

# ECJ Decides that Cross-Border Pension Rules in the Netherlands Are Incompatible with EU Law: *Commission v. Pays-Bas (Capital retraite après transfert)* (Case C-360/22) (Direct Tax)

16 November 2023

Report from IBFD Knowledge Centre

On 16 November 2023, the Court of Justice of the European Union (ECJ) gave its decision in *European Commission v. Kingdom of the Netherlands* (Case C-360/22) based on a number of grounds.

On those grounds, the Court (Sixth Chamber) hereby rules:

1. By establishing and maintaining in force the requirements for the transfer of pension capital laid down in Article 85(1)(b) and Article 87(2)(f) of the Law on pensions, read in conjunction with Article 19b(2) of the 1964 Law on Wages Tax, in the version applicable to the present action, under which a transfer of the value of pension entitlements to a pension insurance institution established in a Member State other than the Kingdom of the Netherlands is subject only to exemption from tax if the possibilities of redeeming those claims as capital are the same as or more limited than under Netherlands law, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 45 TFEU and Article 28 of the [Agreement on the European Economic Area](#) of 2 May 1992.
2. Orders the Kingdom of the Netherlands to pay the costs.

(Unofficial translation by IBFD Knowledge Centre)

For a previous TNS regarding the case, see [European Commission Refers Netherlands to ECJ Over Its Cross-Border Pension Rules \(22 August 2022\)](#).

A more substantial report containing details of the ECJ's decision will be published in the ECJ Case Law collection in due course.