

4. Is Article 49 EC to be interpreted as precluding national rules prohibiting the operation and brokering of public games of chance on the internet, in particular where, at the same time, although only for a transitional period of one year, their online operation and brokering is permitted, subject to legislation protecting minors and players, for the purposes of the principle of proportionality and to enable two commercial gambling brokers who have previously operated exclusively online to switch over to those distribution channels permitted by the Staatsvertrag?

Action brought on 11 February 2008 — Commission of the European Communities v Kingdom of Belgium

(Case C-47/08)

(2008/C 128/30)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: J.-P. Keppenne and H. Støvlbæk, agents)

Defendant: Kingdom of Belgium

Form of order sought

The applicant claims that the Court should:

- declare that, by laying down a nationality requirement for access to the profession of notary and by failing to transpose Council Directive 89/48/EEC ⁽¹⁾ in respect of the occupation of notary, the Kingdom of Belgium has failed to fulfil its obligations under the EC Treaty, in particular Articles 43 and 45 EC, and Directive 89/48/EEC on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration;
- order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

By its action, the Commission first of all alleges that the defendant, by laying down a nationality requirement for access to the profession of notary and its practice, disproportionately restricts freedom of establishment as laid down in Article 43 EC. Admittedly, Article 45 EC exempts from the application of the chapter relating to the right of establishment activities connected directly and specifically with the exercise of public authority. According

to the Commission, the tasks entrusted to notaries under Belgian law are so distantly connected to the exercise of public authority that they do not fall within the scope of that article or warrant such a restriction of the freedom of establishment. Those tasks, in fact, do not confer on notaries a power of coercion and less restrictive measures than a nationality requirement could be laid down by the national legislature, such as subjecting the operators concerned to strict conditions for access to the profession, specific professional duties and/or a specific test.

By its second complaint, the Commission further alleges that the defendant failed to fulfil its obligations by failing to transpose Directive 89/48/EEC in respect of the profession of notary. As it is a regulated profession, the directive is fully applicable to that profession and the high level of qualification required of notaries could easily be guaranteed by an aptitude test or an adaptation period.

⁽¹⁾ Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years duration (OJ 1989 L 19, p. 16).

Action brought on 12 February 2008 — Commission of the European Communities v French Republic

(Case C-50/08)

(2008/C 128/31)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: J.-P. Keppenne and M H. Støvlbæk, Agents)

Defendant: French Republic

Form of order sought

The applicant claims that the Court should:

- declare that, by laying down a nationality requirement for access to the profession of notary, the French Republic has failed to fulfil its obligations under the EC Treaty, in particular Articles 43 EC and 45 EC;
- order the French Republic to pay the costs.

Pleas in law and main arguments

By its action, the Commission alleges that the defendant, by laying down a nationality requirement for access to the profession of notary and its practice, disproportionately restricts the freedom of establishment laid down in Article 43 EC. Admittedly, Article 45 EC exempts from the application of the chapter relating to the right of establishment activities connected directly and specifically with the exercise of public authority. According to the Commission, the tasks entrusted to notaries under French law are so distantly connected to the exercise of public authority that they do not fall within the scope of that article or warrant such a restriction of the freedom of establishment.

First, those tasks do not in fact confer on notaries a genuine power of coercion and the respective rights and duties of a judge and notary are completely separate.

Secondly, less restrictive measures than a nationality requirement could be laid down by the national legislature, such as subjecting the operators concerned to strict conditions for access to the profession, specific professional duties and/or a specific test.

Action brought on 12 February 2008 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-51/08)

(2008/C 128/32)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: J.-P. Keppenne and H. Støvlbæk, agents)

Defendant: Grand Duchy of Luxembourg

Form of order sought

The applicant claims that the Court should:

- declare that, by laying down a nationality requirement for access to the profession of notary and by failing to transpose Council Directive 89/48/EEC ⁽¹⁾ in respect of the occupation of notary, the Grand Duchy of Luxembourg has failed to fulfil its obligations under the EC Treaty, in particular Articles 43 and 45 EC, and Directive 89/48/EEC on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration;

- order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

By its action, the Commission first of all alleges that the defendant, by laying down a nationality requirement for access to the profession of notary and its practice, disproportionately restricts freedom of establishment as laid down in Article 43 EC. Admittedly, Article 45 EC exempts from the application of the chapter relating to the right of establishment activities connected directly and specifically with the exercise of public authority. According to the Commission, the tasks entrusted to notaries under Luxembourgish law are so distantly connected to the exercise of public authority that they do not fall within the scope of that article or warrant such a restriction of the freedom of establishment. Those tasks, in fact, do not confer on notaries a power of coercion and less restrictive measures than a nationality requirement could be laid down by the national legislature, such as subjecting the operators concerned to strict conditions for access to the profession, specific professional duties and/or a specific test.

By its second complaint, the Commission further alleges that the defendant failed to fulfil its obligations by failing to transpose Directive 89/48/EEC in respect of the profession of notary. As it is a regulated profession, the directive is fully applicable to that profession and the high level of qualification required of notaries could easily be guaranteed by an aptitude test or an adaptation period.

⁽¹⁾ Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years duration (OJ 1989 L 19, p. 16).

Reference for a preliminary ruling from the Unabhängiger Finanzsenat, Außenstelle Graz (Austria), lodged on 15 February 2008 — Dachberger & Söhne GmbH v Zollamt Salzburg, Erstattungen

(Case C-77/08)

(2008/C 128/33)

Language of the case: German

Referring court

Unabhängiger Finanzsenat, Außenstelle Graz