

Case C-101/94

Commission of the European Communities  
v  
Italian Republic

(Dealing in transferable securities)

Opinion of Advocate General Lenz delivered on 19 March 1996 ..... I - 2693  
Judgment of the Court, 6 June 1996 ..... I - 2719

Summary of the Judgment

*Freedom of movement for persons — Freedom of establishment — Freedom to provide services — Dealing in transferable securities — Activity restricted by a Member State to companies or firms whose registered office is on its territory — Not permitted*  
(EC Treaty, Arts 52 and 59)

Articles 52 and 59 of the Treaty preclude a Member State from restricting the activity of dealing in transferable securities (apart from by banks) to companies or firms whose registered office is on its territory, thus prevent-

ing dealers from other Member States who wish to exercise an activity on its territory from using certain forms of establishment, such as a branch or agency, so that they are obliged to incur additional costs compared

with its own nationals, and making it altogether impossible for them to make use of their freedom to provide services.

By so doing the State applies a difference in treatment which is not objectively justified, since although the above requirement facilitates the supervision and control of operators in the market, it is neither the only means of nor an indispensable condition for, firstly, making sure that operators comply with its rules for pursuing the activity of dealer in transferable securities and, secondly, imposing effective sanctions on dealers who breach those rules. Nothing prevents the State from requiring dealers from

other Member States to supply information and documents relating specifically to the activities of their secondary establishments on its territory, from making their activity subject to the provision of financial guarantees or from concluding cooperation agreements with the supervisory authorities of other Member States regarding supervision of markets and agents; furthermore, it cannot argue that it is not possible to compare the rules on access to the profession of securities dealer in the various Member States, in particular the rules on guarantees regarding companies' own funds, where its legislation expressly provides for the possibility of concluding such agreements and the different methods used by Member States to determine own funds requirements ensure equivalent protection overall.