

JUDGMENT OF THE COURT (Grand Chamber)

24 May 2011 *

In Case C-53/08,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 12 February 2008,

European Commission, represented by G. Braun and H. Støvlbæk, acting as Agents,
with an address for service in Luxembourg,

applicant,

supported by:

United Kingdom of Great Britain and Northern Ireland, represented by S. Behzadi-Spencer, acting as Agent,

intervener,

* Language of the case: German.

v

Republic of Austria, represented by E. Riedl, M. Aufner and G. Holley, acting as Agents,

defendant,

supported by:

Czech Republic, represented by M. Smolek, acting as Agent,

Federal Republic of Germany, represented by M. Lumma and J. Kemper, acting as Agents,

French Republic, represented by G. de Bergues and B. Messmer, acting as Agents,

Republic of Latvia, represented by L. Ostrovska, K. Drēviņa and J. Barbale, acting as Agents,

Republic of Lithuania, represented by D. Kriauciūnas and E. Matulionytė, acting as Agents,

Republic of Hungary, represented by R. Somssich, K. Veres and M. Fehér, acting as Agents,

Republic of Poland, represented by M. Dowgielewicz, C. Herma and D. Lutostańska, acting as Agents,

Republic of Slovenia, represented by V. Klemenc and Ž. Cilenšek Bončina, acting as Agents,

Slovak Republic, represented by J. Čorba, acting as Agent,

interveners,

THE COURT (Grand Chamber),

composed of V. Skouris, President, A. Tizzano, J.N. Cunha Rodrigues, K. Lenaerts, J.-C. Bonichot, A. Arabadjiev (Rapporteur) and J.-J. Kasel, Presidents of Chambers, R. Silva de Lapuerta, E. Juhász, G. Arestis, M. Ilešič, C. Toader and M. Safjan, Judges,

Advocate General: P. Cruz Villalón,
Registrar: M.-A. Gaudissart, head of unit,

having regard to the written procedure and further to the hearing on 27 April 2010,

after hearing the Opinion of the Advocate General at the sitting on 14 September 2010,

gives the following

Judgment

- ¹ By its application the Commission of the European Communities asks the Court to declare that, by imposing a nationality condition for access to the profession of civil-law notary and by failing to transpose for that profession Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p. 16), as amended by Directive 2001/19/EC of the European Parliament and of the Council of 14 May 2001 (OJ 2001 L 206, p. 1) ('Directive 89/48'), and/or Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ 2005 L 255, p. 22), the Republic of Austria has failed to fulfil its obligations under those directives and Articles 43 EC and 45 EC.

Legal context

European Union law

² The 12th recital in the preamble to Directive 89/48 stated that ‘the general system for the recognition of higher-education diplomas is entirely without prejudice to the application of ... Article [45 EC].’

³ Article 2 of Directive 89/48 read as follows:

‘This Directive shall apply to any national of a Member State wishing to pursue a regulated profession in a host Member State in a self-employed capacity or as an employed person.

This Directive shall not apply to professions which are the subject of a separate Directive establishing arrangements for the mutual recognition of diplomas by Member States.’

⁴ The profession of notary was not the subject of any legislation of the kind referred to in the second paragraph of Article 2.

⁵ Directive 89/48 laid down a period for its transposition, which, in accordance with Article 12, expired on 4 January 1991.

6 Directive 2005/36 repealed Directive 89/48 with effect from 20 October 2007, pursuant to Article 62 of Directive 2005/36.

7 Recital 9 in the preamble to Directive 2005/36 reads as follows:

‘While maintaining, for the freedom of establishment, the principles and safeguards underlying the different systems for recognition in force, the rules of such systems should be improved in the light of experience. Moreover, the relevant directives have been amended on several occasions, and their provisions should be reorganised and rationalised by standardising the principles applicable. It is therefore necessary to replace [Directive 89/48].’

8 Recital 14 in the preamble to that directive states :

‘The mechanism of recognition established by [Directive 89/48] remains unchanged.
...’

9 According to recital 41 in the preamble to the directive, the directive ‘is without prejudice to the application of Articles 39(4) [EC] and 45 [EC] concerning notably notaries.’

National legislation

General organisation of the profession of notary

- 10 In the Austrian legal system notaries practise as a liberal profession. The organisation of the profession of notary is governed by the Code of Notaries (Notariatsordnung) of 25 July 1871 (RGBL. 75/1871), in the version of BGBl. I, 164/2005 ('the NO').
- 11 Under Paragraph 1(1) of the NO, notaries are 'appointed and accredited by the State to receive and issue ... authentic instruments concerning legal declarations and legal transactions and facts from which rights may be derived [and] to keep safe the documents entrusted to them by the parties'.
- 12 Under Paragraph 8 of the NO, notaries may exercise their powers throughout the Republic of Austria.
- 13 The number of notaries and their posts and official seats are determined by order of the Minister of Justice, as follows from Paragraph 9 of the NO.
- 14 The fees of notaries are fixed in accordance with the Federal Law on notaries' fees (Bundesgesetz über den Notariatstarif (Notariatstarifgesetz)) of 8 November 1973 (BGBl. 576/1973), as amended, and the Federal Law on the fees of notaries as commissioners

of the courts (Bundesgesetz über die Gebühren der Notare als Beauftragte des Gerichtes (Gerichtskommissionstarifgesetz)) of 3 March 1971 (BGBl. 108/1971), as amended.

- 15 In accordance with Paragraph 6(1)(a), the office of notary may be held only by an Austrian national.

Activities of notaries

- 16 The activities of notaries in the Austrian legal system may be divided into three categories.
- 17 In the first place, a notary has authority under Paragraph 1(1) of the NO to authenticate instruments and agreements. The intervention of the notary may be mandatory or optional, depending on the document he is to authenticate. By his intervention the notary confirms that all the conditions required by law for the drawing up of the document are satisfied, and that the parties have legal personality and capacity to enter into legal transactions.
- 18 A notarial act has probative force under Paragraph 292(1) of the Code of Civil Procedure (Gesetz über das gerichtliche Verfahren in bürgerlichen Rechtsstreitigkeiten (Zivilprozessordnung)) of 1 August 1895 (RGBl. 113/1895), as amended ('the ZPO'), which is in Part 2, Section 1, Title 3 of the code, headed 'Proof by documents'. Under that provision, authentic documents, that is, documents drawn up in due form by a person invested with public confidence within the activities assigned to him, are

complete proof of what is attested by that person. Proof that the event or fact attested or the authentication is incorrect is admissible under Paragraph 292(2).

- 19 Paragraph 272 of the ZPO lays down the principle that the court is unfettered in its assessment of the evidence.
- 20 Under Paragraph 3 of the NO, a notarial act is enforceable if certain conditions are met, in particular the debtor's submission to immediate enforcement.
- 21 In accordance with Paragraph 1 of the Code of Enforcement (Gesetz über das Exekutions- und Sicherungsverfahren (Exekutionsordnung)) of 27 May 1896 (RGBl. Nr. 79/1896), as amended, the notarial acts mentioned in Paragraph 3 of the NO are enforceable within the meaning of the Code of Enforcement.
- 22 It follows from the provisions of the Code of Enforcement, as amended, that a notary does not exercise functions in connection with enforcement.
- 23 In the second place, a notary is empowered under Paragraph 5 of the NO to draw up private documents and to represent parties in certain proceedings exhaustively listed in that provision.
- 24 In the third place, a notary acting as a commissioner of the court ('Gerichtskommissär') carries out in certain non-contentious matters the activities listed in Paragraph 1(1) of the Federal Law on commissioners of the courts (Bundesgesetz über die Tätigkeit der Notare als Beauftragte des Gerichtes im Verfahren außer Streitsachen

(Gerichtskommissärsgesetz)) of 11 November 1970 (BGBl. 343/1970), in the version of BGBl. I, 112/2003 ('the GKG').

- ²⁵ Those activities include various tasks of the law of succession for the purpose of dealing with successions, such as in particular recording the death, drawing up the inventory of the estate, identifying the heirs and receiving their declarations of acceptance of the inheritance, conserving the estate, and taking the necessary measures for that purpose.
- ²⁶ The Federal Law on judicial proceedings in non-contentious matters (Bundesgesetz über das gerichtliche Verfahren in Rechtsangelegenheiten außer Streitsachen (Außerstreitgesetz)) (BGBl. I, 111/2003), as amended ('the AußStrG'), lays down detailed rules in this respect. Thus, under Paragraph 144(3) of that law, the notary must immediately produce the document to the court if the court so requests or a judicial decision is necessary.
- ²⁷ Also, in accordance with Paragraphs 160 and 161 of the AußStrG, in the event of contradictory declarations of acceptance of an inheritance, if no agreement can be reached the notary must refer the question to the court, which will examine the claims of the parties and the evidence they adduce and decide who is entitled to the inheritance.
- ²⁸ Under Paragraph 166(2) of the AußStrG, disputes concerning whether an item belongs to the deceased's estate are to be decided by the court.

- 29 Under Paragraphs 177 and 178 of the AußStrG, the court is to award the estate to the heirs, by means of an order.
- 30 Other tasks assigned to notaries under the GKG, outside the field of the law on succession, include the valuation and sale of movable and immovable property, the drawing up of inventories, and the conducting of agreed divisions of property.
- 31 Excluded from the notary's powers, in accordance with Paragraph 1(2) of the GKG, are in particular the making of judicial decisions, the drawing up of statements of judicial settlements, and the imposition of coercive measures within the meaning of Paragraph 79 of the AußStrG.
- 32 In accordance with Paragraph 7 of the GKG, the notary must carry out the tasks described in paragraphs 24 to 30 above within the time-limits set by the court. If he fails to comply with the time-limits, the commission is withdrawn from him and another notary is appointed as commissioner in his place.
- 33 In accordance with Paragraph 7a of the GKG, the notary carries out the above tasks under the supervision of the court. In that respect the court may undertake the necessary investigations, ask the notary to report on his activity, and give him instructions. Under Paragraph 7a(2) of the GKG, challenges to measures taken by the notary or to his conduct must be brought before the court.

The administrative procedure

- ³⁴ A complaint was made to the Commission concerning the nationality condition for access to the profession of notary in Austria. After examining the complaint the Commission, by letter of 8 November 2000, gave the Republic of Austria formal notice to submit its observations within two months on the compliance of the nationality condition with the first paragraph of Article 45 EC and on the failure to transpose Directive 89/48 with respect to the profession of notary.
- ³⁵ The Republic of Austria replied to the letter of formal notice by letter of 23 January 2001.
- ³⁶ The Commission sent the Republic of Austria a supplementary letter of formal notice on 16 July 2002, complaining that it had failed to fulfil its obligations under Article 43 EC, the first paragraph of Article 45 EC, and Directive 89/48.
- ³⁷ The Republic of Austria replied to the supplementary letter of formal notice by letter of 12 September 2002.
- ³⁸ Since it was not persuaded by the arguments put forward by the Republic of Austria, the Commission on 18 October 2006 sent it a reasoned opinion in which it concluded that that State had failed to fulfil its obligations under Article 43 EC, the first paragraph of Article 45 EC, and Directive 89/48. The Commission invited the Republic of Austria to take the necessary steps to comply with the reasoned opinion within two months from its receipt.

39 By letter of 19 December 2006, the Republic of Austria stated why it considered that the position adopted by the Commission was not well founded.

40 In those circumstances, the Commission decided to bring the present action.

The action

First head of claim

Arguments of the parties

41 By its first head of claim, the Commission asks the Court to declare that, by reserving access to the profession of notary exclusively to its own nationals, the Republic of Austria has failed to fulfil its obligations under Article 43 EC and the first paragraph of Article 45 EC.

42 The Commission notes, as a preliminary point, that access to the profession of notary is not subject to any nationality condition in some Member States and that condition has been abolished in other Member States, such as the Kingdom of Spain, the Italian Republic and the Portuguese Republic.

- ⁴³ It observes, in the first place, that Article 43 EC is one of the fundamental provisions of European Union law which is intended to ensure that all nationals of Member States who establish themselves in another Member State, even if that establishment is only secondary, for the purpose of pursuing activities there as self-employed persons receive the same treatment as nationals of that State and prohibits any discrimination on grounds of nationality.
- ⁴⁴ The Commission and the United Kingdom of Great Britain and Northern Ireland submit that the first paragraph of Article 45 EC must be given an autonomous and uniform interpretation (Case 147/86 *Commission v Greece* [1988] ECR 1637, paragraph 8). In that it lays down an exception to freedom of establishment for activities connected with the exercise of official authority, that article must moreover be interpreted strictly (Case 2/74 *Reyners* [1974] ECR 631, paragraph 43).
- ⁴⁵ The exception under the first paragraph of Article 45 EC must therefore be restricted to activities which in themselves involve a direct and specific connection with the exercise of official authority (*Reyners*, paragraphs 44 and 45). According to the Commission, the concept of official authority implies the exercise of a decision-making power going beyond the ordinary law and taking the form of being able to act independently of, or even contrary to, the will of other subjects of law. Official authority manifests itself in particular, according to the Court's case-law, in the exercise of powers of constraint (Case C-114/97 *Commission v Spain* [1998] ECR I-6717, paragraph 37).
- ⁴⁶ In the view of the Commission and the United Kingdom, activities connected with the exercise of official authority must be distinguished from those carried out in the public interest. A number of professions are entrusted with special powers in the public interest, but do not for all that take part in the exercise of official authority.

- 47 The Commission and the United Kingdom also observe that the first paragraph of Article 45 EC in principle refers to specific activities, not to an entire profession, unless the activities concerned are inseparable from the professional activity in question taken as a whole.
- 48 The Commission examines, in the second place, the various activities of notaries in the Austrian legal system.
- 49 First, as regards the authentication of documents and agreements, the Commission submits that the notary merely attests the wishes of the parties, after advising them, and gives legal effect to those wishes. In carrying out that activity, the notary has no decision-making powers with respect to the parties.
- 50 That function of authentication requires notaries to have a high level of professional competence and integrity but does not involve a direct and specific connection with the exercise of public authority. The fact that that activity is regarded in the Austrian legal system as part of the preventive administration of justice and is entrusted to notaries by the State in order to reduce the burden of work of the courts does not mean that the activity may be equated to a function of authority.
- 51 Moreover, many other tasks which were at one time regarded as functions of authority as have now been privatised or outsourced.
- 52 As regards the particular features of the rules of evidence regarding notarial acts, probative force similar to that of notarial acts is also enjoyed by other documents which do not fall within the exercise of official authority, such as statements drawn up by sworn field watchmen, forest rangers, gamekeepers and water bailiffs.

- 53 As regards the enforceability of authentic instruments, the Commission submits that the endorsement of a document with the authority to enforce precedes the enforcement proper and is not part of it. Enforceability does not therefore confer any power of constraint on notaries, since they are not enforcement officers. Moreover, any disputes that may arise will be decided not by the notary but by the court.
- 54 Secondly, as regards the activities of notaries acting as Gerichtskommissäre, the Commission submits that these cannot be regarded as connected with the exercise of official authority, as a notary does not have any decision-making or coercive power, that is, the power to impose a decision on a person against his will, in connection with those activities. In any case, those activities are preparatory and auxiliary to those of the courts. In addition, a Gerichtskommissär has no real discretion when adopting measures to conserve an estate.
- 55 Thirdly, the Commission, with the United Kingdom, submits that the provisions of European Union law that contain references to the activities of notaries do not pre-judge the application of Article 43 EC and the first paragraph of Article 45 EC to those activities.
- 56 Both Article 1(5)(d) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ 2000 L 178, p. 1) and recital 41 in the preamble to Directive 2005/36 exclude from their scope the activities of notaries only to the extent that they involve a direct and specific connection with the exercise of public authority. This is thus merely a reservation which has no effect on the interpretation of the first paragraph of Article 45 EC. As to Article 2(2)(1) 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), which excludes the activities of notaries from the scope of that

directive, the Commission argues that the fact that the legislature chose to exclude a particular activity from the scope of that directive does not mean that the first paragraph of Article 45 EC applies to that activity.

- ⁵⁷ Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) and Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (OJ 2004 L 143, p. 15) do no more, in the Commission's submission, than require the Member States to recognise and make enforceable documents which have been formally drawn up or registered as authentic instruments and are enforceable in another Member State.
- ⁵⁸ Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) (OJ 2001 L 294, p. 1), Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE) (OJ 2003 L 207, p. 1) and Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies (OJ 2005 L 310, p. 1) are not relevant to the outcome of the present case, since they merely confer on notaries, and on other competent authorities appointed by the State, the task of certifying that certain acts and formalities have been carried out before the transfer of the registered office and the creation and merger of companies.
- ⁵⁹ The European Parliament Resolution of 23 March 2006 on the legal professions and the general interest in the functioning of legal systems (OJ 2006 C 392 E, p. 105, 'the 2006 resolution') is a purely political act, whose terms are ambiguous because in point 17 the European Parliament asserts that Article 45 EC must be applied to the profession of notary, while in point 2 it reaffirms the position taken in its Resolution of 18 January 1994 on the state and organisation of the profession of notary in

the twelve Member States of the Community (OJ 1994 C 44, p. 36, 'the 1994 resolution'), in which it expressed the wish that the nationality condition for access to the profession of notary laid down in the legislation of several Member States should be abolished.

- ⁶⁰ The Commission and the United Kingdom further submit that Case C-405/01 *Colegio de Oficiales de la Marina Mercante Española* [2003] ECR I-10391, referred to by several Member States in their written observations, concerned the exercise by masters and chief mates of merchant ships of a wide range of functions in connection with the maintenance of safety, police powers, and authority in respect of notarial matters and the registration of births, marriages and deaths. The Court did not therefore have occasion to make a detailed examination of the various activities carried out by notaries from the point of view of the first paragraph of Article 45 EC. Consequently, that judgment is not a sufficient basis for concluding that that provision applies to notaries.
- ⁶¹ Moreover, contrary to the submissions of the Republic of Austria, the Court's case-law distinguishes notaries from public authorities by acknowledging that an authentic instrument may be drawn up by a public authority or any other authority empowered by the State (Case C-260/97 *Unibank* [1999] ECR I-3715, paragraphs 15 and 21).
- ⁶² The Republic of Austria, supported by the Czech Republic, the Federal Republic of Germany, the French Republic, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Poland, the Republic of Slovenia and the Slovak Republic, submits that the activities of notaries are connected with the exercise of official authority and therefore fall within the exception in the first paragraph of Article 45 EC.
- ⁶³ The Republic of Austria submits, first, that Article 45 EC guarantees the right of the Member States to define freely the rules they wish to impose on access to professions

connected permanently or occasionally with the exercise of official authority. In its view, the Commission's interpretation of Article 45 EC is founded on case-law of the Court that is not relevant in the present case. In *Colegio de Oficiales de la Marina Mercante Española*, by contrast, the Court held that the tasks entrusted to masters of Spanish ships in notarial matters were connected with the exercise of official authority.

⁶⁴ The Republic of Austria, the Federal Republic of Germany, the Republic of Poland, the Republic of Slovenia and the Slovak Republic further submit that the exercise of official authority cannot be limited solely to activities involving the exercise of powers of coercion or to activities exercised by the courts. Other activities may also fall within the concept of the exercise of official authority if they are characterised in particular by the exercise of special powers.

⁶⁵ Secondly, the special status of notaries in the Austrian legal system shows, according to the Republic of Austria, in particular through the procedure for appointing notaries and the rules under which notaries cannot be removed, are disqualified from certain offices, and are independent, that notaries exercise official authority. The Republic of Austria further submits that the profession of notary is a single profession and the various activities carried on by notaries cannot be separated from it.

⁶⁶ Thirdly, the activities of authentication carried out by notaries are intended, according to the Republic of Austria, to resolve civil law claims or definitively rule them out and create an enforceable document. Notarial instruments can be contested only by judicial proceedings on strictly limited grounds.

- ⁶⁷ Notarial instruments also have enhanced probative force which is binding on the courts when they exercise their powers of assessment. They are also enforceable. Both the enforcement procedure and the procedure leading to the establishment of an authority to enforce lie at the heart of the exercise of official authority by the State. It follows that the activity of notaries establishing authentic instruments is directly and specifically connected to the exercise of official authority.
- ⁶⁸ Fourthly, as regards the activities carried out by notaries as Gerichtskommissäre, the Republic of Austria submits that a Gerichtskommissär conducts quasi-judicial proceedings in successions, in which he may, independently of the wishes of the parties or even against their wishes, have to take measures to conserve the estate, such as ordering residential and business premises to be closed, placing official seals on them, freezing or unfreezing bank accounts, taking into safekeeping and releasing assets, and various procedural measures.
- ⁶⁹ The Republic of Austria also states that when a notary acts as a Gerichtskommissär he engages the liability of the State. He is also regarded as an official for the purposes of the criminal law.
- ⁷⁰ Fifthly, the European Union acts mentioned in paragraphs 56 to 58 above place notarial instruments on the same level as judicial decisions. Moreover, the Parliament confirmed in its 1994 and 2006 resolutions that the profession of notary is connected with the exercise of official authority.
- ⁷¹ Similarly, it follows from *Unibank* that the establishment of authentic instruments by an office-holder such as a notary is directly and specifically connected with the exercise of official authority.

Findings of the Court

— Preliminary observations

⁷² By its first head of claim, the Commission complains that the Republic of Austria is blocking the establishment in its territory, for the purpose of practising as a notary, of nationals of other Member States by reserving access to that profession to its own nationals, in breach of Article 43 EC.

⁷³ This head of claim thus concerns solely the nationality condition laid down by the Austrian legislation at issue for access to that profession, from the point of view of Article 43.

⁷⁴ Accordingly, it does not relate to the status and organisation of notaries in the Austrian legal system, nor to the conditions of access, other than that of nationality, to the profession of notary in that Member State.

⁷⁵ Moreover, as the Commission stated at the hearing, the first head of claim does not concern the application of the provisions of the EC Treaty on the freedom to provide services. Nor does it relate to the Treaty provisions on freedom of movement for workers.

— Substance

- ⁷⁶ Article 43 EC is one of the fundamental provisions of European Union law (see, to that effect, *inter alia*, *Reyners*, paragraph 43).
- ⁷⁷ The concept of establishment within the meaning of that provision is a very broad one, allowing a national of the European Union to participate, on a stable and continuous basis, in the economic life of a Member State other than his State of origin and to profit therefrom, so contributing to economic and social interpenetration within the European Union in the sphere of activities of self-employed persons (see, *inter alia*, Case C-161/07 *Commission v Austria* [2008] ECR I-10671, paragraph 24).
- ⁷⁸ The freedom of establishment conferred on nationals of one Member State in the territory of another Member State includes in particular access to and exercise of activities of self-employed persons under the same conditions as are laid down by the law of the Member State of establishment for its own nationals (see, *inter alia*, Case 270/83 *Commission v France* [1986] ECR 273, paragraph 13, and, to that effect, *Commission v Austria*, paragraph 27). In other words, Article 43 EC prohibits the Member States from laying down in their laws conditions for the pursuit of activities by persons exercising their right of establishment there which differ from those laid down for its own nationals (*Commission v Austria*, paragraph 28).
- ⁷⁹ Article 43 EC is thus intended to ensure that all nationals of all Member States who establish themselves in another Member State for the purpose of pursuing activities there as self-employed persons receive the same treatment as nationals of that State, and it prohibits, as a restriction on freedom of establishment, any discrimination on grounds of nationality resulting from national legislation (*Commission v France*, paragraph 14).

80 In the present case, the national legislation at issue reserves access to the profession of notary to Austrian nationals, thus enshrining a difference in treatment on grounds of nationality which is prohibited in principle by Article 43 EC.

81 The Republic of Austria submits, however, that the activities of notaries are outside the scope of Article 43 EC because they are connected with the exercise of official authority within the meaning of the first paragraph of Article 45 EC. The Court must therefore begin by examining the concept of the exercise of official authority within the meaning of that provision, before going on to ascertain whether the activities of notaries in the Austrian legal system fall within that concept.

82 As regards the concept of the ‘exercise of official authority’ within the meaning of the first paragraph of Article 45 EC, the assessment of that concept must take account, in accordance with settled case-law, of the character as European Union law of the limits imposed by that provision on the permitted exceptions to the principle of freedom of establishment, so as to ensure that the effectiveness of the Treaty in the field of freedom of establishment is not frustrated by unilateral provisions of the Member States (see, to that effect, *Reyners*, paragraph 50; *Commission v Greece*, paragraph 8; and Case C-438/08 *Commission v Portugal* [2009] ECR I-10219, paragraph 35).

83 It is also settled case-law that the first paragraph of Article 45 EC is an exception to the fundamental rule of freedom of establishment. As such, the exception must be interpreted in a manner which limits its scope to what is strictly necessary to safeguard the interests it allows the Member States to protect (*Commission v Greece*, paragraph 7; *Commission v Spain*, paragraph 34; Case C-451/03 *Servizi Ausiliari Dottori Commercialisti* [2006] ECR I-2941, paragraph 45; Case C-393/05 *Commission v Austria* [2007] ECR I-10195, paragraph 35; Case C-404/05 *Commission v Germany* [2007] ECR I-10239, paragraphs 37 and 46; and *Commission v Portugal*, paragraph 34).

- 84 In addition, the Court has repeatedly held that the exception in the first paragraph of Article 45 EC must be restricted to activities which in themselves are directly and specifically connected with the exercise of official authority (*Reyners*, paragraph 45; Case C-42/92 *Thijssen* [1993] ECR I-4047, paragraph 8; *Commission v Spain*, paragraph 35; *Servizi Ausiliari Dottori Commercialisti*, paragraph 46; *Commission v Germany*, paragraph 38; and *Commission v Portugal*, paragraph 36).
- 85 In this respect, the Court has had occasion to rule that the exception in the first paragraph of Article 45 EC does not extend to certain activities that are auxiliary or preparatory to the exercise of official authority (see, to that effect, *Thijssen*, paragraph 22; *Commission v Spain*, paragraph 38; *Servizi Ausiliari Dottori Commercialisti*, paragraph 47; *Commission v Germany*, paragraph 38; and *Commission v Portugal*, paragraph 36), or to certain activities whose exercise, although involving contacts, even regular and organic, with the administrative or judicial authorities, or indeed cooperation, even compulsory, in their functioning, leaves their discretionary and decision-making powers intact (see, to that effect, *Reyners*, paragraphs 51 and 53), or to certain activities which do not involve the exercise of decision-making powers (see, to that effect, *Thijssen*, paragraphs 21 and 22; Case C-393/05 *Commission v Austria*, paragraphs 36 and 42; *Commission v Germany*, paragraphs 38 and 44; and *Commission v Portugal*, paragraphs 36 and 41), powers of constraint (see, to that effect, *inter alia*, *Commission v Spain*, paragraph 37) or powers of coercion (see, to that effect, Case C-47/02 *Anker and Others* [2003] ECR I-10447, paragraph 61, and *Commission v Portugal*, paragraph 44).
- 86 It must be ascertained in the light of the above considerations whether the activities entrusted to notaries in the Austrian legal system involve a direct and specific connection with the exercise of official authority.
- 87 Account must be taken of the nature of the activities carried out by the members of the profession at issue (see, to that effect, *Thijssen*, paragraph 9).

- 88 First, in order to draw up authentic instruments in due and proper form, the notary must ascertain that all the conditions required by law for drawing up the instrument are satisfied. Moreover, an authentic instrument has probative force and is enforceable.
- 89 It must be observed, in this respect, that the documents that may be authenticated under Austrian law are documents and agreements freely entered into by the parties. They decide themselves, within the limits laid down by law, the extent of their rights and obligations and choose freely the conditions which they wish to be subject to when they produce a document or agreement to the notary for authentication. The notary's intervention thus presupposes the prior existence of an agreement or consensus of the parties.
- 90 Furthermore, the notary cannot unilaterally alter the agreement he is called on to authenticate without first obtaining the consent of the parties.
- 91 The activity of authentication entrusted to notaries does not therefore, as such, involve a direct and specific connection with the exercise of official authority within the meaning of the first paragraph of Article 45 EC.
- 92 The fact that some documents and agreements are subject to mandatory authentication, in default of which they are void, cannot call that conclusion into question. It is normal for the validity of various documents to be subject, in national legal systems and in accordance with the rules laid down, to formal requirements or even compulsory validation procedures.

- ⁹³ The obligation of notaries to ascertain, before carrying out the authentication of a document or agreement, that all the conditions required by law for drawing up that document or agreement have been satisfied and, if that is not the case, to refuse to perform the authentication cannot call that conclusion into question either.
- ⁹⁴ It is true that, as the Republic of Austria observes, the notary's verification of those facts pursues an objective in the public interest, namely to guarantee the lawfulness and legal certainty of documents entered into by individuals. However, the mere pursuit of that objective cannot justify the powers necessary for that purpose being reserved exclusively to notaries who are nationals of the Member State concerned.
- ⁹⁵ Acting in pursuit of an objective in the public interest is not, in itself, sufficient for a particular activity to be regarded as directly and specifically connected with the exercise of official authority. It is not disputed that activities carried out in the context of various regulated professions frequently, in the national legal systems, involve an obligation for the persons concerned to pursue such an objective, without falling within the exercise of official authority.
- ⁹⁶ However, the fact that notarial activities pursue objectives in the public interest, in particular to guarantee the lawfulness and legal certainty of documents entered into by individuals, constitutes an overriding reason in the public interest capable of justifying restrictions of Article 43 EC deriving from the particular features of the activities of notaries, such as the restrictions which derive from the procedures by which they are appointed, the limitation of their numbers and their territorial jurisdiction, or the rules governing their remuneration, independence, disqualification from other offices and protection against removal, provided that those restrictions enable those objectives to be attained and are necessary for that purpose.

- 97 It is also true that a notary must refuse to authenticate a document or agreement which does not satisfy the conditions laid down by law, regardless of the wishes of the parties. However, following such a refusal, the parties remain free to remedy the unlawfulness, amend the conditions in the document or agreement, or abandon the document or agreement.
- 98 As to the probative force and the enforceability of notarial acts, these indisputably endow those acts with significant legal effects. However, the fact that an activity includes the drawing up of acts with such effects does not suffice for that activity to be regarded as directly and specifically connected with the exercise of official authority within the meaning of the first paragraph of Article 45 EC.
- 99 Thus, in particular, as far as the probative force of notarial acts is concerned, it must be pointed out that that force derives from the rules on evidence laid down by law in the legal system in question. Paragraph 292 of the ZPO, which defines the probative force of an authentic instrument, forms part of Part 2, Section 1, Title 3 of that code, 'Proof by documents'. The probative force conferred by law on a particular document thus has no direct effect on whether the activity which includes the drawing up of the document is in itself directly and specifically connected with the exercise of official authority, as required by the case-law (see, to that effect, *Thijssen*, paragraph 8, and *Commission v Spain*, paragraph 35).
- 100 Moreover, as follows in particular from Paragraph 292(2) of the ZPO, proof that the event or fact attested or the authentication is incorrect is admissible.

- 101 It cannot therefore be argued that a notarial act, because of its probative force, unconditionally binds a court exercising its power of assessment, since, as is not disputed, the judge decides in accordance with his own firm conviction in the light of all the facts and evidence collected in the judicial proceedings. The principle of the unfettered assessment of the evidence by the court is moreover laid down in Paragraph 272 of the ZPO.
- 102 As regards the enforceable nature of an authentic instrument, it must be observed, as the Republic of Austria submits, that that enforceability enables the obligation embodied in the instrument to be enforced without the prior intervention of the court.
- 103 The enforceability of an authentic instrument does not, however, derive from powers possessed by the notary which are directly and specifically connected with the exercise of official authority. As follows from Paragraph 3 of the NO, the enforceability of a notarial act is conditional in particular on the debtor's agreement to submit to enforcement of the act with no prior proceedings being brought. It follows that the notarial act is not enforceable without the consent of the debtor. So, while the notary's endorsement of the authority to enforce on the authentic instrument does give it enforceable status, that status is based on the intention of the parties to enter into a document or agreement, after its conformity with the law has been checked by the notary, and to make it enforceable.
- 104 Secondly, as regards the power of notaries to draw up private documents and represent the parties in certain clearly defined cases, it must be recalled that the legal advice and assistance provided by a notary, even if compulsory or the subject of a statutory monopoly, cannot be regarded as connected with the exercise of official authority (see, to that effect, *Reyners*, paragraph 52).

105 Thirdly, as regards the activities entrusted to notaries under the GKG, it must be noted that the notary's function is primarily to carry out certain tasks in connection with the law of succession, such as recording the death, drawing up the inventory of the estate, identifying the heirs, conserving the estate, and taking measures for that purpose.

106 It is clear that the notary carries out those tasks under the supervision of the court, which may at any time request him to report on the state of progress, or indeed conduct an investigation in that respect, as follows from Paragraph 7a(1) of the GKG. Under Paragraph 7 of that law, the court may also revoke the commission given to the notary if he has not completed his tasks within the time-limits prescribed. Furthermore, if the court so requests, the notary must immediately produce the document to the court, in accordance with Paragraph 144(3) of the AußStrG.

107 The notary must also refer to the court for a decision any objection to the various measures taken in connection with a succession, as follows in particular from Paragraphs 7a(2) of the GKG and Paragraphs 160, 161 and 166(2) of the AußStrG. It is also for the court to award the estate to the heirs, pursuant to Paragraphs 177 and 178 of the AußStrG, and thus to bring the procedure to an end.

108 The tasks assigned to notaries in connection with the law of succession are thus performed under the supervision of the court, to which the notary must refer any disputes, and which moreover takes the final decision. Those tasks cannot therefore be regarded, as such, as directly and specifically connected with the exercise of official authority (see, to that effect, *Thijssen*, paragraph 21; Case C-393/05 *Commission v Austria*, paragraphs 41 and 42; *Commission v Germany*, paragraphs 43 and 44; and *Commission v Portugal*, paragraphs 37 and 41).

- ¹⁰⁹ That conclusion is not affected by the fact that a notary can take various measures of conservation or organisation in connection with his functions concerning successions. That power is ancillary to the notary's principal task of handling the succession, to which those measures are intended to contribute. As stated in the preceding paragraph, that task cannot be regarded as directly and specifically connected with the exercise of official authority.
- ¹¹⁰ The same applies to the other tasks entrusted to notaries under the GKG, such as the valuation and sale of movable and immovable property, the drawing up of inventories, and the regulation of agreed divisions of property, as those tasks are also performed under the supervision of the court, as follows from Paragraphs 7 and 7a of the GKG.
- ¹¹¹ Fourthly, as regards the particular status of notaries in the Austrian legal system, it need only be recalled that, as follows from paragraphs 84 and 87 above, it is by reference to the nature of the relevant activities themselves, not by reference to that status as such, that it must be ascertained whether those activities fall within the exception in the first paragraph of Article 45 EC.
- ¹¹² Two points must be made here, however. In the first place, it is not disputed that, apart from the cases in which a notary is appointed by law, every party can choose a notary freely. While notaries' fees are indeed fixed by law, the quality of the services they provide may vary from one notary to another, depending in particular on their professional capabilities. It follows that, within the geographical limits of their office, notaries practise their profession, as the Advocate General observes in point 18 of his Opinion, in conditions of competition, which is not characteristic of the exercise of official authority.

- 113 In the second place, the Republic of Austria cannot plead in response to the above considerations the fact that, where a notary acts as a *Gerichtskommissär*, he engages the liability of the State. Outside that particular case, the notary is solely liable for the actions carried out in his professional activity.
- 114 Fifthly, the argument which the Republic of Austria bases on certain European Union acts also fails to convince. As regards the acts mentioned in paragraph 56 above, it must be stated that the fact that the legislature chose to exclude the activities of notaries from the scope of a particular measure does not mean that those activities necessarily fall within the exception in the first paragraph of Article 45 EC. In the case of Directive 2005/36 in particular, the very wording of recital 41 in the preamble to that directive, stating that the directive ‘is without prejudice to the application of [Article 45 EC] concerning notably notaries’, shows that the European Union legislature precisely did not adopt a position on the applicability of the first paragraph of Article 45 EC to the profession of notary.
- 115 The regulations mentioned in paragraph 57 above relate to the recognition and enforcement of authentic instruments formally drawn up or registered and enforceable in a Member State, and do not therefore affect the interpretation of the first paragraph of Article 45 EC. Nor is that conclusion called into question by the European Union acts mentioned in paragraph 58 above, in that, as the Commission rightly submits, they are confined to entrusting to notaries and to other competent authorities appointed by the State the task of certifying that certifying that certain acts and formalities have been carried out before the transfer of the registered office and the creation and merger of companies.
- 116 As to the 1994 and 2006 resolutions, mentioned in paragraph 59 above, it is clear that they have no legal effect, since such resolutions are by nature not legally binding. Moreover, although they state that the profession of notary comes under Article 45

EC, the Parliament specifically expressed the wish in the 1994 resolution that measures should be taken to abolish the nationality condition for access to the profession of notary, that position being implicitly confirmed again in the 2006 resolution.

- ¹¹⁷ Sixthly, as regards the argument which the Republic of Austria bases on *Colegio de Oficiales de la Marina Mercante Española*, it must be observed that that case concerned the interpretation of Article 39(4) EC, not the first paragraph of Article 45 EC. Moreover, it follows from paragraph 42 of that judgment that, when the Court held that the functions entrusted to masters and chief mates of ships were connected with the exercise of rights under powers conferred by public law, it was referring to the totality of the functions exercised by them. The Court thus did not examine the single notarial power conferred on masters and chief mates of ships, namely the power to receive, safeguard and dispatch wills, separately from their other powers, such as their powers of coercion and punishment.
- ¹¹⁸ As to the *Unibank* case, also relied on by the Republic of Austria, it is clear that that case had nothing to do with the interpretation of the first paragraph of Article 45 EC. Moreover, the Court held, in paragraph 15 of *Unibank*, that for a document to be an 'authentic' instrument within the meaning of Article 50 of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36), the involvement of a public authority or any other authority empowered by the State of origin is necessary.
- ¹¹⁹ In those circumstances, it must be concluded that the activities of notaries as defined in the current state of the Austrian legal system are not connected with the exercise of official authority within the meaning of the first paragraph of Article 45 EC.

¹²⁰ Consequently, the nationality condition required by Austrian legislation for access to the profession of notary constitutes discrimination on grounds of nationality prohibited by Article 43 EC.

¹²¹ In the light of all the above considerations, the first head of claim is well founded.

Second head of claim

Arguments of the parties

¹²² The Commission claims that the Republic of Austria has failed to transpose, as regards the profession of notary, Directive 89/48 for the period up to 20 October 2007 and Directive 2005/36 for the period from that date.

¹²³ The Commission submits, as does the United Kingdom, that the profession of notary is a regulated profession within the meaning of Article 1(c) of Directive 89/48 and consequently falls within the scope of that directive. Recital 41 in the preamble to Directive 2005/36 does not have the effect of excluding that profession from the scope of that directive unless the profession comes under the first paragraph of Article 45 EC, which the Commission denies. Moreover, if the legislature had intended to exclude the profession of notary from the scope of Directive 2005/36, it would have done so expressly.

- ¹²⁴ The Commission notes that Directives 89/48 and 2005/36 allow the Member States to prescribe an aptitude test or an adaptation period capable of ensuring the high level of qualifications required of notaries. In addition, the application of those directives does not have the effect of preventing the recruitment of notaries by means of competitions, but only of giving nationals of the other Member States access to those competitions. That application also has no effect on the procedure for appointing notaries.
- ¹²⁵ The Republic of Austria, the Republic of Hungary, the Republic of Poland, the Republic of Slovenia and the Slovak Republic submit that notaries are excluded from the scope of those directives because their activity falls within the exception in Article 45 EC.
- ¹²⁶ The Republic of Slovenia argues that the Court should of its own motion reject the Commission's second head of claim as inadmissible in that, first, it has become devoid of purpose since the repeal of Directive 89/48 and, secondly, the subject-matter of the dispute has been extended beyond what was determined in the administrative proceedings.

Findings of the Court

— Admissibility

- ¹²⁷ The legal arguments put forward by the Commission show that this claim relates to the alleged failure to transpose Directive 89/48 and/or Directive 2005/36 as regards the profession of notary. It must be noted, however, that both the letters of formal

notice and the reasoned opinion of the Commission relate to the former directive. The Court must therefore examine of its own motion whether the second head of claim is admissible.

- 128 In accordance with its case-law, the Court may of its own motion examine whether the conditions laid down in Article 226 EC for bringing an action for failure to fulfil obligations are satisfied (Case C-362/90 *Commission v Italy* [1992] ECR I-2353, paragraph 8, and Case C-417/02 *Commission v Greece* [2004] ECR I-7973, paragraph 16).
- 129 It is settled case-law that, in the context of proceedings under Article 226 EC, the existence of a failure to fulfil obligations must be assessed in the light of the European Union legislation in force at the close of the period prescribed by the Commission for the Member State concerned to comply with its reasoned opinion (see, inter alia, Case C-365/97 *Commission v Italy* [1999] ECR I-7773, paragraph 32; Case C-275/04 *Commission v Belgium* [2006] ECR I-9883, paragraph 34; and Case C-270/07 *Commission v Germany* [2009] ECR I-1983, paragraph 49).
- 130 In the present case, that period ended on 18 December 2006. On that date Directive 89/48 was still in force, since Directive 2005/36 repealed it only with effect from 20 October 2007. Consequently, in so far as the present claim is based on the alleged failure to transpose Directive 89/48, it is not devoid of purpose (see, by analogy, judgment of 11 June 2009 in Case C-327/08 *Commission v France*, paragraph 23).
- 131 As to the admissibility of the claim in so far as it concerns the alleged failure to transpose Directive 2005/36, it must be recalled that, as the Court has previously held, although the claims as stated in the application cannot in principle be extended beyond the infringements alleged in the operative part of the reasoned opinion and in the letter of formal notice, the fact nevertheless remains that the Commission has standing to seek a declaration that a Member State has failed to fulfil obligations which were created in the original version of a European Union measure, subsequently amended or repealed, and which were maintained in force under the provisions of a new

European Union measure. Conversely, the subject-matter of the dispute cannot be extended to obligations arising under new provisions which have no equivalent in the original version of the measure concerned, for otherwise it would constitute a breach of the essential procedural requirements of infringement proceedings (see, to that effect, Case C-365/97 *Commission v Italy*, paragraph 36; Case C-363/00 *Commission v Italy* [2003] ECR I-5767, paragraph 22; and Case C-416/07 *Commission v Greece* [2009] ECR I-7883, paragraph 28).

- ¹³² Consequently, the claims in the Commission's application seeking a declaration that the Republic of Austria has failed to fulfil its obligations under Directive 2005/36 are in principle admissible, on condition that those obligations are analogous to those arising under Directive 89/48 (see, by analogy, Case C-416/07 *Commission v Greece*, paragraph 29).
- ¹³³ As appears from recital 9 in the preamble to Directive 2005/36, while aiming to improve, reorganise and rationalise the existing provisions by standardising the principles applicable, that directive maintains, for freedom of establishment, the principles and safeguards underlying the different systems of recognition in force, such as those established by Directive 89/48.
- ¹³⁴ Similarly, recital 14 in the preamble to Directive 2005/36 states that the mechanism of recognition established inter alia by Directive 89/48 remains unchanged.
- ¹³⁵ In the present case, the Commission's complaint against the Republic of Austria relates, as far as the profession of notary is concerned, to the failure to transpose not a particular provision of Directive 2005/36 but that directive as a whole.

136 In those circumstances, the alleged obligation to transpose Directive 2005/36 as regards the profession of notary is analogous to that arising under Directive 89/48 in so far as the principles and safeguards underlying the system of recognition established by that directive are maintained in Directive 2005/36 and the mechanism of recognition established by Directive 89/48 remained unchanged after the adoption of Directive 2005/36.

137 This head of claim must therefore be regarded as admissible.

— Substance

138 The Commission complains that the Republic of Austria has not transposed Directives 89/48 and 2005/36 with reference to the profession of notary. The Court must therefore examine whether those directives apply to that profession.

139 The legislative context of those directives must be taken into account here.

140 Thus it must be noted that the legislature expressly stated in the 12th recital in the preamble to Directive 89/48 that the general system for the recognition of higher education diplomas introduced by that directive is ‘entirely without prejudice to the application of ... Article [45 EC]’. That reservation reflects the legislature’s intention to leave activities covered by the first paragraph of Article 45 EC outside the scope of that directive.

- ¹⁴¹ At the time of adoption of that directive, the Court had not yet had occasion to rule on whether the activities of notaries were covered by the first paragraph of Article 45 EC.
- ¹⁴² Over the years following the adoption of the directive, the Parliament, in its 1994 and 2006 resolutions mentioned in paragraphs 59 and 116 above, asserted on the one hand that the first paragraph of Article 45 EC should be fully applied to the profession of notary as such, while expressing the wish on the other hand that the nationality condition for access to that profession should be abolished.
- ¹⁴³ Moreover, when adopting Directive 2005/36, which replaced Directive 89/48, the European Union legislature was careful to state in recital 41 in the preamble to the directive that it was without prejudice to the application of Article 45 EC ‘concerning notably notaries’. As stated in paragraph 114 above, by expressing that reservation the European Union legislature did not adopt a position on the applicability of the first paragraph of Article 45 EC, and hence of Directive 2005/36, to the activities of notaries.
- ¹⁴⁴ That is shown in particular by the legislative history of Directive 2005/36. In its legislative resolution on the proposal for a European Parliament and Council directive on the recognition of professional qualifications (OJ 2004 C 97E, p. 230), adopted on first reading on 11 February 2004, the Parliament had proposed that it should be expressly stated in Directive 2005/36 that it did not apply to notaries. Although that proposal was not taken up in the amended proposal for a Directive of the European Parliament and of the Council on the recognition of professional qualifications (COM(2004) 317 final) or in Common Position (EC) No 10/2005 of 21 December 2004 adopted by the Council, acting in accordance with the procedure referred to in Article 251 of the Treaty establishing the European Community, with a view to adopting a directive of the European Parliament and of the Council on the recognition of professional qualifications (OJ 2005 C 58E, p. 1), that was not because the proposed directive was

to apply to the profession of notary but because, in particular, a ‘derogation from the principle of freedom of establishment and the freedom to provide services for activities that involve direct and specific participation in the exercise of official authority [was] provided for’ by the first paragraph of Article 45 EC.

¹⁴⁵ In view of the particular circumstances of the legislative procedure and the situation of uncertainty which resulted, as may be seen from the legislative context described above, it does not appear possible to conclude that, at the end of the period prescribed in the reasoned opinion, there existed a sufficiently clear obligation for the Member States to transpose Directives 89/48 and 2005/36 with respect to the profession of notary.

¹⁴⁶ The second head of claim must therefore be rejected.

¹⁴⁷ In the light of all the foregoing considerations, it must be held that, by imposing a nationality condition for access to the profession of notary, the Republic of Austria has failed to fulfil its obligations under Article 43 EC, and the action must be dismissed as to the remainder.

Costs

¹⁴⁸ Under Article 69(3) of the Rules of Procedure, where each party succeeds on some and fails on other heads, the Court may order that the costs be shared or that the parties bear their own costs. Since the Commission’s application has been upheld only in part, each party must be ordered to bear its own costs.

¹⁴⁹ Under the first subparagraph of Article 69(4) of the Rules of Procedure, Member States which intervene in the proceedings are to bear their own costs. The Czech Republic, the Federal Republic of Germany, the French Republic, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and the United Kingdom must therefore bear their own costs.

On those grounds, the Court (Grand Chamber) hereby

- 1. Declares that, by imposing a nationality condition for access to the profession of notary, the Republic of Austria has failed to fulfil its obligations under Article 43 EC;**
- 2. Dismisses the action as the remainder;**
- 3. Orders the European Commission, the Republic of Austria, the Czech Republic, the Federal Republic of Germany, the French Republic, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.**

[Signatures]