incompatible with the directive on deposit guarantee schemes, but it must conform with the provisions of the Treaty and, in particular, the provisions relating to State aid

In November 2011, the Belgian State granted to 800 000 members of three ARCO financial cooperatives (Arcopar, Arcofin and Arcoplus) the same protection as that provided for savings deposits and life insurance, namely protection limited to € 100 000 per investor. The ARCO Group, one of the main shareholders of the Belgian-French Dexia Bank, was thus protected against the threat of the flight of private investors from the three financial cooperatives. At the same time, ARCO was given the opportunity to contribute to the recapitalisation of Dexia Bank, which was in serious difficulty following the global financial crisis which had commenced in 2008. The three financial cooperatives have been in liquidation since the end of 2011.

In 2014, the Commission classified that ‘ARCO guarantee’ as unlawful State aid (since it was not notified in a timely manner) and incompatible with the internal market.¹ The Commission requested Belgium to recover the associated advantages and to make no payments under the guarantee. The three financial cooperatives and Belgium brought an action before the General Court for annulment of that decision of the Commission.²

Those proceedings were however stayed pending the Court of Justice’s response in the present proceedings to the questions referred by the Belgian Constitutional Court. Ruling on several questions referred by the Raad van State (Council of State), itself ruling on an action brought by a number of private and institutional investors not covered by the ARCO guarantee, the Belgian Constitutional Court is called upon to verify the constitutionality of the organic law of the National Bank of Belgium, in so far as the latter provides for a guarantee of that kind for shares in certain recognised financial cooperatives. It therefore first requests the Court to clarify whether the guarantee scheme is compatible with EU law, in particular with the general principle of equality and the directive on deposit guarantee schemes.³

In today’s judgment, the Court notes first of all that under the directive, the Member States are to ensure that within their territory one or more deposit-guarantee schemes are introduced and officially recognised. ‘Deposit’ means, first, any credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a credit institution must repay under the legal and contractual conditions applicable, and, secondly, any debt evidenced by a certificate issued by that credit institution. **It is apparent from the file available to the Court that the shares of companies such as recognised cooperatives operating in the financial sector at issue in the main proceedings do not fall within that definition.** It appears that such shares are essentially participations in the own capital of the

¹ Commission Decision 2014/686/EU of 3 July 2014 on State aid SA.33927 (12/C) (ex 11/NN) implemented by Belgium — Guarantee scheme protecting the shares of individual members of financial cooperatives (notified under document C(2014) 1021).

² [T-664/14](#) Belgium v Commission and [T-711/14](#) Arcofin and Others v Commission.

³ Articles 20 and 21 of the Charter of Fundamental Rights of the EU; Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee (OJ L 135, p. 5).

undertaking concerned, whereas the deposits referred to in the directive are distinguished by the fact that they form part of the borrowed capital of a credit institution. The acquisition of such shares is thus more comparable to the acquisition of shares in companies, with respect to which no guarantees are provided by the directive, than to a payment made into a bank account.

Moreover, the recognised financial cooperatives operating in the financial sector do not come within the personal scope of application of the directive. Those undertakings' activity does not consist in granting credits for their own account. It also does not appear that such undertakings receive deposits from the public or grant regularly, like banks, credits for their own account.

Consequently, the directive does not impose on Member States the obligation to adopt a scheme to guarantee shares in recognised cooperatives operating in the financial sector such as that at issue in the main proceedings.

The Court holds nevertheless that the extension of a deposit guarantee scheme to shares in recognised cooperatives operating in the financial sector does not appear, in itself, to be incompatible with the directive.

However, such an extension cannot undermine the practical effectiveness of the deposit-guarantee scheme that the directive requires to be established. The higher the risks to be secured are, the more the deposit guarantee is watered down. It is for the Constitutional Court to determine whether the adoption of such a guarantee scheme is liable to undermine the practical effectiveness of the deposit-guarantee scheme. In that regard, the Constitutional Court must in particular take into account the fact, first, that the adoption of such a scheme for shares in cooperatives benefits, in this case, a large number of small investors of the Belgian deposit-guarantee scheme and, secondly, that the ARCO Group cooperatives, which were admitted to that guarantee scheme a short time before the guarantee provided for by that scheme was invoked, did not make any contribution in the past towards the financing of the scheme. In addition, such an extension must be compatible with the provisions of the Treaty and in particular with those relating to State aid.

As regards the Commission decision which classified the 'ARCO decision' as unlawful State aid (since it was not notified in a timely manner) and incompatible with the internal market, the Court considers that the Commission did not erroneously classify that guarantee as 'State aid'. Its decision is also sufficiently reasoned. **The Court therefore holds that its examination has disclosed no factor of such a kind as to affect the validity of the decision.** Moreover, the Commission was entitled to conclude in its decision that the guarantee scheme at issue was unlawfully put into effect by Belgium.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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