Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

18 January 2022*

(Reference for a preliminary ruling – Freedom to provide services – Article 49 TFEU – Directive 2006/123/EC – Article 15 – Architects' and engineers' fees – Fixed minimum tariffs – Direct effect – Judgment establishing a failure to fulfil obligations delivered during proceedings before a national court or tribunal)

In Case C-261/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Federal Court of Justice, Germany), made by decision of 14 May 2020, received at the Court on 15 June 2020, in the proceedings

Thelen Technopark Berlin GmbH

v

MN,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, A. Prechal, K. Jürimäe, C. Lycourgos, E. Regan, S. Rodin (Rapporteur), I. Ziemele and J. Passer, Presidents of Chambers, M. Ilešič, F. Biltgen, P.G. Xuereb, N. Piçarra and L.S. Rossi, Judges,

Advocate General: M. Szpunar,

Registrar: M. Krausenböck, administrator,

having regard to the written procedure and further to the hearing on 3 May 2021,

after considering the observations submitted on behalf of:

– Thelen Technopark Berlin GmbH, by M. Schultz, Rechtsanwalt,

– MN, initially by V. Vorwerk and H. Piorreck, and subsequently by V. Vorwerk, Rechtsanwälte,

– the Netherlands Government, by M.K. Bulterman, M.L. Noort, M.H.S. Gijzen and J. Langer, acting as Agents,

* Language of the case: German.

– the European Commission, by L. Armati, L. Malferrari, W. Mölls and M. Kellerbauer, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 July 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 49 TFEU, as well as Article 15(1), (2)(g) and (3) of 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).

2 The request has been made in proceedings between Thelen Technopark Berlin GmbH ('Thelen') and MN concerning the payment of fees to MN.

Legal context

European Union law

3 Recital 6 of Directive 2006/123 states:

'[Barriers to the freedom of establishment for providers in Member States and barriers to the free movement of services as between Member States] cannot be removed solely by relying on direct application of [Articles 49 and 56 TFEU], since, on the one hand, addressing them on a case-by-case basis through infringement procedures against the Member States concerned would, especially following enlargement, be extremely complicated for national and [EU] institutions, and, on the other hand, the lifting of many barriers requires prior coordination of national legal schemes, including the setting up of administrative cooperation. As the European Parliament and the Council [of the European Union] have recognised, [an EU] legislative instrument makes it possible to achieve a genuine internal market for services.'

4 Article 2(1) of that directive states:

'This Directive shall apply to services supplied by providers established in a Member State.'

5 Article 15 of that directive provides:

'1. Member States shall examine whether, under their legal system, any of the requirements listed in paragraph 2 are imposed and shall ensure that any such requirements are compatible with the conditions laid down in paragraph 3. Member States shall adapt their laws, regulations or administrative provisions so as to make them compatible with those conditions.

2. Member States shall examine whether their legal system makes access to a service activity or the exercise of it subject to compliance with any of the following non-discriminatory requirements:

…

(g) fixed minimum and/or maximum tariffs with which the provider must comply;

…

3. Member States shall verify that the requirements referred to in paragraph 2 satisfy the following conditions:

(a) non-discrimination: requirements must be neither directly nor indirectly discriminatory according to nationality nor, with regard to companies, according to the location of the registered office;

(b) necessity: requirements must be justified by an overriding reason relating to the public interest;

(c) proportionality: requirements must be suitable for securing the attainment of the objective pursued; they must not go beyond what is necessary to attain that objective and it must not be possible to replace those requirements with other, less restrictive measures which attain the same result.

…'

German law

6 Architects' and engineers' rates are governed by the Verordnung über die Honorare für Architekten- und Ingenieurleistungen (Honorarordnung für Architekten und Ingenieure – HOAI) (Decree on fees for services provided by architects and engineers (Official scale of fees for services provided by architects and engineers – HOAI)) of 10 July 2013 (BGBl. 2013 I, p. 2276) ('the HOAI').

7 Paragraph 1 of the HOAI is worded as follows:

'This decree governs the calculation of fees for the basic services of architects and engineers (acting as agents) established in Germany, provided that those basic services are covered by this decree and are provided from Germany.'

8 Paragraph 7(1), (3) and (5) of that piece of legislation provides:

'1. Fees shall be based on the written agreement adopted by the contracting parties when the agency contract was awarded and shall fall within the minimum and maximum rates set by this decree.

…

3. The minimum rates set in this decree may be reduced in exceptional cases, subject to written agreement.

…

5. In the absence of a written agreement to the contrary executed at the time when the agency contract was awarded, it shall be irrefutably presumed that minimum rates have been agreed in accordance with the provisions of subparagraph 1.

…'

The dispute in the main proceedings and the questions referred for a preliminary ruling

9 On 2 June 2016, Thelen, a real estate company, and MN, an engineer, concluded a service contract pursuant to which MN undertook to perform certain services covered by the HOAI with a view to the completion of a scheduled construction project in Berlin (Germany) in return for payment of a flat-rate fee, the amount of which was EUR 55 025.

10 After terminating that contract by letter of 2 June 2017, MN invoiced Thelen for the services performed by way of a final fee invoice drawn up in July 2017 on the basis of the minimum rates referred to in Paragraph 7 of the HOAI. To that end, taking into account the amount of the payments already made by Thelen, he brought a claim before the Landgericht Essen (Regional Court, Essen, Germany) for payment of the remaining amount due – EUR 102 934.59 – together with interest and procedural costs.

11 By judgment of 28 December 2017, that court ordered Thelen to pay the sum of EUR 100 108.34, together with interest.

12 Thelen brought an appeal against that judgment before the Oberlandesgericht Hamm (Higher Regional Court, Hamm, Germany), which, by a judgment of 23 July 2019, partly varied that judgment, ordering Thelen to pay the sum of EUR 96 768.03, together with interest.

13 Thelen brought an appeal on a point of law (*Revision*) against that judgment before the Bundesgerichtshof (Federal Court of Justice, Germany), which is the referring court in the present case, requesting that MN's claim be dismissed in its entirety.

14 The referring court recalls that the Court held in the judgment of 4 July 2019, *Commission* v *Germany* (C-377/17, EU:C:2019:562), and confirmed in the order of 6 February 2020, *hapeg dresden* (C-137/18, not published, EU:C:2020:84), that the HOAI is incompatible with Article 15(1), (2)(g) and (3) of Directive 2006/123 without, however, giving a ruling on the compatibility of the HOAI with Article 49 TFEU.

15 According to the referring court, the outcome of the appeal on a point of law depends on whether Article 15(1), (2)(g) and (3) of Directive 2006/123 has direct effect in a dispute which is exclusively between private individuals, so that Paragraph 7 of the HOAI should be disapplied for the purpose of deciding that dispute.

16 The referring court emphasises, first, that it follows from Article 4(3) TEU and the third paragraph of Article 288 TFEU that the Member States are required to achieve the result sought by a directive and, second, that that obligation is incumbent on all the authorities of the Member States, including the judicial authorities, with that obligation meaning, inter alia, that the judicial authorities are required, so far as possible, to interpret their domestic law in conformity with EU law. However, that court specifies that the principle that national law must be interpreted in conformity with EU law cannot serve as a basis for a *contra legem* interpretation of national law.

17 In that regard, the referring court notes that an interpretation of the HOAI in conformity with Directive 2006/123 is not possible in the present case. In its view, Paragraph 7 of the HOAI cannot be interpreted as not applying to a fee agreement setting fees in an amount lower than the minimum rates laid down by the HOAI. It is apparent from the HOAI that such an agreement is invalid, except in a few exceptional cases which do not correspond to the situation at issue in the main proceedings. Thus, the referring court considers that an interpretation of the HOAI according to which it would be permissible to derogate from the minimum rates laid down by that piece of legislation would be a *contra legem* interpretation of national law.

18 That court specifies that the drafters of the most recent version of the HOAI were aware of the potential incompatibility of the scales laid down therein with Directive 2006/123, but that they considered – wrongly – that they could rectify this by restricting, in Paragraph 1 of the HOAI, the scope of that piece of legislation to purely domestic situations.

19 The referring court therefore considers that the outcome of the appeal on a point of law depends, in essence, on the question whether Article 15(1), (2)(g) and (3) of Directive 2006/123 has direct effect in a dispute which is exclusively between private individuals, inasmuch as, if the Court were to answer that question in the affirmative, Paragraph 7 of the HOAI would have to be disapplied and the appeal on a point of law would have to be upheld. The referring court observes that that question was expressly left open in the order of 6 February 2020, *hapeg dresden* (C-137/18, not published, EU:C:2020:84), so that a reference for a preliminary ruling is necessary.

20 The referring court indicates that, although it has already been held by the Court that Article 15 of Directive 2006/123 has direct effect and applies even in purely domestic situations, there are nonetheless still doubts as to whether Article 15 of Directive 2006/123 has direct effect in a dispute which is exclusively between private individuals. In that regard, the referring court cites the case-law of the Court according to which the provisions of a directive cannot be relied on between private individuals, even where Member States, such as, in the present case, the Federal Republic of Germany, have failed to transpose that directive or have done so incorrectly. However, in the case in the main proceedings, the two parties to the dispute are precisely private individuals.

21 The referring court considers that it is apparent from the case-law of the Court that a directive cannot give rise to obligations on the part of private individuals, so that it cannot, in principle, be relied on in a dispute which is exclusively between private individuals for the purpose of disapplying legislation of a Member State which is contrary to that directive. According to the referring court, it can make no difference whether a directive is capable of imposing direct obligations on private individuals or directly depriving them of subjective rights conferred on them by national law, such as, in the present case, the act of depriving an engineer or an architect of the minimum rates laid down by national law. In addition, the referring court considers that the case in the main proceedings is not one of the exceptional cases in which the Court has acknowledged that directives have direct effect in disputes which are exclusively between private individuals.

22 Moreover, the referring court considers that, even if the HOAI concerns only purely domestic situations, the question whether that piece of legislation infringes Article 49 TFEU, which has not been decided by the Court, may prove to be relevant for resolving the dispute in the main proceedings. In that regard, that court recalls that, under the principle of the primacy of EU law, the directly applicable provisions of the Treaties and the acts of the institutions have the effect of rendering any contrary provision of national law automatically inapplicable, even in a dispute which is exclusively between private individuals.

23 In those circumstances the Bundesgerichtshof (Federal Court of Justice) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Does it follow from EU law, in particular from Article 4(3) TEU, the third paragraph of Article 288 TFEU and Article 260(1) TFEU, that, in the context of ongoing court proceedings between private persons, Article 15(1), (2)(g) and (3) of [Directive 2006/123] has direct effect in such a way that the national provisions contrary to that directive that are contained in Paragraph 7 of [the HOAI], pursuant to which the minimum rates for planning and supervision services provided by architects and engineers laid down in [the scale set out in that paragraph] are mandatory – save in certain exceptional cases – and any [agreement concluded with architects or engineers setting fees lower than those minimum rates] is invalid, are no longer to be applied?

(2) If Question 1 is to be answered in the negative:
(a) Does the Federal Republic of Germany’s scheme of mandatory minimum rates for planning and supervision services provided by architects and engineers in Paragraph 7 of the HOAI constitute an infringement of the freedom of establishment under Article 49 TFEU or of other general principles of EU law?
(b) If Question 2(a) is to be answered in the affirmative: Does it follow from such an infringement that the national rules on mandatory minimum rates (in [the present] case: Paragraph 7 of the HOAI) are no longer to be applied in ongoing court proceedings between private persons?’

Consideration of the questions referred

The first question

24 By its first question, the referring court asks, in essence, whether EU law is to be interpreted as meaning that a national court, when hearing a dispute which is exclusively between private individuals, is required to disapply a piece of national legislation which, in breach of Article 15(1), (2)(g) and (3) of Directive 2006/123, sets minimum rates for fees for services provided by architects and engineers and which renders invalid agreements derogating from that legislation.

25 In order to answer the first question, it should be borne in mind, in the first place, that the principle of the primacy of EU law establishes the pre-eminence of EU law over the law of the Member States and requires all Member State bodies to give full effect to the various EU provisions, and the law of the Member States may not undermine the effect accorded to those various provisions in the territory of those States (judgment of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraphs 53 and 54 and the case-law cited).

26 That principle requires, inter alia, national courts, in order to ensure the effectiveness of all provisions of EU law, to interpret, to the greatest extent possible, their national law in conformity with EU law and to afford individuals the possibility of obtaining redress where their rights have been impaired by a breach of EU law attributable to a Member State (judgment of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraph 57).

27 More specifically, the Court has repeatedly held that a national court, when hearing a dispute which is exclusively between private individuals, is required, when applying the provisions of domestic law adopted for the purpose of transposing obligations laid down by a directive, to consider the whole body of rules of national law and to interpret them, so far as possible, in the light of the wording and purpose of the directive in order to achieve an outcome consistent with the objective pursued by that directive (judgments of 15 January 2014, *Association de médiation sociale*, C-176/12, EU:C:2014:2, paragraph 38 and the case-law cited, and of 4 June 2015, *Faber*, C-497/13, EU:C:2015:357, paragraph 33).

28 However, the principle that national law must be interpreted in conformity with EU law has certain limits. Thus, the obligation on a national court to refer to the content of a directive when interpreting and applying the relevant rules of domestic law is limited by general principles of law and it cannot serve as the basis for a *contra legem* interpretation of national law (see, to that effect, judgments of 15 January 2014, *Association de médiation sociale*, C-176/12, EU:C:2014:2, paragraph 39 and the case-law cited, and of 13 December 2018, *Hein*, C-385/17, EU:C:2018:1018, paragraph 51).

29 In the present case, as has been noted in paragraph 17 above, the referring court considers that an interpretation of the national legislation at issue in the main proceedings resulting from Paragraph 7 of the HOAI in accordance with the requirements of Article 15(1), (2)(g) and (3) of Directive 2006/123 would be *contra legem*.

30 It is necessary, in the second place, to note that, where the national court which is called upon within the exercise of its jurisdiction to apply provisions of EU law is unable to interpret national legislation in accordance with the requirements of EU law, the principle of the primacy of EU law requires that national court to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation, even if adopted subsequently, and it is not necessary for that court to request or await the prior setting aside of such provision by legislative or other constitutional means (see, to that effect, judgment of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraph 58 and the case-law cited).

31 That said, account should also be taken of the other essential characteristics of EU law and, in particular, of the nature and legal effects of directives (see, to that effect, judgment of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraph 59).

32 Thus, a directive cannot of itself impose obligations on an individual and cannot therefore be relied on as such against that individual before a national court. In accordance with the third paragraph of Article 288 TFEU, the binding nature of a directive, which constitutes the basis for the possibility of relying on it, exists only in relation to 'each Member State to which it is addressed'; the European Union has the power to enact, in a general and abstract manner, obligations for individuals with immediate effect only where it is empowered to adopt regulations. Therefore, even a clear, precise and unconditional provision of a directive does not allow a national court to disapply a provision of its national law which conflicts with it if, were that court to do so, an additional obligation would be imposed on an individual (judgment of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraphs 65 to 67 and the case-law cited).

33 Accordingly, a national court is not required, solely on the basis of EU law, to disapply a provision of its national law which is contrary to a provision of EU law if the latter provision does not have direct effect (judgment of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraph 68),

without prejudice, however, to the possibility, for that court, or for any competent national administrative authority, to disapply, on the basis of domestic law, any provision of national law which is contrary to a provision of EU law that does not have such effect.

34 In the present case, it is true that the Court has already held that paragraph 1 of Article 15 of Directive 2006/123 is capable of having direct effect in so far as the second sentence of that paragraph imposes on the Member States an unconditional and sufficiently precise obligation to adapt their laws, regulations or administrative provisions so as to make them compatible with the conditions laid down in paragraph 3 of that article (see, to that effect, judgment of 30 January 2018, *X and Visser*, C-360/15 and C-31/16, EU:C:2018:44, paragraph 130).

35 However, that provision is being relied on, in the present case, as such in a dispute between private individuals for the purpose of disapplying a piece of national legislation which is contrary to that provision.

36 If Article 15(1), (2)(g) and (3) of Directive 2006/123 were to be applied in the dispute in the main proceedings, MN would, under that provision, be deprived of his right, based on Paragraph 7 of the HOAI, to claim the rates referred to therein and would, consequently, be obliged to accept the amount set in the contract at issue in the main proceedings. However, the case-law recalled in paragraphs 32 and 33 above excludes that provision from being recognised as having such effect solely on the basis of EU law.

37 The referring court is therefore not required, solely on the basis of EU law, to disapply Paragraph 7 of the HOAI, even if that provision is contrary to Article 15(1), (2)(g) and (3) of Directive 2006/123.

38 Those findings are not affected by the judgment of 4 July 2019, *Commission* v *Germany* (C-377/17, EU:C:2019:562), whereby the Court held that, by maintaining the fixed tariffs for the planning services of architects and engineers laid down in Paragraph 7 of the HOAI, the Federal Republic of Germany had failed to fulfil its obligations under Article 15(1), (2)(g) and (3) of Directive 2006/123.

39 It is true that, under Article 260(1) TFEU, if the Court finds that a Member State has failed to fulfil an obligation under the Treaties, that Member State is required to take the necessary measures to comply with the judgment of the Court. In addition, it follows from settled case-law that the competent national courts and administrative authorities are required to take all appropriate measures to enable EU law to be fully applied and are thus required to disapply, if the circumstances so require, a provision of national law which is contrary to EU law (see, to that effect, judgments of 13 July 1972, *Commission* v *Italy*, 48/71, EU:C:1972:65, paragraph 7, and of 16 December 2010, *Seydaland Vereinigte Agrarbetriebe*, C-239/09, EU:C:2010:778, paragraphs 52 and 53 and the case-law cited).

40 However, the Court has previously held that the purpose of judgments delivered under Articles 258 to 260 TFEU is, first and foremost, to lay down the duties of Member States when they fail to fulfil their obligations, and not to confer rights on individuals, it being understood that those rights derive not from those judgments but from the very provisions of EU law (see, to that effect, judgment of 14 December 1982, *Waterkeyn and Others*, 314/81 to 316/81 and 83/82, EU:C:1982:430, paragraphs 15 and 16). It follows that the competent national courts and

administrative authorities are not required, solely on the basis of such judgments, to disapply in a dispute between private individuals a piece of national legislation which is contrary to a provision of a directive.

41 That having been noted, it should be borne in mind, in the third place, that a party which has been harmed as a result of national law not being in conformity with EU law could rely on the case-law derived from the judgment of 19 November 1991, *Francovich and Others* (C-6/90 and C-9/90, EU:C:1991:428), in order to obtain, if appropriate, compensation for the loss or damage sustained (see, to that effect, judgment of 15 January 2014, *Association de médiation sociale*, C-176/12, EU:C:2014:2, paragraph 50 and the case-law cited).

42 In that regard, it should be noted that, according to settled case-law, the principle of State liability for loss and damage caused to individuals as a result of breaches of EU law for which the State can be held responsible is inherent in the system of the treaties on which the European Union is based (judgment of 4 October 2018, *Kantarev*, C-571/16, EU:C:2018:807, paragraph 92 and the case-law cited).

43 Thus, it is for each Member State to ensure that individuals obtain reparation for loss and damage caused to them by non-compliance with EU law, whichever public authority is responsible for the breach and whichever public authority is in principle, under the law of the Member State concerned, responsible for making reparation (judgment of 4 October 2018, *Kantarev*, C-571/16, EU:C:2018:807, paragraph 93 and the case-law cited).

44 In addition, the Court has repeatedly held, concerning the conditions for incurring the non-contractual liability of the State to make reparation for loss and damage caused to individuals as a result of breaches of EU law for which it is responsible, that individuals who have been harmed have a right to reparation if three conditions are met: the rule of EU law infringed must be intended to confer rights on them; the breach of that rule must be sufficiently serious; and there must be a direct causal link between that breach and the loss or damage sustained by the individuals (judgment of 4 October 2018, *Kantarev*, C-571/16, EU:C:2018:807, paragraph 94 and the case-law cited).

45 It also follows from settled case-law that it is, in principle, for the national courts to apply the criteria for establishing the liability of Member States for damage caused to individuals by breaches of EU law, in accordance with the guidelines laid down by the Court for the application of those criteria (judgment of 4 October 2018, *Kantarev*, C-571/16, EU:C:2018:807, paragraph 95 and the case-law cited).

46 In the present case, it should be borne in mind that the Court has previously held that, by maintaining the fixed tariffs for the planning services of architects and engineers laid down by Paragraph 7 of the HOAI, the Federal Republic of Germany failed to fulfil its obligations under Article 15(1), (2)(g) and (3) of Directive 2006/123 (see, to that effect, judgment of 4 July 2019, *Commission* v *Germany*, C-377/17, EU:C:2019:562), and that that provision of EU law precludes such national legislation, inasmuch as the latter prohibits agreements, in contracts concluded with architects or engineers, on rates lower than the minimum rates determined according to those tariffs (see, to that effect, order of 6 February 2020, *hapeg dresden*, C-137/18, not published, EU:C:2020:84, paragraph 21).

47 It follows from the settled case-law of the Court that a breach of EU law will clearly be sufficiently serious if it has persisted despite a judgment finding the breach in question to be established, or despite a preliminary ruling or settled case-law of the Court on the matter from which it is clear that the conduct in question constituted a breach (judgments of 5 March 1996, *Brasserie du pêcheur and Factortame*, C-46/93 and C-48/93, EU:C:1996:79, paragraph 57, and of 30 May 2017, *Safa Nicu Sepahan* v *Council*, C-45/15 P, EU:C:2017:402, paragraph 31).

48 Having regard to all the foregoing considerations, the answer to the first question is that EU law must be interpreted as meaning that a national court, when hearing a dispute which is exclusively between private individuals, is not required, solely on the basis of EU law, to disapply a piece of national legislation which, in breach of Article 15(1), (2)(g) and (3) of Directive 2006/123, sets minimum rates for fees for services provided by architects and engineers and which renders invalid agreements derogating from that legislation, without prejudice, however, to, first, the possibility for that court to disapply that legislation on the basis of domestic law in the context of such a dispute, and, second, the right of a party which has been harmed as a result of national law not being in conformity with EU law to claim compensation for the ensuing loss or damage sustained by that party.

The second question

49 By its second question, the referring court asks, in essence, whether Article 49 TFEU is to be interpreted as precluding national legislation which sets minimum rates for services provided by architects and engineers and which renders invalid agreements which derogate from that legislation.

50 In that regard, it should be borne in mind that the provisions of the FEU Treaty on the freedom of establishment, the freedom to provide services and the free movement of capital do not, in principle, apply to a situation which is confined in all respects within a single Member State (judgment of 15 November 2016, *Ullens de Schooten*, C-268/15, EU:C:2016:874, paragraph 47 and the case-law cited).

51 As can be seen from the order for reference, the dispute in the main proceedings is characterised by factors that are all confined within the Federal Republic of Germany. There is nothing in the case file before the Court to indicate that one of the parties to the main proceedings is established outside the territory of the Federal Republic of Germany or that the services at issue in the main proceedings were performed outside that territory.

52 In that regard, it should be noted that the Court, on a question being referred to it by a national court in connection with a situation which is confined in all respects within a single Member State, cannot, where the referring court gives no indication to that effect, consider that a request for a preliminary ruling concerning the interpretation of the provisions of the FEU Treaty relating to the fundamental freedoms is necessary for the purpose of resolving the dispute pending before that court. The specific factors that allow a link to be established between the subject matter or circumstances of a dispute which is confined in all respects within the Member State concerned, on the one hand, and Article 49, 56 or 63 TFEU, on the other, must be apparent from the order for reference (see, to that effect, judgment of 15 November 2016, *Ullens de Schooten*, C-268/15, EU:C:2016:874, paragraph 54).

53 Consequently, in a situation such as that at issue in the main proceedings, it is for the referring court to indicate to the Court, in accordance with the requirements of Article 94 of the Rules of Procedure of the Court of Justice, in what way the dispute pending before it, despite its purely domestic character, has a connecting factor with the provisions of EU law relating to the fundamental freedoms that makes the requested preliminary ruling concerning the interpretation of those provisions necessary for the purpose of resolving that dispute (see, to that effect, judgment of 15 November 2016, *Ullens de Schooten*, C-268/15, EU:C:2016:874, paragraph 55).

54 As the order for reference contains no indication to that effect, the present question cannot be regarded as admissible (see, to that effect, judgments of 20 September 2018, *Fremoluc*, C-343/17, EU:C:2018:754, paragraph 33; of 14 November 2018, *Memoria and Dall'Antonia*, C-342/17, EU:C:2018:906, paragraph 21; and of 24 October 2019, *Belgische Staat*, C-469/18 and C-470/18, EU:C:2019:895, paragraph 26).

55 Having regard to all the foregoing considerations, it must be held that the second question is inadmissible.

Costs

56 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

EU law must be interpreted as meaning that a national court, when hearing a dispute which is exclusively between private individuals, is not required, solely on the basis of EU law, to disapply a piece of national legislation which, in breach of Article 15(1), (2)(g) and (3) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, sets minimum rates for fees for services provided by architects and engineers and which renders invalid agreements derogating from that legislation, without prejudice, however, to, first, the possibility for that court to disapply that legislation on the basis of domestic law in the context of such a dispute, and, second, the right of a party which has been harmed as a result of national law not being in conformity with EU law to claim compensation for the ensuing loss or damage sustained by that party.

[Signatures]