



## Reports of Cases

**Case C-377/17**

**European Commission**

**v**

**Federal Republic of Germany**

**Judgment of the Court (Fourth Chamber), 4 July 2019**

(Failure of a Member State to fulfil obligations — Services in the internal market — Directive 2006/123/EC — Article 15 — Article 49 TFEU — Freedom of establishment — Fees of architects and engineers for planning services — Minimum and maximum tariffs)

1. *Freedom of establishment — Freedom to provide services — Services in the internal market — Directive 2006/123 — Requirements to be evaluated — National legislation establishing a system of minimum and maximum tariffs for fees of architects and engineers for planning services — Justification — Burden of proof on the Member State — Scope (European Parliament and Council Directive 2006/123, Art. 15)*

(see paragraphs 64, 65, 85)

2. *Freedom of establishment — Freedom to provide services — Services in the internal market — Directive 2006/123 — Requirements to be evaluated — National legislation establishing a system of minimum and maximum tariffs for fees of architects and engineers for planning service — Not permissible — Justification — Ensuring the quality of services and the protection of consumers — Breach of principle of proportionality (European Parliament and Council Directive 2006/123, Arts 15(2)(b) and (3))*

(see paragraphs 66-71, 76-82, 88, 89, 92-95, operative part 1)

### **Résumé**

In the judgment *Commission v Germany* (C-377/17), delivered on 4 July 2019, the Court held that the Federal Republic of Germany failed to fulfil its obligations under Directive 2006/123<sup>1</sup> by maintaining fixed tariffs for architects and engineers for planning services.

The Court was required to examine a piece of German legislation which introduced a system of minimum and maximum tariffs for the planning services of architects and engineers. According to the Federal Republic of Germany, the aim of the minimum tariffs was, inter alia, to achieve an objective of quality planning services and consumer protection, while the aim of the maximum

<sup>1</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36).

tariffs was to ensure consumer protection by guaranteeing that fees are transparent and by preventing excessive tariffs.

According to the Court, the tariffs at issue are covered by the provision of Directive 2006/123 under which Member States have to examine whether their legal system imposes any requirements making the exercise of an activity subject to compliance by the provider with minimum and/or maximum tariffs.<sup>2</sup> In order to be compatible with the objectives of that directive, those requirements must be non-discriminatory, necessary, and proportionate to the achievement of an overriding reason relating to the public interest.<sup>3</sup>

Since the objectives relied on by the Federal Republic of Germany are recognised in the Court's case-law as overriding reasons relating to the public interest, the Court carried out an analysis of the suitability and proportionality of the German system of tariffs.

In the first place, as regards minimum tariffs, the Court stated first of all that, in the light of the judgment of 5 December, *Cipolla and Others* (C-94/04 and C-202/04), the existence of minimum tariffs for planning services is, in principle, with respect to the characteristics of the German market, appropriate for the purpose of helping to ensure a high level of quality of those services. With respect to the very high number of operators active in the planning services market and a market where the information available to planning service providers and consumers is highly asymmetric, there may be a risk that the service providers engage in competition that may result in the offer of services at a discount, or the elimination of operators offering quality services as a consequence of adverse selection. In such a context, the imposition of minimum tariffs may be such as to help to limit that risk by preventing services being offered at prices that are inadequate to ensure, in the long term, the quality of those services.

However, the Court then held that those minimum tariffs are not suitable for securing the attainment of the objectives pursued. According to the Court, the fact that planning services are not restricted to certain professions subject to obligatory surveillance under legislation relating to the professions or through professional bodies indicates a lack of consistency in the German legislation in relation to the objective of preserving a high level of quality. The minimum tariffs are not suitable for attaining such an objective if the provision of the services subject to those tariffs is not itself circumscribed by minimal safeguards that ensure the quality of those services.

In the second place, as regards maximum tariffs, the Court observed that, although such tariffs are such as to contribute to the protection of consumers, the Federal Republic of Germany had failed to demonstrate why making available to clients guidance as to prices for the various categories of services would, as a less restrictive measure, not suffice to achieve that objective adequately. It follows that the requirement consisting of setting maximum tariffs cannot be regarded as being proportionate to that objective.

<sup>2</sup> Article 15(2)(g) of Directive 2006/123.

<sup>3</sup> Article 15(3) of Directive 2006/123.