Reports of Cases

OPINION OF ADVOCATE GENERAL
SAUGMANDSGAARD ØE
delivered on 28 February 2019[1]

Case C‑729/17

European Commission
v

Hellenic Republic

(Failure of a Member State to fulfil obligations – Directive 2005/36/EC – Recognition of professional qualifications – National rules concerning the recognition of evidence of training obtained for the purposes of pursuing the profession of mediator)

I. Introduction

1. By its action, the Commission seeks from the Court, first, a declaration that the Hellenic Republic has failed to fulfil its obligations under Article 49 TFEU, which prohibits restrictions on the freedom of establishment, and Article 15(2)(b) and (c) and (3) of Directive 2006/123/EC on services in the internal market.[2] In this regard, it complains that that Member State infringed those provisions by limiting the legal form that must be adopted by mediator training institutions.

2. Secondly, the Commission seeks a declaration that the Hellenic Republic has failed to fulfil the obligations arising both from Article 49 TFEU itself and from Articles 13, 14 and 50(1) of, and Annex VII to, Directive 2005/36/EC on the recognition of professional qualifications.[3] Under this heading, it alleges that the Hellenic Republic made the procedure for the recognition of academic qualifications held by persons applying for accreditation to practise as a mediator subject, first, to additional requirements not provided for in that directive with respect to the content of the requisite certificates, and, secondly, to compensation measures without a prior assessment as to the existence or otherwise of any substantial differences with national training, and at the same time infringed the principle of non-discrimination.

3. As requested by the Court, this Opinion will focus on the complaints relating to the incompatibility of the Greek legislation at issue with Directive 2005/36,[4] in particular from the point of view of the relationship between that directive and Directive 2008/52/CE.[5]

1 Original language: French.

2 Directive of the European Parliament and of the Council of 12 December 2006 (OJ 2006 L 376, p. 36).

3 Directive of the European Parliament and of the Council of 7 September 2005 (OJ 2005 L 255, p. 22).

4 As regards any incompatibility of national legislation with Article 15 of Directive 2006/123 and Article 49 TFEU, see Opinion of Advocate General Szpunar in *Commission* v *Germany*, pending (C‑377/17).

5 Directive of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (OJ 2008 L 136, p. 3).

II. Legal framework

A. Directive 2005/36

4. Article 13, entitled ‘Conditions for recognition’, provides, in paragraph 1:

‘If access to or pursuit of a regulated profession in a host Member State is contingent upon possession of specific professional qualifications, the competent authority of that Member State shall permit access to and pursuit of that profession, under the same conditions as apply to its nationals, to applicants possessing the attestation of competence or evidence of formal qualifications referred to in Article 11, required by another Member State in order to gain access to and pursue that profession on its territory.

Attestations of competence or evidence of formal qualifications shall be issued by a competent authority in a Member State, designated in accordance with the laws, regulations or administrative provisions of that Member State’.

5. Article 14 of that directive, entitled ‘Compensation measures, provides, in paragraphs 1, 4 and 5:

‘1. Article 13 shall not preclude the host Member State from requiring the applicant to compete an adaptation period of up to three years or to take an aptitude test if:

(a) the training the applicant has received covers substantially different matters than those covered by the evidence of formal qualifications required in the host Member State;

(b) the regulated profession in the host Member State comprises one or more regulated professional activities which do not exist in the corresponding profession in the applicant’s home Member State, and the training required in the host Member State covers substantially different matters from those covered by the applicant’s attestation of competence or evidence of formal qualifications.

…

4. For the purposes of paragraphs 1 and 5, “substantially different matters” means matters in respect of which knowledge, skills and competences acquired are essential for pursuing the profession and with regard to which the training received by the migrant shows significant differences in terms of content from the training required by the host Member State.

5. Paragraph 1 shall be applied with due regard to the principle of proportionality. In particular, if the host Member State intends to require the applicant to complete an adaptation period or take an aptitude test, it must first ascertain whether the knowledge, skills and competences acquired by the applicant in the course of his professional experience or through lifelong learning, and formally validated to that end by a relevant body, in any Member State or in a third country, is of such nature as to cover, in full or in part, the substantially different matters defined in paragraph 4.’

6. Article 50 of the that directive, entitled ‘Documentation and formalities’, provides in paragraph 1 that, ‘where the competent authorities of the host Member State decide on an application for authorisation to pursue the regulated profession in question by virtue of this Title, those authorities may demand the documents and certificates listed in Annex VII …’.

7. Annex VII, concerning ‘Documents and certificates which may be required in accordance with Article 50(1)’, is worded as follows:

‘1. Documents

(a) Proof of nationality of the person concerned.

(b) Copies of the attestations of professional competence or of the evidence of formal qualifications giving access to the profession in question, and an attestation of the professional experience of the person concerned where applicable.

The competent authorities of the host Member State may invite the applicant to provide information concerning his training to the extent necessary in order to determine the existence of potential substantial differences with the required national training, as laid down in Article 14. …

(c) For the cases referred to in Article 16, a certificate concerning the nature and duration of the activity issued by the competent authority or body in the home Member State or the Member State from which the foreign national comes.

…’

B. Greek law

1. Law No 3898/2010

8. Law No 3898/2010[6] transposes Directive 2008/52.

9. Article 6 of that Law, entitled ‘Accreditation body’, provides, in paragraphs 1 and 3:

‘1. A “Mediator Accreditation Committee” shall be established under the supervision of the Ministry of Justice, Transparency and Human Rights. The Committee’s responsibilities shall include, inter alia, … the accreditation of applicant mediators ….

3. The accreditation of applicant mediators shall be the subject of examinations taken before a Board comprised of two members of the Committee referred to in paragraph 1, who shall be appointed by the Chairperson of that Committee, and a judge, who … shall chair that Board. The Board shall determine whether the applicant possesses the knowledge and skills, and adequate training delivered by the training institutions referred to in Article 5, necessary in order to be able to provide mediation services; its decision shall be in writing and duly reasoned. …’

10. Article 7(2)(a) of that Law provides that ‘the Minister for Justice, Transparency and Human Rights … shall set out the particular conditions applicable to the accreditation of mediators, as well as the procedure for the recognition of evidence of accreditation obtained by mediators in another Member State of the European Union. Such recognition, as well as any temporary or permanent revocation of accreditation, shall be contingent upon the prior agreement of the Committee referred to in Article 6(1)’. Article 6(5) provides, inter alia, that the Minister, acting by decision, ‘shall set out the detailed rules, criteria and conditions governing the examination of applicant mediators before the Board’.

6 Law on mediation in civil and commercial matters (FEK A’ 211/16.12.2010), as amended by the legislative act referred to in point 11 of this Opinion.

11. Article 14 of that Law was amended by the legislative act of 4 December 2012,[7] which inserted into that article a paragraph 2, according to which 'evidence of accreditation as a mediator issued by a training institution based in another country following training delivered in Greece may be recognised, provided that that evidence was obtained no later than the date of authorisation and commencement of operation of a training institution or training institutions within the meaning of Article 5 of Law No 3898/2010, and, in any event, no later than 31 December 2012'.

2. Amended Ministerial Decision No 109088

12. Paragraphs 1, 2 and 5 of section A of the single article of Ministerial Decision No 109088 of 12 December 2011,[8] as amended by Decision No 107309 of 20 December 2012[9] ('amended Ministerial Decision No 109088'), is worded as follows:

'A. I hereby set out the procedure for the recognition of evidence of accreditation as a mediator issued by a training institution based in another country as follows:

Evidence of accreditation as a mediator which is issued by a training institution based in another country shall be recognised as equivalent by the Mediator Accreditation Committee in accordance with the following procedure:

1. The persons concerned shall file an application for recognition of their evidence of accreditation as a mediator.

…

2. The application form shall be accompanied by the following supporting documentation:

…

(c) a certificate issued by the training institution and for the attention of the Mediator Accreditation Committee, as provided for in Article 6(1) of Law No 3898/2010, which confirms:

  (aa) the total number of hours' training;

  (bb) the matters taught;

  (cc) the place of training;

  (dd) the number of participants;

  (ee) the number and qualifications of the trainers;

  (ff) the procedure for the examination and assessment of candidates and the arrangements for ensuring the integrity of that procedure.

…

7 Legislative act concerning the regulation of urgent matters falling within the competence of the Ministry of Finance, Ministry of Development, Competition, Infrastructure, Transport and Networks, the Ministry of Education and Religious Affairs, the Ministry of Culture and Sport, the Ministry of the Environment, Energy and Climate Change, the Ministry of Labour, Social Security and Social Assistance, the Ministry of Justice, Transparency and Human Rights, the Ministry of Administrative Reform and Electronic Governance, and laying down other provisions (FEK A' 237/5.12.2012).

8 FEK B' 2824/14.12.2011.

9 FEK B' 3417/21.12.2012.

5. The Mediator Accreditation Committee shall accept evidence of accreditation as being equivalent provided that it has been issued by a recognised institution based in another country and the person concerned is able to demonstrate experience of having taken part in at least three mediation procedures as a mediator, assistant mediator or counsel to one of the parties. The Committee may, at its own discretion, ask the person concerned to undergo an additional examination, in particular in the case where his training was delivered in Greece by an institution based in another country.

As regards recognition of the equivalence of evidence of accreditation obtained in another country or issued by a recognised training institution based in another country following training delivered in Greece, the Mediator Accreditation Committee may accept evidence of accreditation as being equivalent even if the person concerned cannot demonstrate experience of having taken part in at least three mediation procedures as a mediator, assistant mediator or counsel to one of the parties, provided that it is readily apparent from the combination of information contained in the application that the applicant engages in further training and regularly practises mediation, and provided that that evidence was obtained by 31 December 2012 at the latest'.

3. Law No 4512/2018

13. Law No 4512/2018, which includes a chapter II entitled 'Rules on mediation', was published on 17 January 2018.[10]

14. Article 188 of that Law, entitled 'Qualifications of mediators', provides in paragraph 1 that 'mediators must: (a) hold a higher education diploma awarded [in Greece] or an equivalent diploma awarded in another country; (b) have been trained by a mediator training institution recognised by the Central Mediation Committee or hold evidence of accreditation issued by another Member State of the European Union; (c) have been accredited by that Committee and have registered as a mediator with the Ministry of Justice, Transparency and Human Rights. Anyone with a higher education diploma awarded [in Greece] or an equivalent diploma issued in another country who also holds an MPhil or a PhD in mediation issued by a higher education establishment in another country shall not be required, for the purposes of accreditation, to undertake further training with a mediator training institution or to take any examinations. Anyone having held the office of judge shall be excluded from practising the profession of mediator'.

15. Article 202 of that Law, entitled 'Accreditation of mediators', provides in paragraph 1 that 'mediator accreditation and registration in accordance with Article 203(2) shall be effected by the Central Mediation Committee after examinations …'.

16. Article 203 of that Law, entitled 'Public information – Register', provides in paragraph 6 that 'any mediator who has been accredited in another Member State of the European Union in accordance with the provisions laid down in that Member State with respect to the lawful pursuit of the profession of mediator may register as a mediator … after filing an application to do so. His application must be accompanied by essential supporting documentation to attest to his status as mediator, his registration taking place following the review and approval of that documentation by the Central Mediation Committee. That Committee shall examine the lawfulness of the documents produced by the person concerned, using any appropriate means it sees fit in order to do so'.

10 Law on the rules implementing the structural reforms of the economic adjustment programme and laying down other provisions (FEK A' 5/17.1.2018), in particular Articles 178 to 206.

17. Article 205 of Law No 4512/2018 provides that, ‘as from the entry into force of this Law, any provision to the contrary that lays down different rules in respect of any matter relating to mediation shall be repealed. The provisions of Article 1 of Law No 3898/2010 shall remain in force’. Furthermore, Article 206 of Law No 4512/2018 provides that ‘this Chapter II shall enter into force upon its publication in the official journal of the government …’.

III. Pre-litigation procedure and the procedure before the Court

18. Following a complaint calling into question the compatibility with Directives 2005/36, 2006/123 and 2008/52 of Law No 3898/2010 and amended Ministerial Decision No 109088, the Commission, by email of 11 July 2013, asked the Hellenic Republic for information on mediator training in Greece.

19. Being unsatisfied with the response it had received, the Commission, on 11 July 2014, sent the Hellenic Republic a letter of formal notice inviting it to submit observations on an infringement both of Articles 13 and 14 of Directive 2005/36 and of Article 15(2)(b) and (c) of Directive 2006/123.

20. Finding the response obtained to be still unsatisfactory, the Commission, on 29 May 2015, sent an additional letter of formal notice confirming its previous opinion and placing on record its further concern as to the incompatibility of the Greek legislation with Article 50 of, and Annex VII to, Directive 2005/36, as well as with the principle of non-discrimination as set out in Articles 45 and 49 TFEU.

21. Being unconvinced by the merits of the arguments put forward in response by the Hellenic Republic, the Commission sent it a reasoned opinion, which was received on 26 February 2016.[11] According to that opinion: *first*, by limiting the *legal form of mediator training institutions* to non-profit companies that must be formed of at least one Bar Association and at least one Professional Chamber in Greece, in accordance with Law No 3898/2010 and Presidential Decree No 123/2011,[12] the Hellenic Republic has failed to fulfil its obligations in relation to freedom of establishment under Article 49 TFEU and Article 15(2)(b) and (c) and (3) of Directive 2006/123. *Secondly*, by making the procedure for the *recognition of academic qualifications* subject to additional requirements concerning the content of certificates and to compensation measures without a prior assessment of any substantial differences, and by maintaining in force discriminatory provisions which compel applicants for accreditation as a mediator[13] to demonstrate experience of having taken part in at least three mediation procedures, the Hellenic Republic has failed to fulfil its obligations under Articles 45 and 49 TFEU and Articles 13, 14 and 50 of, and Annex VII to, Directive 2005/36.

22. By letter of 10 May 2016, the Hellenic Republic contested the failures to fulfil obligations of which it had been accused. *First*, it contended that mediation constituted an activity connected with the exercise of official authority, more specifically the administration of justice, and, as such, was caught by the exception provided for in the first paragraph of Article 51 TFEU, and that, furthermore, the provisions of Directive 2008/52 support the view that measures restricting the freedom of establishment and the freedom to provide services may be justified by the general interest. *Secondly*, it

11 I would point out that, although the application says ‘16 February’, it is clear from the documents annexed to it that the reasoned opinion is dated 25 February 2016 and was received the following day.

12 Presidential Decree setting out the conditions for the authorisation and operation of institutions for the training of mediators in civil and commercial matters (FEK A’ 255/9.12.2011). Article 1(1) provides that ‘a mediator training institution … may be a non-profit civil-law partnership jointly formed of at least one Bar Association and at least one Professional Chamber in Greece and operating under an authorisation issued by the Department for matters relating to the Profession of Lawyer and Bailiffs within the Directorate-General for Judicial Administration at the Ministry of Justice, Transparency and Human Rights (Article 5(1) of Law No 3898/2010)’.

13 The Commission’s application refers more specifically in this regard to applicants for accreditation who hold evidence of accreditation obtained in another country or issued by a recognised training institution based in another country following training delivered in Greece.

submitted that mediators who have acquired professional qualifications in another Member State are not deprived of the possibility of pursuing that profession, since the provisions called into question allow their competence to be recognised on the basis of documents relating to their further training rather than on the basis of the aforementioned experience criterion.

23. Being of a different view, the Commission, by act dated 22 December 2017 and lodged on 4 January 2018, brought the present action under Article 258 TFEU for a declaration as to the failures to fulfil obligations identified in its reasoned opinion.[14]

24. In its defence, the Hellenic Republic contended that the action should be dismissed, on the ground that Law No 3898/2010 and Presidential Decree No 123/2011 were repealed by Law No 4512/2018, which removed the national rules called into question.

25. In its reply, the Commission maintained the complaints and arguments which it had raised in its application, arguing in particular that the changes which were introduced by Law No 4512/2018 after this application was lodged do not conclusively eliminate the alleged failures to fulfil obligations.

26. In its rejoinder, the Hellenic Republic provided a number of clarifications with respect to the system established by Law No 4512/2018 and contended that the action should be dismissed.

27. At the hearing on 6 December 2018, the Hellenic Republic and the Commission presented oral argument.

IV. Analysis

A. The national provisions called into question in this action

28. Before examining the merits of the Commission's complaints relating to the failure to fulfil obligations under Directive 2005/36 of which the Hellenic Republic is accused,[15] it is important to determine *the scope of the present action* and to identify the national provisions forming the subject of that action.

29. It is true that, in its application, the Commission defined the national legal framework within which the present case sits, referring more specifically to Law No 3898/2010 and amended Ministerial Decision No 109088,[16] in the versions applicable on the date of the document initiating the present proceedings.[17]

30. In its defence, however, the Hellenic Republic submitted that, following the entry into force of Law No 4512/2018, which, inter alia, governs the profession of mediator, all of the national rules at which the present action is directed were repealed and replaced by provisions consistent with EU law, with the result that the complaints raised by the Commission 'now have no point'. It stated in particular, first, that 'the provisions of Law No 4512/2018 [have] removed … the obligation for persons applying

14 See point 21 of this Opinion. It should be noted that Article 49 TFEU alone is cited as the legal basis for the application, not Article 45 TFEU, which was referred to by way of an additional legal basis in the reasoned opinion.

15 The merits will be examined in points 39 et seq. of this Opinion.

16 It seems to me that the adoption of amended Ministerial Decision No 109088 follows in particular from the wording of Article 7(2)(a) of Law No 3898/2010.

17 It should be noted that, although the Commission also refers to Presidential Decree No 123/2011, that instrument is not affected by the strand of the action for failure to fulfil obligations with which the present targeted Opinion is concerned (see point 3 of this Opinion).

for accreditation as a mediator who hold evidence of accreditation issued in another country or by a recognised training institution based in another country to have taken part in at least three mediation procedures', and, secondly, that those provisions amended the conditions governing registration as a mediator in Greece.[18] It reiterated that argument in its rejoinder.[19]

31. In its reply, the Commission stated, with specific regard to the alleged infringement of Directive 2005/36, first, that the complaints described in its application were not divested of their substance and, secondly, that the case called for a number of clarifications with respect to the purport of certain provisions of Law No 4512/2018 and the continued application or otherwise of the previous rules.[20] It went on to say that, in any event, it referred back to those aspects of its application that had dealt with the aforementioned infringement, which it regards as having been caused by the previous legislation 'notwithstanding the consideration it has given to the new legislation' cited by the defendant.

32. During the oral stage of the present proceedings, the parties essentially reiterated their respective positions. In particular, the Hellenic Republic stated that Article 205 of Law No 4512/2018, the wording of which is imprecise according to the Commission, had had the effect of repealing all of the previous provisions relating to mediation, a list of which had been drawn up in a record kept in the archives of the Greek parliament. The Commission, on the other hand, stated that the complaints based on Directive 2005/36 which it had raised against the national provisions referred to in its application were also directed against the provisions arising from Law No 4512/2018, which, it its view, were not manifestly contrary to those contained in the previous legislation.

33. In this regard, I would, *first*, note that the Hellenic Republic has not formally raised a plea as to the inadmissibility of this action for failure to fulfil obligations. The Court can nonetheless examine of its own motion whether the conditions laid down in Article 258 TFEU as governing the bringing of such an action are fulfilled. In particular, according to settled case-law, it follows from Article 120 of the Rules of Procedure of the Court that the essential points of law on which an action is based must be indicated coherently and intelligibly in the application itself and that the forms of order sought must be set out unambiguously there so as to make it possible to know exactly the scope of the alleged infringement of EU law, this being a condition that must be satisfied in order to enable the Member State to present an effective defence and the Court to undertake a proper review.[21]

34. *Secondly*, I would recall that it has been repeatedly held that the existence of a failure to fulfil obligations must be assessed by reference to the situation prevailing in the Member State *at the end of the period laid down in the reasoned opinion*, with the result that any changes arising subsequently cannot be taken into account by the Court in assessing whether that infringement has actually taken place. So it is that the arguments put forward by the defendant State must be disregarded in so far as they relate to a legislative development which postdates the expiry of that period.[22] Furthermore, an

18 In this regard, the Hellenic Republic submits that Law No 4512/2018 sought to 'enhance the training of applicant mediators by laying down prerequisites for eligibility to undertake mediator training. [The persons concerned must] hold a diploma attesting to study at a higher educational establishment in Greece or a recognised equivalent diploma issued in another country, but is under no obligation to have experience of participation in a mediation procedure'. It went on to say that 'Article 203(6) of [that] Law provides for the option to register as a mediator or accredited mediator in another Member State, in accordance with the provisions laid down in that Member State with respect to the lawful pursuit of the profession of mediator'.

19 According to the rejoinder, 'the ministerial decisions on mediation [that predated] Law No 4512/2018 became obsolete on the entry into force of that Law'.

20 According to the Commission, it is not clear, in particular from Article 205 and Article 188(1)(a) and (b) of that Law, whether the national provisions called into question in its application have been fully repealed. Consequently, the failure to fulfil obligations complained of continues in being despite the reform of the relevant legislation.

21 See, inter alia, judgments of 14 October 2010, *Commission* v *Austria* (C-535/07, EU:C:2010:602, paragraph 42); of 19 December 2012, *Commission* v *Italy* (C-68/11, EU:C:2012:815, paragraphs 49 to 54); and of 5 April 2017, *Commission* v *Bulgaria* (C-488/15, EU:C:2017:267, paragraph 50).

22 See, inter alia, judgments of 28 July 2011, *Commission* v *Belgium* (C-133/10, not published, EU:C:2011:527, paragraphs 31 to 39); of 25 October 2012, *Commission* v *Portugal* (C-557/10, EU:C:2012:662, paragraphs 24 and 25); of 4 September 2014, *Commission* v *France* (C-237/12, EU:C:2014:2152, paragraphs 52 to 55); of 18 December 2014, *Commission* v *United Kingdom* (C-640/13, not published, EU:C:2014:2457, paragraphs 41 to 44); and of 4 May 2017, *Commission* v *Luxembourg* (C-274/15, EU:C:2017:333, paragraphs 41, 47 and 48).

action for failure to fulfil obligations in connection with national legislation that continues to produce effects on that date, this being the only relevant date for the purposes of assessing the admissibility of the action, is not devoid of purpose. After all, in cases where the infringement has been eliminated after that date, there is still an interest in pursuing the action in order to establish the basis of any liability which a Member State may incur, as a result of its infringement, to, amongst others, persons who derive rights from that infringement.[23]

35. Now, in this instance, the provisions of Chapter II of Law No 4512/2018, on which the Hellenic Republic relies, entered into force on 17 January 2018,[24] and, therefore, after the date on which the time limit lad down in the reasoned opinion expired, that is to say 26 April 2016,[25] and even after the present action was lodged, on 4 January 2018. Given that the alleged failure to fulfil obligations had certainly not disappeared on the date on which that time limit expired, the amendment of the provisions called into question by the Commission which took place after that date cannot have divested that action of its purpose. In my view, therefore, no conclusive inference can be drawn from ascertaining whether or not Law No 4512/2018 fully repealed the provisions of Greek law referred to in the application, because that question has no bearing in any event on the admissibility of the action in so far as it relates to those provisions.

36. *Thirdly*, it follows from the Court's case-law that, where the national legislation called into question in proceedings for failure to fulfil obligations was amended after the expiry of the time limit laid down in the reasoned opinion, *the Commission must be regarded as not having changed the subject matter of its action* if it attributes the complaints raised against the previous provisions to the provisions arising from the reformed legislation too, *provided*, however, that it is established that the content of the two versions of the legislation is essentially identical and the system introduced by the legislation contested in the pre-litigation procedure has therefore, on the whole, been *maintained*.[26]

37. In the present case, it seems to me that the arguments, both written and oral, which the Commission has put forward before the Court on the subject of the provisions of Law No 4512/2018 are marked by a lack of clarity, if not vitiated by a degree of ambiguity. The Commission thus stated that it wished to direct the complaints based on Directive 2005/36 not only against the national legislation referred to in its application but also against Law No 4512/2018, but failed to establish to exactly what extent the content of the latter is similar to the previous legislation and, therefore, contrary to the aforementioned directive, inasmuch as it simply expressed a number of doubts in this regard.[27] To my mind, this way of proceeding is not consistent with the aforementioned case-law concerning the clarity and precision that the Commission's claims must exhibit where that institution is seeking a declaration that a Member State has failed to fulfil its obligations under EU law[28] and it is not for the Court to make up for the applicant's shortcomings in circumstances where the latter does not satisfy those requirements.[29]

23 See, inter alia, judgments of 10 April 2008, *Commission* v *Italy* (C-442/06, EU:C:2008:216, paragraph 42); of 7 April 2011, *Commission* v *Portugal* (C-20/09, EU:C:2011:214, paragraphs 31 to 42); and of 23 April 2015, *Commission* v *Bulgaria* (C-376/13, not published, EU:C:2015:266, paragraphs 43 and 45).

24 Those provisions (cited in extract in points 13 et seq. of this Opinion) entered into force on the date on which that Law was published, pursuant to Article 206 of that Law.

25 It should be noted that, according to the documents annexed to the application, the Commission gave the Hellenic Republic two months from the date of receipt of the reasoned opinion, which was received on 26 February 2016, to remedy the infringement complained of.

26 See, to this effect, judgments of 22 September 2005, *Commission* v *Belgium* (C-221/03, EU:C:2005:573, paragraph 38 et seq.); of 10 January 2006, *Commission* v *Germany* (C-98/03, EU:C:2006:3, paragraph 27); of 21 March 2013, *Commission* v *France* (C-197/12, not published, EU:C:2013:202, paragraph 26); and of 4 September 2014, *Commission* v *Germany* (C-211/13, not published, EU:C:2014:2148, paragraph 24).

27 Both in the Commission's reply and at the hearing.

28 In addition to the judgments cited in footnote 21 above, see Opinion of Advocate General Jääskinen in *Commission* v *Estonia* (C-39/10, EU:C:2011:770, paragraphs 32 et seq.).

29 Given that, in relation to the substance of the action, it falls to the Commission to establish the infringement complained of by providing the Court with the information necessary for it to determine the existence and extent of that infringement, to which end it may not rely on any presumption (see, inter alia, judgments of 29 October 2015, *Commission* v *Belgium* (C-589/14, not published, EU:C:2015:736, paragraphs 28 and 32); of 29 June 2017, *Commission* v *Portugal* (C-126/15, EU:C:2017:504, paragraphs 70 and 80); and of 12 April 2018, *Commission* v *Denmark* (C-541/16, EU:C:2018:251, paragraph 25)).

38. In conclusion, since the provisions of Greek law referred to in the Commission's application[30] were not repealed before the time limit laid down in the reasoned opinion expired, I take the view that the present action for failure to fulfil obligations cannot be regarded as being devoid of purpose and must therefore be declared admissible in so far as it relates to those provisions. I am also of the mind, however, that any attribution of the complaints contained in the application to the provisions arising from Law No 4512/2018 has not been substantiated by the Commission to an extent sufficient to enable it to be taken into account by the Court, at least so far as concerns the infringement of Directive 2005/36, with the result that there will, in my opinion, be no need to assess the alleged infringement in relation to those new provisions.

B. The failure to fulfil obligations under Directive 2005/36

39. In the light of the respective arguments of the parties to the present proceedings, I shall begin by looking at whether the Greek legislation at issue does indeed fall within the material scope of Directive 2005/36 on the recognition of professional qualifications, more specifically from the point of view of the relationship between that directive and Directive 2008/52,[31] account being taken of the limited subject matter of the present Opinion[32] (section 1). Since Directive 2005/36 should, in my view, be declared applicable in this regard, it will be necessary, next, to determine whether the aforementioned legislation is consistent with it (section 2).

1. The applicability of Directive 2005/36 with respect in particular to Directive 2008/52

40. As a preliminary point, I would note that the question of the applicability of Directive 2005/36, in relation more specifically to the content of Directive 2008/52, was, to my mind, raised largely during the pre-litigation stage, even though it is referred to in the document bringing the matter before the Court.[33]

41. In its application, the Commission states that, in their response to the reasoned opinion, the Greek authorities cast doubt on the applicability of Directive 2005/36 on the ground that the classification of the profession of mediator as a 'regulated profession' might 'depend on the correlation between Directive 2005/36 and the subsequent Directive 2008/52'.

42. *In the first place*, I would submit that it follows explicitly from the application that the Greek authorities have not contested the Commission's position to the effect that the profession of mediator in Greece constitutes a '*regulated profession*' within the meaning of Article 3(1)(a) of Directive 2005/36. The Hellenic Republic did not question that point of view before the Court. What is more, that view is correct in my opinion, for the following reasons.

30 That is to say, so far as concerns the complaints alleging infringement of Directive 2005/36, the provisions of Law No 3898/2010 and of amended Ministerial Decision No 109088.

31 The provisions of Directive 2008/52 (on certain aspects of mediation) are also, not to say principally, relied on by the Hellenic Republic as a ground of defence against the first complaint raised by the Commission, which is based on the obligations arising from Article 49 TFEU (on the freedom of establishment) and Article 15 of Directive 2006/123 (on services in the internal market). I would recall that that complaint does not, however, form part of the subject matter of the present targeted Opinion (see points 1 and 3 of the latter).

32 According to the application, the Hellenic Republic has also relied on two other arguments in order to oppose the application of Directive 2005/36, one based on the first paragraph of Article 51 TFEU (which creates an exception to the freedom of establishment for activities connected with the exercise of official authority in a Member State), and the other alleging that it has not yet designated a national authority empowered to recognise the professional qualifications of mediators in Greece (as provided for in Article 56(3) of that directive). Those two arguments will not, however, be analysed in this targeted Opinion.

33 The Commission's application thus states that the Greek authorities raised an objection in this regard in their response to the reasoned opinion. To my mind, the Hellenic Republic did not substantiate that objection either in the defence or in the rejoinder which it lodged before the Court, nor even in its oral observations, its pleadings at the hearing having mentioned Directive 2008/52, it is true, but in connection with Directive 2006/123, a strand of the case not being dealt with in this Opinion (see footnote 31 of the latter). During the pre-litigation procedure, the parties have an opportunity to set out and develop the line of argument which they will, subsequently, be called upon to expound before the Court in the event that proceedings for a declaration of failure to fulfil obligations are brought before it (see, inter alia, order of the President of the Court of 15 November 2018, *Commission* v *Poland* (C-619/18, EU:C:2018:910, paragraph 24)).

43. It follows from the wording of that provision[34] and the Court's related case-law[35] that that term refers to a professional activity which, in relation to the conditions for taking it up or pursuing it, is directly or indirectly governed by national provisions stipulating the possession of specific professional qualifications in the form of evidence of training specifically designed to prepare those to whom that evidence is awarded to pursue a given profession. Now, the profession of mediator as governed in Greece does meet those criteria, since access to it is subject to the completion of training geared towards the acquisition of a professional qualification and accreditation specifically permitting its holder to pursue that profession, in accordance in particular with Article 6(1) and (3) of Law No 3898/2010.[36] Directive 2005/36 *is* therefore applicable to this case, in the light of Article 3(1)(a).

44. *In the second place*, it should be noted that, according to the application, the Greek authorities maintained during the pre-litigation procedure that the scope of application of Directive 2005/36 is *limited to the 'pursuit' of a regulated profession*, relying in support of that argument on a supposed link between that directive and *Directive 2008/52*. Nonetheless, the 'correlation' thus established between those two instruments was not clarified by the parties before the Court. The issue raised, if I understand it correctly on the basis of the information provided by the Commission, is to what extent the harmonisation flowing from Directive 2005/36, account being taken of Directive 2008/52, encompasses the conditions of access to a regulated profession such as the profession of mediator in Greece.

45. In this regard, I would recall that, in accordance with Articles 1 and 2 thereof, Directive 2005/36 lays down the rules in accordance with which professional qualifications acquired by Member State nationals in one or more 'home' Member States must be recognised in a 'host' Member State for the purposes of access to regulated professions within the meaning of that directive or the pursuit thereof in the territory of the latter State.[37]

46. The argument that account must be taken of Directive 2008/52 in order to define the material scope of Directive 2005/36, aside from not having been shown to be relevant by the Hellenic Republic before the Court, strikes me in any event as being entirely unfounded. For one thing, Directive 2008/52 makes no reference to Directive 2005/36,[38] which preceded it. And for another, to my knowledge, the Court has never in its case-law established any substantive link between those two instruments, the

34 Article 3(1)(a) of Directive 2005/36 defines the concept of 'regulated profession' as follows: 'a professional activity or group of professional activities, access to which, the pursuit of which, or one of the modes of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions, to the possession of specific professional qualifications; in particular the use of a professional title limited by legislative, regulatory or administrative provisions to holders of a given professional qualification shall constitute a mode of pursuit …'.

35 See, inter alia, judgments of 17 December 2009, *Rubino* (C-586/08, EU:C:2009:801, paragraph 24); of 6 October 2015, *Brouillard* (C-298/14, EU:C:2015:652, paragraphs 36 to 38); and of 21 September 2017, *Malta Dental Technologists Association and Reynaud* (C-125/16, EU:C:2017:707, paragraphs 34 and 35).

36 Which provides that applicant mediators must undergo an examination by a board responsible for verifying, prior to the issue of accreditation, that they have the [necessary] knowledge and skills and have been adequately trained by an authorised institution.

37 See also Opinion of Advocate General Sharpston in *Brouillard* (C-298/14, EU:C:2015:408, point 28).

38 Unlike, for example, recital 19 and Article 3(2) of Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (OJ 2013 L 165, p. 63). In this regard, see my Opinion in *Menini and Rampanelli* (C-75/16, EU:C:2017:132, point 55 et seq.).

subject areas of which are very different.[39] What is more, on reading the provisions of Directive 2008/52 that are potentially relevant,[40] which have to do in essence with the quality of mediation,[41] I cannot see how those provisions might be such as to affect the applicability of Directive 2005/36 in the present case.

47. Finally, as the Commission states, it is settled case-law that, if the conditions of access to a profession have not been harmonised, the Member States are entitled to define the knowledge and qualifications required for the pursuit of that profession, although they nonetheless remain bound to respect the fundamental freedoms guaranteed by the FEU Treaty when exercising their powers in that area.[42] In this instance, it is my view that, since the conditions of access to the activity of mediator have not to date been harmonised at EU level, in particular not by the provisions of Directive 2008/52, the Member States remain competent to define those conditions, subject to the obligation incumbent on them to ensure that national provisions adopted in this regard do not constitute an unjustified obstacle to the effective exercise of those freedoms.

48. I therefore consider, like the Commission, that there is no doubt not only that the profession of mediator in Greece constitutes a 'regulated profession' within the meaning of Directive 2005/36, but also that that profession falls within the material scope of that directive. Consequently, it falls to be determined whether the national legislation called into question by this action is consistent with the requirements of that instrument.

2. The incompatibility of the national provisions with Directive 2005/36

49. It follows from the *arguments put forward by the parties on the substance of the case* that the Commission submits that, in adopting the legislation referred to in the application, more specifically amended Ministerial Decision No 109088 read in conjunction with Law No 3898/2010, the Hellenic Republic not only infringed Articles 13, 14 and 50 of, and Annex VII to, Directive 2005/36, but also breached the principle of non-discrimination within the context of that legislation.

50. The Hellenic Republic refutes that line of argument[43] by contending that the new provisions arising from Law No 4512/2018[44] are significantly different from those contained in the legislation targeted by the application, all of which were repealed by the aforementioned Law. I would recall in this regard that, for the reasons given earlier, I am of the view that the provisions of that Law should not form the subject of the assessment which the Court will have to carry out of the failure to fulfil obligations at issue in the present case.[45]

39 I would recall that Directive 2008/52 concerns certain aspects of mediation as an alternative dispute resolution method that is to be encouraged, while Directive 2005/36 concerns the recognition of professional qualifications, as is apparent from both the titles and the first articles of those instruments, which define their respective subject areas.

40 In the light of the exchange of argument and evidence before the Court on the relationship between Directive 2008/52 and, also, Directive 2006/123 (see footnote 31 of this Opinion).

41 Namely, recital 16 and Article 1 of Directive 2008/52, which set out its objectives, Article 3(b), which defines the term 'mediator', and Article 4, which concerns the 'quality of mediation'. While recital 16 and Article 4(2) call upon Member States to promote the training of mediators in order to foster good-quality mediation, that directive is nonetheless not intended to govern the professional qualifications of mediators. See, inter alia, Cadiet, L., 'Directive No 2008/52/CE …', *Droit processuel civil de l'Union européenne*, LexisNexis, Paris, 2011, p. 321 et seq., in particular point 850; Ybarra Bores, A., 'The European Union and alternative dispute resolution methods: Directive 2008/52/EC …', *Latest Developments in EU Private International Law*, Intersentia, Cambridge, 2011, p. 175 et seq., in particular p. 181; and Esplugues, C., 'Civil and commercial mediation in the EU after the transposition of Directive 2008/52/EC', *Civil and Commercial Mediation in Europe*, Vol. II, Intersentia, Cambridge, 2014, p. 485 et seq., in particular p. 516.

42 See, inter alia, judgments of 10 December 2009, *Peśla* (C-345/08, EU:C:2009:771, paragraph 34 et seq.); of 27 June 2013, *Nasiopoulos* (C-575/11, EU:C:2013:430, paragraph 20); and of 17 December 2015, *X-Steuerberatungsgesellschaft* (C-342/14, EU:C:2015:827, paragraph 44 et seq.).

43 Both in its defence and rejoinder and in its oral observations.

44 On the wording of those provisions, see points 13 to 17 and 30 of this Opinion.

45 See point 34 et seq. of this Opinion.

51. It is also worth noting that the defendant refrains from commenting on the compatibility with EU law of the earlier version of the Greek legislation, referred to in the application, even though the reform on which it relies entered into force after the time limit laid down by the Commission in the reasoned opinion had expired, meaning that the adoption of that reform cannot constitute a valid defence, as the aforementioned case-law makes clear.[46] What is more, the fact that a party relies exclusively on the introduction of new provisions in a procedural context such as this would, to my mind, demonstrate rather that the national legal framework was indeed inconsistent with EU law at the time when the relevant time limit expired.[47]

52. In any event, it is settled case-law, even in circumstances where the Member State concerned does not contest the infringement, that it is for the Court to establish whether the infringement complained of exists or not.[48]

53. In this connection, I would note that, as regards the incompatibility with Directive 2005/36 of the Greek legislation referred to in the application, the Commission raises various complaints by which it accuses the Hellenic Republic of having made the procedure for the recognition of academic qualifications which applicant mediators have to follow subject to *requirements not provided for in Articles 13, 14 and 50 of, and Annex VII to, that directive*. That analysis is correct in my opinion, for the *following reasons*.

54. First of all, it should be made clear that, given that the profession of mediator, which is regulated in Greece,[49] is not mentioned in the provisions of Chapters II and III of Title III of Directive 2005/36, concerning the freedom of establishment, it is subject to the general system for the recognition of evidence of training, laid down in Chapter I of that title, and in particular Articles 10 to 14 of that directive.[50]

55. Article 13 lays down the conditions for such recognition. In particular, paragraph 1 thereof provides that the competent authority of the host Member State must permit access to and pursuit of a regulated profession, under the same conditions as apply to its nationals, to applicants possessing an attestation of competence or evidence of formal qualifications, as referred to in Article 11 of the same directive, which has been issued by a competent authority in another Member State for the same purpose.[51]

56. It is true that Article 14 of Directive 2005/36 goes on to say that Article 13 thereof does not preclude the host Member State from imposing 'compensation measures', consisting in an adaptation period or an aptitude test, on persons wishing to take up and pursue a regulated profession. Article 14 nonetheless confines that possibility to the situations listed in paragraph 1 thereof, which refers in particular, in point (a), to the case where 'the training the applicant has received covers

46 See also point 34 et seq. of this Opinion.

47 See by analogy, inter alia, judgments of 10 March 2016, *Commission* v *Spain* (C-38/15, not published, EU:C:2016:156, paragraphs 33 and 34), and of 10 November 2016, *Commission* v *Greece* (C-504/14, EU:C:2016:847, paragraph 144).

48 See, inter alia, judgments of 17 July 2014, *Commission* v *Greece* (C-600/12, not published, EU:C:2014:2086, paragraph 46); of 14 September 2017, *Commission* v *Greece* (C-320/15, EU:C:2017:678, paragraph 21); and of 15 March 2018, *Commission* v *Czech Republic* (C-575/16, not published, EU:C:2018:186, paragraph 105).

49 In this regard, see point 42 et seq. of this Opinion.

50 See also judgment of 21 September 2017, *Malta Dental Technologists Association and Reynaud* (C-125/16, EU:C:2017:707, paragraph 38).

51 Article 13(2) provides for the particular situation where applicants have pursued the profession in question in another Member State which does not regulate that profession.

substantially different matters than those covered by the evidence of formal qualifications required in the host Member State'.[52] Paragraph 4 defines the expression 'substantially different matters'[53] and paragraph 5 stipulates that that option must be used with due regard to the principle of proportionality.[54]

57. Furthermore, Article 50(1) of that directive states that the competent authority of the host Member State may demand, to my mind exclusively, the documents and certificates listed in Annex VII to that instrument. Point 1(b) and (c) of that annex states that production of the attestations mentioned there may be requested under the conditions laid down in the latter provisions.

58. Now, *in the present case*, the provisions of amended Ministerial Decision No 109088, read in conjunction with those of Law No 3898/2010, go beyond the rules laid down in the abovementioned provisions of Directive 2005/36.

59. *Firstly*, the recognition in question is subject to *requirements concerning the content of the requisite certificates* which are not consistent, in my opinion, with the system established by that directive.

60. Thus, paragraph 2(c) of section A of the single article of Amended Ministerial Decision No 109088 lists a whole series of details which must appear on the certificates that applicant mediators are required to provide to the Greek accreditation committee,[55] and from these I have identified those[56] that are inconsistent with the rules laid down by the EU legislature because they do not lend themselves to a proportionate evaluation of the content of the training completed by the persons concerned, contrary to the limited assessment criteria that follow, in my view, from Article 14 and Article 50(1) of, and Annex VII(1) to, Directive 2005/36.[57]

61. In addition, as the Commission submits, it follows from the Court's case-law on the free movement of persons as guaranteed by Article 45 TFEU that the equivalence of a foreign diploma must be assessed by reference exclusively to the degree of knowledge and qualifications which its holder can be assumed, by virtue of that diploma, to possess, having regard to the nature and duration of the studies and practical training to which the diploma relates.[58]

52 It should be noted that paragraph 1(b) also refers to the criterion of 'substantially different matters'.

53 As follows: 'matters in respect of which knowledge, skills and competences acquired are essential for pursuing the profession and with regard to which the training received by the migrant shows *significant differences in terms of content* from the training required by the host Member State' (my emphasis).

54 This is confirmed by recital 15 of that directive, which states that, 'in the absence of harmonisation of the minimum training conditions for access to the professions governed by the general system, it should be possible for the host Member State to impose a compensation measure. This measure should be proportionate and, in particular, take account of the applicant's professional experience. Experience shows that requiring the migrant to choose between an aptitude test or an adaptation period offers adequate safeguards as regards the latter's level of qualification, so that any derogation from that choice should in each case be justified by an imperative requirement in the general interest'.

55 Under point (c), applicant mediators must produce, along with other supporting documentation, 'a certificate issued by the training institution for the attention of the Mediator Accreditation Committee, as provided for in Article 6(1) of Law No 3898/2010, which confirms' the following: '(aa) the total number of hours' training', '(bb) the matters taught', '(cc) the place of the training' (it should be noted that the Commission's application sometimes refers in this regard to 'the method of teaching', in error in my opinion), '(dd) the number of participants', '(ee) the number and qualifications of the trainers' and '(ff) the procedure for examining and assessing candidates and the arrangements for ensuring the integrity of that procedure'.

56 That is to say, more specifically, the four details required in point (cc) to (ff), cited in the previous footnote, which are expressly referred to in the Commission's application.

57 On the criteria inherent in those provisions, see, in particular, Pertek, J., 'Consolidation de l'acquis des systèmes de reconnaissance des diplômes par la directive 2005/36 du 7 septembre 2005', *Revue du marché commun et de l'Union européenne*, 2008, pp. 126 and 127, and Berthoud, F., *La reconnaissance des qualifications professionnelles – Union européenne et Suisse-Union européenne*, Dossier de droit européen, No 30, Schulthess, Geneva, 2016, pp. 306 to 334.

58 See, inter alia, judgments of 10 December 2009, *Peśla* (C-345/08, EU:C:2009:771, point 39), and of 6 October 2015, *Brouillard* (C-298/14, EU:C:2015:652, point 55).

62. *Secondly*, under the Greek legislation at issue, the recognition of qualifications is linked to *compensation measures* which are imposed on a category of applicant mediators *without any prior assessment* as to the existence or otherwise of *substantial differences* with national training, even though the need for such an assessment follows, in my and the Commission's opinion, from Article 14 of Directive 2005/36, and, more specifically, from the aforementioned provisions of paragraphs 1, 4 and 5 thereof.

63. Thus, paragraph 5 of section A of the single article of amended Ministerial Decision No 109088 provides that, when it comes to recognising evidence of accreditation obtained in another country or issued by a training institution based in another country following training delivered in Greece, the Greek Mediator Accreditation Committee is able to accept such equivalence under conditions which, to my mind, are not consistent with the types of criteria provided for in Directive 2005/36 and exceed the discretion which that directive leaves to the competent authorities of the Member States in this field.[59] First and foremost, I consider that, since those conditions are not suitable for establishing beforehand whether the training received by the person concerned relates to matters which are substantially different from those covered by the evidence of training required in the host Member State, a compensation measure to fill in those gaps, as provided for in Article 14 of that directive, would appear to be objectively necessary.

64. *Thirdly*, the Commission submits that, in the context of that same legislation, the Hellenic Republic has also infringed the *principle of non-discrimination*, inasmuch as it has maintained in force national provisions requiring persons who apply for accreditation as a mediator after having obtained evidence of accreditation from a training institution based in another country[60] to demonstrate experience of having taken part in at least three mediation procedures, whereas the same does not apply to persons who have obtained evidence of accreditation from a Greek training institution.

65. I share that view, although, in my opinion, the third complaint is no different from the aforementioned second complaint, given that the former too is concerned with the content of paragraph 5 of section A of the single article of amended Ministerial Decision No 109088 (that content having been examined earlier in the light of Directive 2005/36), and that, to my mind, that directive itself contains a prohibition against any criterion for the recognition of qualifications which is of a discriminatory nature.[61]

59 Thus, the first subparagraph of paragraph 5 requires 'the person concerned [to] demonstrate *experience of having taken part in at least three mediation procedures* as a mediator, assistant mediator or counsel to one of the parties', and goes on to say that '[that] Committee *may, at its discretion*, ask the person concerned to undergo *an additional examination*'. The second subparagraph allows the person concerned to be exempted from proving such experience, provided that 'it is readily apparent from the combination of information contained in the application that the applicant engages in further training and *regularly practises mediation, and provided that that evidence was obtained by 31 December 2012 at the latest*' (my emphasis).

60 More specifically, evidence of accreditation obtained in another country or issued by a recognised training institution based in another country following training delivered in Greece.

61 In particular, it follows from Article 13 of Directive 2005/36 that the competent authority of a Member State must grant access to a regulated profession such as that of mediator 'under the same conditions as apply to its nationals'. The contested provisions of amended Ministerial Decision No 109088, however, are intrinsically liable to affect nationals of other Member States more than Greek nationals, thus creating a risk that the former will be at a disadvantage and, therefore, the subject of indirect discrimination.

66. *Finally*, like the Commission, I would make the point that the *arguments which the Hellenic Republic put forward in rebuttal under this heading* during the pre-litigation procedure are of no consequence. More specifically, according to the Court's settled case-law,[62] the fact that an administrative practice may, on a case-by-case basis, allow the provisions of the Greek legislation which are not consistent with Directive 2005/36, in particular those requiring the aforementioned experience, not to be applied, is immaterial.[63]

67. I therefore take the view that the Commission has demonstrated to the requisite legal standard the existence of the failure to fulfil obligations which the Hellenic Republic is accused of having committed under Directive 2005/36, inasmuch as that failure to fulfil obligations concerns amended Ministerial Decision No 109088 read in conjunction with Law No 3898/2010.

V. Conclusion

68. In the light of the foregoing considerations, and without prejudice to the examination of the other complaints raised in this case, I propose that the Court should rule as follows:

By making the procedure for the recognition of academic qualifications subject to additional requirements concerning the content of the requisite certificates and to compensation measures without any prior assessment as to the existence or otherwise of any substantial differences with national training, the Hellenic Republic has failed to fulfil its obligations under Articles 13, 14 and 50 of, and Annex VII to, Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications.

62 Thus, if the authorities of a Member State do not in practice apply a national provision which is contrary to EU law, the principle of legal certainty nonetheless requires that provision to be formally amended (see, inter alia, judgments of 13 March 1997, *Commission* v *France*, C-197/96, EU:C:1997:155, paragraph 14; of 5 July 2007, *Commission* v *Belgium*, C-522/04, EU:C:2007:405, paragraph 70; and of 24 October 2013, *Commission* v *Spain*, C-151/12, EU:C:2013:690, paragraphs 26 and 36).

63 The Commission submits that the option available to the Greek national authorities not to apply the experience criterion is limited, since it exists only in the case of persons who obtained evidence of accreditation as a mediator by 31 December 2012 at the latest (see the second sentence of the second subparagraph of paragraph 5 of section A of the single article of amended Ministerial Decision No 109088 and Article 14(2) of Law No 3898/2010 as amended in 2012).