

Case C-42/92

Adrianus Thijssen

v

Controledienst voor de Verzekeringen

(Reference for a preliminary ruling
from the Belgian Raad van State)

(Freedom of establishment — Exercise of official authority)

Report for the Hearing	I - 4048
Opinion of Advocate General Lenz delivered on 24 March 1993	I - 4059
Judgment of the Court (Fifth Chamber), 13 July 1993	I - 4066

Summary of the Judgment

Freedom of movement for persons — Freedom of establishment — Derogations — Activities connected with the exercise of public authority — Approved commissioners of insurance undertakings pursuing their activities in Belgium — Not included
(EEC Treaty, Art. 55, first paragraph)

The derogation from the freedom of establishment provided for in the first paragraph of Article 55 of the Treaty, which excludes from the application of the provisions on freedom of establishment activities which in a Member State are connected, even occasionally, with the exercise of official authority, must be restricted to activities which in

themselves are directly and specifically connected with the exercise of official authority.

That is not the case for the activities of approved commissioners with insurance undertakings and private provident associations when they are exercised in a context

such as that which operates in Belgium, where *vis-à-vis* the Insurance Inspectorate, which is a public body participating in the exercise of official authority and endowed with powers of regulation, supervision and direction, the approved commissioner, who is freely appointed by the insurance undertaking and is remunerated by it, has merely

an auxiliary and preparatory role to play, notwithstanding the fact that his activities are subject to the supervision of the Insurance Inspectorate, that he must swear an oath and that he may impose a veto with suspensory effect on the implementation of decisions adopted by the undertaking.

REPORT FOR THE HEARING in Case C-42/92 *

I — Facts and procedure

Legal background

1. The Belgian Law of 9 July 1975 on the regulation of insurance undertakings (*Belgisch Staatsblad*, 29 July 1975; hereinafter 'the Law') established the *Controledienst voor de Verzekeringen*, or Insurance Inspectorate (Articles 29 to 37), the office of approved commissioner (Articles 38 to 40), and a consultative committee, the Insurance Commission. The Insurance Inspectorate has 'the task of supervising the application of this law and its implementing regulations' (Article 29, second paragraph). It has the power to issue regulations for the purposes, *inter alia*, of imposing obligations and restrictions on insurance undertakings 'in order to ensure that their activities are conducted in accordance with the principles of insurance practice, the precepts of equity and the general interests of insured parties and

beneficiaries under contracts of insurance' (Article 29, fourth paragraph).

2. Article 38 of the Law provides that Belgian insurance companies or associations must appoint at least one commissioner from among the members of the Institute of Auditors who have been approved by the Insurance Inspectorate. Belgian undertakings which are in the form of mutual insurance societies or non-profit-making associations are required to appoint an approved commissioner from among either those persons specified in the abovementioned Law or persons specially approved by the Insurance Inspectorate. Foreign insurance undertakings are required to appoint, for the particular purposes of managing their operations in Belgium, an approved commissioner selected from the same group of persons.

3. Article 40 of the Law describes the duties of the commissioners as follows:

* Language of the case: Dutch.