Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

29 July 2019*

(Failure of a Member State to fulfil obligations — Infringement of Directive 2006/123/EC and Articles 49 and 56 TFEU — Restrictions and requirements relating to the location of the registered office, legal form, shareholding and multidisciplinary activities of partnerships and companies of civil engineers, patent agents and veterinary surgeons)

In Case C-209/18,

ACTION for failure to fulfil obligations under Article 258 TFEU, brought on 23 March 2018,

European Commission, represented by G. Braun and H. Tserepa-Lacombe, acting as Agents,

applicant,

v

Republic of Austria, represented by G. Hesse, acting as Agent,

defendant,

supported by:

Federal Republic of Germany, represented initially by T. Henze and D. Klebs and subsequently by D. Klebs, acting as Agents,

intervener,

THE COURT (Fourth Chamber),

composed of M. Vilaras, President of the Chamber, K. Jürimäe, D. Šváby, S. Rodin (Rapporteur) and N. Piçarra, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: German.

Judgment

1 By its action the European Commission asks the Court to declare that, by maintaining the requirements relating to the seat for partnerships and companies of civil engineers and patent agents, the requirements relating to legal form and shareholding for partnerships and companies of civil engineers, patent agents and veterinary surgeons, and the restriction of multidisciplinary activities for partnerships and companies of civil engineers and patent agents, the Republic of Austria has failed to fulfil its obligations under Article 14(1), Article 15(1), (2)(b) and (c), and (3), and Article 25 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) and Articles 49 and 56 TFEU.

Legal context

EU law

2 Recital 9 of Directive 2006/123 states:

‘This Directive applies only to requirements which affect the access to, or the exercise of, a service activity. Therefore, it does not apply to requirements, such as road traffic rules, rules concerning the development or use of land, town and country planning, building standards as well as administrative penalties imposed for non-compliance with such rules which do not specifically regulate or specifically affect the service activity but have to be respected by providers in the course of carrying out their economic activity in the same way as by individuals acting in their private capacity.’

3 Recital 22 of that directive states:

‘The exclusion of healthcare from the scope of this Directive should cover healthcare and pharmaceutical services provided by health professionals to patients to assess, maintain or restore their state of health where those activities are reserved to a regulated health profession in the Member State in which the services are provided.’

4 Recital 40 of that directive reads as follows:

‘The concept of “overriding reasons relating to the public interest” to which reference is made in certain provisions of this Directive has been developed by the Court of Justice in its case-law in relation to Articles 43 and 49 of the Treaty and may continue to evolve. The notion as recognised in the case-law of the Court of Justice covers at least the following grounds: … public health, … the protection of the recipients of services …’

5 Article 2(2)(f) and (l) of the directive reads as follows:

‘2. This Directive shall not apply to the following activities:

…

(f) healthcare services whether or not they are provided via healthcare facilities, and regardless of the ways in which they are organised and financed at national level or whether they are public or private;

…

(l) services provided by notaries and bailiffs, who are appointed by an official act of government.’

6 In accordance with Article 4(2) of the directive, 'provider' is defined for the purposes of the directive as any natural person who is a national of a Member State, or any legal person as referred to in Article 54 TFEU and established in a Member State, who offers or provides a service.

7 Article 14, 'Prohibited requirements', of the directive provides in points 1 and 3:

'Member States shall not make access to, or the exercise of, a service activity in their territory subject to compliance with any of the following:

(1) discriminatory requirements based directly or indirectly on nationality or, in the case of companies, the location of the registered office, including in particular:
   (a) nationality requirements for the provider, his staff, persons holding the share capital or members of the provider's management or supervisory bodies;
   (b) a requirement that the provider, his staff, persons holding the share capital or members of the provider's management or supervisory bodies be resident within the territory;

…

(3) restrictions on the freedom of a provider to choose between a principal or a secondary establishment, in particular an obligation on the provider to have its principal establishment in their territory, or restrictions on the freedom to choose between establishment in the form of an agency, branch or subsidiary.'

8 Article 15(1), (2)(b) and (c), (3), (5) and (6) of the 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:

…

(b) an obligation on a provider to take a specific legal form;

(c) requirements which relate to the shareholding of a company;

…

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.

…

5. In the mutual evaluation report provided for in Article 39(1), Member States shall specify the following:

(a) the requirements that they intend to maintain and the reasons why they consider that those requirements comply with the conditions set out in paragraph 3;

(b) the requirements which have been abolished or made less stringent.

6. From 28 December 2006 Member States shall not introduce any new requirement of a kind listed in paragraph 2, unless that requirement satisfies the conditions laid down in paragraph 3.'

9 Article 25 of the directive provides:

'1. Member States shall ensure that providers are not made subject to requirements which oblige them to exercise a given specific activity exclusively or which restrict the exercise jointly or in partnership of different activities.

However, the following providers may be made subject to such requirements:

(a) the regulated professions, in so far as is justified in order to guarantee compliance with the rules governing professional ethics and conduct, which vary according to the specific nature of each profession, and is necessary in order to ensure their independence and impartiality;

(b) providers of certification, accreditation, technical monitoring, test or trial services, in so far as is justified in order to ensure their independence and impartiality.

2. Where multidisciplinary activities between providers referred to in points (a) and (b) of paragraph 1 are authorised, Member States shall ensure the following:

(a) that conflicts of interest and incompatibilities between certain activities are prevented;

(b) that the independence and impartiality required for certain activities is secured;

(c) that the rules governing professional ethics and conduct for different activities are compatible with one another, especially as regards matters of professional secrecy.

3. In the report referred to in Article 39(1), Member States shall indicate which providers are subject to the requirements laid down in paragraph 1 of this Article, the content of those requirements and the reasons for which they consider them to be justified.'

Austrian law

The ZTG

10 Paragraph 21 of the Ziviltechnikergesetz (Law on civil engineers, BGBl. 156/1994), in the version applicable to the present case (BGBl. I, 50/2016, 'the ZTG'), reads as follows:

'1. In accordance with the following provisions, civil engineers may, for the exclusive purpose of the permanent exercise of the profession of civil engineer, form partnerships, limited partnerships, limited liability companies and share companies with their own powers conferred by the Federal Minister for Economic Affairs and Labour (companies of civil engineers).

2. Companies of civil engineers shall themselves exercise the profession of civil engineer.

3. The formation of a civil-law partnership with persons carrying on a trade is permissible only if they are not authorised to perform implementing actions. Such a partnership shall not be subject to the provisions of Part 2 of this Federal law.'

11 Paragraph 25 of the ZTG, 'Seat and name', provides:

'1. Companies of civil engineers must have their seat in Austria at the seat of the practice of one of the members or board members with powers of management and representation.

2. Companies of civil engineers must add to their name the suffix "company of civil engineers" in accordance with the general provisions of law on trading names. The word "Ziviltechniker" (civil engineer(s)) may be abbreviated to "ZT".

3. In business documents the names and powers of all members with powers of management and representation must be stated.'

12 Paragraph 26 of the ZTG provides:

'1. Only natural persons and companies of civil engineers authorised to practise may be members of a company of civil engineers.

2. Persons carrying on a trade whose activity corresponds technically to the authorisation of a company of civil engineers and members or leading employees of such traders with powers of management and representation may not be members of that company of civil engineers.'

13 Paragraph 28 of the ZTG provides:

'1. Only natural persons who are members with a current authorisation and together hold more than half of the shares in the company may be managers and statutory representatives of a company of civil engineers. In operations in which technically different authorisations of several civil engineers are required, the company agreement must in any case oblige managers with relevant authorisations to act jointly.

2. Technical questions of the exercise of the profession of a company of civil engineers shall be decided, in the competent institutions of the company, exclusively by the members exercising their authorisation. No decision may be taken contrary to the will of those members who have an authorisation technically relevant to the subject matter of the decision.

3. Members who do not belong to the profession are to be contractually required to observe the rules of professional practice.

4. Where companies of civil engineers are registered partnerships, members who do not exercise their authorisation may only be limited partners.

5. Where companies of civil engineers are share companies, the statutes must provide exclusively for registered shares. The transfer of shares is to be conditional on approval by the general meeting. The general meeting is to be obliged to approve the transfer only in compliance with the provisions of this federal law and the rules of professional practice.'

The PAG

14 Paragraph 2 of the Patentanwaltsgesetz (Law on patent agents) of 7 June 1967 (BGBl. 214/1967), in the version applicable to the present case (BGBl. I, 126/2013, 'the PAG'), reads as follows:

'1. Registration on the list of patent agents is conditional on proof of fulfilment of the following requirements:

(a) Austrian nationality;

(b) legal capacity;

(c) permanent seat of the practice in Austria;

(d) completion of a total of at least five years' studies at an Austrian university or equivalent studies at a university in the European Economic Area or in the Swiss Confederation whose subject is a field of technology or natural science, or nostrification of equivalent foreign academic degrees;

(e) completion of a practical stage (Paragraph 3);

(f) passing the examination for patent agents (Paragraph 8 et seq.) at least one year before completion of the practical stage;

(g) third-party liability insurance in accordance with Paragraph 21a.

2. Nationality of a Contracting State to the Agreement on the European Economic Area or of the Swiss Confederation is to be equated to Austrian nationality.

3. For persons who satisfy the requirements for the profession of patent agent set out in Paragraph 16a(1), the examination of suitability (Paragraphs 15a and 15b) shall replace the requirements of subparagraph 1(d) to (f).'

15 Paragraph 29a of the PAG provides:

'In the case of companies for the exercise of the profession of patent agent, the following requirements must be fulfilled at all times:

1. Only the following may be members:

(a) patent agents;

(b) spouses or registered partners and children of a patent agent belonging to the company;

(c) former patent agents who have given up the exercise of the profession of patent agent and were members at the time of giving up or whose practice is continued by the company;

(d) the surviving spouse or registered partner and children of a deceased patent agent if he was a member at the time of decease or if the surviving spouse or registered partner or children enter into partnership with a patent agent for the purpose of continuing the practice;

(e) Austrian private foundations set up by one or more members, where the exclusive purpose of the foundation is the support of the persons mentioned in points (a) to (d).

2. Patent agents may belong to the company only as personally liable partners or, in the case of limited liability companies, as members with powers of representation and management. The members mentioned in point 1(b) to (e) may belong to the company only as limited partners, as members with no powers of representation and management, or in the manner of a silent partner. Persons other than members may not participate in the turnover or profit of the company.

3. Cessation of the exercise of the profession of patent agent (Paragraph 48(1)(c)) shall not prevent membership of the company, but shall prevent representation and management.

4. Spouses or registered partners (point 1(b)) may belong to the company only for the duration of the marriage or registered partnership, and children (point 1(b) and(d)) only until completion of their 35th year and thereafter for as long as they are preparing for the acquisition of the profession of patent agent.

5. All members must hold their rights in their own name and on their own account; fiduciary transfer and exercise of rights in the company is not permitted.

6. The activity of the company must be limited to the exercise of the profession of patent agent including the necessary ancillary activities and the management of the company's assets.

7. At least one patent agent member must have the seat of his practice at the seat of the company. Paragraph 25a shall apply by analogy to the establishment of branches.

8. Patent agents may belong to only one company; the company agreement may however provide that a patent agent belonging to the company may also exercise the profession of patent agent outside the company. The participation of companies of patent agents in other associations for the joint exercise of a profession is not permitted.

9. All patent agents belonging to the company must individually have powers of representation and management. All other members must be excluded from representation and management.

10. In a company of patent agents in the form of a limited liability company, persons other than patent agent members may not be appointed as manager. In a company of patent agents, a power of attorney and a power to carry out transactions cannot validly be granted.

11. Patent agents must have a decisive influence in the formation of the will of the company. The exercise of the mandate by a patent agent belonging to the company may not be subject to the instructions or approval of the members (general meeting of members).'

The TÄG

16 Paragraph 15a of the Tierärztegesetz (Law on veterinary surgeons) of 13 December 1974 (BGBl. 16/1975), in the version applicable to the present case (BGBl. I, 66/2016, 'the TÄG'), states:

'1. Only veterinary surgeons authorised to practise the profession or companies whose members are veterinary surgeons authorised to practise shall be authorised to operate a veterinary practice or a private veterinary clinic. The participation of non-members of the profession in a company of veterinary surgeons is possible only for silent partners. If, when a limited liability company is established, branches are also envisaged, it must be ensured that only a veterinary surgeon member may be the responsible manager and that he can manage only one branch and must have substantial shares in the company.

2. The responsible management of a private veterinary clinic must be carried out by a veterinary surgeon authorised to practise the profession who is authorised to operate a pharmacy in his practice.'

Pre-litigation procedure

17 On 9 July 2014 the Commission sent the Republic of Austria an administrative letter requesting information on the requirements laid down by national law for companies of civil engineers, patent agents and veterinary surgeons concerning the location of the seat, the legal form and the holding of the shares, and on the restrictions on multidisciplinary activities.

18 The Republic of Austria replied by letter of 9 October 2014, in which it sent the Commission a proposal for amending the PAG, which, however, had not been adopted by the Austrian legislature.

19 On 5 December 2014 the Commission opened the EU Pilot procedure, in which it sent the Republic of Austria supplementary questions, which were replied to on 13 February 2015.

20 On 19 June 2015 the Commission sent the Republic of Austria a letter of formal notice.

21 On 18 September 2015 the Republic of Austria replied to that letter.

22 On 5 October 2015 a meeting was arranged between the Commission and the Republic of Austria to discuss the content of the letter of 18 September 2015. Following that meeting the Republic of Austria sent an additional letter dated 23 October 2015, annexed to which was a proposed amendment to the ZTG. That amendment was intended to abolish the requirement as to the location of the seat for companies of civil engineers, and was to enter into force in the second quarter of 2016. An amendment to the requirement as to the location of the seat for companies of patent agents was also suggested, but the proposed wording would, in the Commission's view, have continued to be open to an interpretation contrary to Article 14(1)(b) of Directive 2006/123 and Article 49 TFEU. In addition, an amendment to the TÄG was announced, and this entered into force on 1 August 2016.

23 On 26 February 2016 the Commission sent the Republic of Austria a reasoned opinion, without, however, referring in it to the requirements relating to the location of the seat for architects and consulting engineers, an amendment to which had been announced.

24 The Republic of Austria replied by letter of 22 April 2016, proposing amendments for companies of patent agents, in particular a rewording of the provisions on the requirements as to the location of the seat and the 'decisive influence' of patent agents in those companies. As regards companies of civil engineers and veterinary surgeons, the Republic of Austria maintained its previous position that no amendment was necessary. Furthermore, the requirement concerning the location of the seat for companies of civil engineers was not abolished.

25 Taking account of those developments, on 17 November 2016 the Commission sent the Republic of Austria a supplementary reasoned opinion.

26 In December 2016 and February 2017 two meetings took place between the Commission and the Republic of Austria on the subject of companies of civil engineers. At those meetings the Republic of Austria undertook to abolish the requirements relating to the location of the seat and to make various amendments to the provisions on shareholding and the restrictions of multidisciplinary activities.

27 The Republic of Austria replied to the supplementary reasoned opinion by two letters of 17 January and 13 March 2017. It confirmed that it was still minded to amend Paragraph 25(1) of the ZTG but was unable to do so because of the interest groups concerned. It further stated that it was ready to amend the PAG and the TÄG within a reasonable time and to continue discussions. A proposed amendment to the ZTG was also transmitted to the Commission on 10 March 2017 by the Federal Minister for Science, Research and the Economy, but the Commission took the view that the amendment was not sufficient to remedy the incompatibility of that legislation with EU law.

28 On 11 October 2017 the Republic of Austria sent the Commission further additional observations, annexed to which was a new draft ZTG intended to take account of the Commission's reservations. While the Commission accepts that that draft envisaged the removal of the requirement concerning the location of the seat of companies of civil engineers, it has not been possible to deal with its other reservations. Furthermore, the draft has not yet been put before the Austrian Parliament with a view to its enactment.

29 In those circumstances, the Commission brought the present action for failure to fulfil obligations.

The action

The applicable provisions

Arguments of the parties

30 As regards the applicability of Directive 2006/123, the Commission rejects the position adopted by the Republic of Austria in the pre-litigation procedure and before the Court on the exclusion from the scope of that directive of the activities of civil engineers and veterinary surgeons.

31 With respect to the activities of civil engineers as persons authenticating documents, the Commission submits that, under Article 2(2)(l) of that directive, the directive does not apply to 'services provided by notaries and bailiffs, who are appointed by an official act of government'. The fact that other professional groups such as civil engineers also issue public documents does not automatically exclude those actions from the scope of the directive. Moreover, the Commission considers that local planning and land use are dealt with in Austria by the federation, the provinces and the municipalities, and, consequently, the fact that civil engineers provide technical support for local authorities in drawing up such plans does not mean that the services they provide are not subject to Directive 2006/123. The Commission is therefore of the view that the ZTG is not legislation outside the scope of that directive.

32 With respect to the activities of veterinary surgeons, the Commission states that the exclusion of healthcare services from the scope of Directive 2006/123 in accordance with Article 2(2)(f) of the directive refers only to services relating to human health, not to the services of veterinary surgeons.

33 The Republic of Austria submits that, at least in the activity of certifying authentic documents, civil engineers act as representatives of the State. It considers that the status of civil engineers in the context of that activity may, under national law, be equated to that of notaries. It concludes that civil engineers are covered by Article 2(2)(l) of Directive 2006/123, at least as regards the activity of certifying authentic documents. As to veterinary surgeons, the Republic of Austria essentially equates their activities to those of health professionals.

Findings of the Court

34 In the first place, it must be observed that, in accordance with Article 2(2)(l) of Directive 2006/123, the directive does not apply to services provided by notaries and bailiffs appointed by an official act of government. Civil engineers, on the other hand, are not mentioned in that provision.

35 Since exceptions are to be interpreted strictly, it must be found that Article 2(2)(l) of Directive 2006/123 is to be interpreted as covering only the services it expressly lists. In those circumstances, the Republic of Austria's argument that civil engineers may certify authentic documents and be equated to notaries in respect of that activity cannot succeed.

36 It cannot therefore be argued that the profession of civil engineer falls outside the scope of Directive 2006/123 in accordance with Article 2(2)(l) of that directive.

37 In the second place, it follows from Article (2)(2)(f) of Directive 2006/123 that 'healthcare services' are expressly excluded from the scope of that directive. However, according to recital 22 of that directive, the services referred to in that exception are those 'provided by health professionals to patients to assess, maintain or restore their state of health', which implies that they are provided to humans (judgment of 1 March 2018, *CMVRO*, C-297/16, EU:C:2018:141, paragraph 39).

38 Since exceptions are to be interpreted strictly, Article 2(2)(f) of that directive must be interpreted as referring only to healthcare services concerning human health.

39 It follows that it cannot be argued that the profession of veterinary surgeon falls outside the scope of Directive 2006/123 in accordance with Article (2)(2)(f) of that directive.

40 In the light of the above, it must be concluded that Directive 2006/123 is applicable both to the activities of civil engineers and to those of veterinary surgeons. In those circumstances, in so far as the Commission complains that the Republic of Austria is in breach of certain provisions of that directive as well as those of Article 49 TFEU, it is necessary to begin by considering the national legislation at issue from the point of view of the provisions of that directive before going on, if necessary, to consider that legislation from the point of view of Article 49 TFEU.

The complaint of infringement of Article 14 of Directive 2006/123

Arguments of the parties

41 The Commission submits that the national provisions on the location of the seat of companies of civil engineers and patent agents infringe Article 14 of Directive 2006/123 and Article 49 TFEU.

42 More particularly, the Commission submits, as regards companies of civil engineers, that Paragraph 25(1) of the ZTG contravenes Article 14(1)(b) of Directive 2006/123 by requiring that not only companies of civil engineers but also at least one of their members acting as managers and representatives must have their seat in Austria. According to the Commission, Article 25(1) of the

ZTG leads to discrimination in so far as it prohibits companies of civil engineers with their seat in a Member State other than the Republic of Austria from offering their services in the Republic of Austria. Article 14 of Directive 2006/123 does not permit such a restriction to be justified.

43 Moreover, as regards companies of patent agents, the Commission submits that it follows from Paragraph 29a(7) of the PAG that at least one member of a company of patent agents must have the seat of his practice at the seat of that company. It also follows from Paragraph 2(1)(c) of the PAG that registration on the list of patent agents is linked to proof that the permanent seat of the practice is in Austria. Consequently, according to the Commission, companies of patent agents and their members must have their seat in Austria, which is equivalent to discrimination on grounds of the location of the seat of the service provider and its members. The Commission considers that those provisions of the PAG constitute discrimination based directly on the location of the seat of a company and indirectly on the nationality of its members.

44 The Commission adds that none of the legislative amendments mentioned by the Republic of Austria have been implemented and that, as regards companies of patent agents, the suggested amendments do not remedy the infringement of EU law.

45 The Republic of Austria contests the complaint, arguing that, as regards companies of civil engineers, it sent the Commission on 11 October 2017, in clear form, a planned reform of the ZTG, thereby expressing its intention to abolish Paragraph 25(1) of that law. It considers that the allegation of a failure to fulfil obligations is unfounded, in particular because the delay in implementing the plan was brought about not solely by the Austrian elections but also by the failure of the Commission to react to an email of 10 March 2017 in which the Republic of Austria submitted specific proposals for a reform of the ZTG.

46 As regards companies of patent agents, the Republic of Austria informs the Court of the new legislative proposals for amending the PAG, submitting that it intends to start a legislative procedure before the end of 2018 for the enactment of an amending law.

Findings of the Court

47 As a preliminary point, it is clear that the Republic of Austria confines itself to contesting the claim by submitting that it has proposed legislative amendments, without, however, contesting the fact that those amendments had not yet entered into force at the time of bringing the present action.

48 It should be observed that the question whether a Member State has failed to fulfil obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion and the Court cannot take account of any subsequent changes (judgment of 28 November 2018, *Commission* v *Slovenia*, C-506/17, not published, EU:C:2018:959, paragraph 50 and the case-law cited).

49 In the present case, it is common ground that, on the expiry of the period given to the Republic of Austria, the requirements imposed by the national legislation at issue were still in force.

50 That having been clarified, it must be concluded, in agreement with the Commission, that from the national provisions that are the subject of the present complaint there follows an obligation, first, for companies of civil engineers and at least one of their members or board members and, second, for companies of patent agents to have their seat in Austria.

51 In that they require those companies to have their seat in national territory, those provisions impose a requirement based directly on the location of the registered office within the meaning of Article 14(1) of Directive 2006/123. Moreover, the obligation for at least one member or board member of a company of civil engineers to have his practice in Austria is, in substance, a requirement to be resident in national territory within the meaning of Article 14(1)(b) of that directive.

52 Article 14 of Directive 2006/123 prohibits Member States from making access to, or the exercise of, a service activity in their territory subject to compliance with any of the requirements set out in points 1 to 8 of that article, thus requiring them to abolish those requirements as a matter of priority and systematically. In addition, no justification can be given for the requirements listed in Article 14 of that directive (judgment of 16 June 2015, *Rina Services and Others*, C-593/13, EU:C:2015:399, paragraph 28).

53 In those circumstances, it must be concluded that the complaint of infringement of Article 14 of Directive 2006/123 is well founded.

The complaint of infringement of Article 15 of Directive 2006/123

Arguments of the parties

54 The Commission submits, with respect to the national requirements concerning legal form and shareholding for companies of civil engineers, patent agents and veterinary surgeons, that they infringe Article 15(1), (2)(b) and (c), and (3) of Directive 2006/123 and Article 49 TFEU, and that they prevent the establishment of new providers belonging to those professions from Member States other than the Republic of Austria. According to the Commission, those requirements restrict the opportunities for such providers established in other Member States to set up a secondary establishment in Austria, unless they adapt their organisational structures to those requirements. Moreover, according to the Commission, those requirements also constitute hindrances for service providers established in Austria.

55 First, the Commission considers that a national rule that the majority of shares in a professional company must be held by natural persons means that control of such a company cannot be exercised by legal persons. It is therefore impossible, according to the Commission, for that kind of professional company to be a subsidiary of another company. The Commission concludes that such a professional company, established in a Member State other than the Republic of Austria, will not be able to set up a branch in Austria offering the same services. Second, the Commission submits that the requirements concerning legal form and shareholding make it more complicated in practice to set up a principal establishment in Austria.

56 With respect more particularly to companies of civil engineers, the Commission recalls that under Paragraph 26(1) of the ZTG only natural persons and companies of civil engineers authorised to practise may be members of a company of civil engineers. It further recalls that Paragraph 28(1) of the ZTG provides that the majority of the shares of such a company must be held by civil engineers, and that they are also the ones who can be appointed managers and statutory representatives of the company of civil engineers concerned.

57 According to the Commission, the requirements as to legal form and shareholding applicable to companies of civil engineers cannot be justified by the fact that some activities of architects and engineers may be carried on not only under the rules of the ZTG but also under those of the Gewerbeordnung (Code of crafts, trade and industry, 'the GewO'), in so far as civil engineers are more highly respected and their services have a higher reputation than those of providers of the same services acting under the GewO. Consequently, according to the Commission, if companies

established in a Member State other than the Republic of Austria are required to choose to exercise their activity as a trade rather than a liberal profession which has an enhanced reputation, that constitutes a restriction of access to the market.

58 With respect to companies of patent agents and veterinary surgeons, the Commission observes that in the pre-litigation procedure the Republic of Austria did not contest the existence of a restriction, but confined itself to submitting that the measures in question are justified and proportionate.

59 The Commission considers that the national requirements at issue are neither justified nor proportionate.

60 First, with respect to companies of civil engineers, the Commission submits that the requirements relating to legal form and shareholding cannot be justified by the objectives of protecting the independence of civil engineers, guaranteeing the quality of services and protecting consumers, nor by other objectives of general interest such as the need to keep separate the activities of planning and carrying out works. In the Commission's view, the Austrian system already contains measures for achieving those objectives, such as rules of conduct in order to avoid conflicts of interest and the subjection of members of the professions concerned to rules relating to insurance and guarantees.

61 Moreover, according to the Commission, the ZTG already contains provisions that prevent interference with the independence of civil engineers. The Commission recalls that Paragraph 28(2) of the ZTG provides that only members with a technically relevant authorisation are to decide technical questions relating to the exercise of the profession, and also that Paragraph 28(3) of the ZTG requires that members who do not belong to the profession are to be contractually required to observe the rules of professional practice.

62 Second, with respect to companies of patent agents, the Commission submits that it follows from Paragraph 29a(1) of the PAG that only patent agents themselves, members of their families and foundations established by those natural persons may be members of such a company. Moreover, under Paragraph 29a(2) of the PAG, persons not belonging to the profession may not play a leading role in a company of patent agents and, under Paragraph 29a(11), patent agents must have a decisive influence within such a company and must not be dependent on other members in the exercise of their mandate.

63 According to the Commission, those requirements cannot be justified either by the objective of general interest of offering consumers a high quality advice and representation service or by the objective of protecting the professional independence of patent agents and the confidentiality of their activities.

64 Such requirements, according to the Commission, go beyond what is necessary for achieving the objectives of independence and confidentiality.

65 Moreover, the Commission considers that strict rules of professional conduct and provisions on insurance for the protection of consumers, such as Paragraph 21a of the PAG, suffice for achieving the objectives stated by the Republic of Austria. Furthermore, the requirements at issue are inconsistent, in that the Austrian legislation allows members of the family of a patent agent to become members of a company of patent agents, whereas no such possibility is provided for in the case of such companies established in Member States other than the Republic of Austria. The Commission adds that the imprecise wording of Paragraph 29a(11) of the PAG relating to the decisive influence of patent agents in the formation of the will of companies of patent agents opens the way to an extremely restrictive interpretation.

66 Third, with respect to companies of veterinary surgeons, the Commission submits that under Paragraph 15a(1) of the TÄG only veterinary surgeons or companies of veterinary surgeons authorised to practise are authorised to operate a veterinary practice or a private veterinary clinic. Moreover,

members of companies of veterinary surgeons must be qualified veterinary surgeons and non-members of the profession may hold shares in such companies only as silent partners. It further observes that only a veterinary surgeon who has substantial shares in a company of veterinary surgeons may become the manager of a branch of the company, and he can manage only one branch.

67 According to the Commission, a high degree of independence of veterinary surgeons and the protection of public health may be obtained by measures less restrictive than the requirement that veterinary surgeons must hold 100% of the voting rights in companies of veterinary surgeons, which constitutes a disproportionate restriction of freedom of establishment. The Commission considers that, if veterinary surgeons are able to exercise a decisive influence by holding enough shares to ensure that they control the company of veterinary surgeons concerned, non-veterinary surgeons cannot be prohibited from having a limited holding in such a company, not blocking such control.

68 The Commission considers that the rules of professional practice and conduct of veterinary surgeons and rigorous supervision of compliance with them, in particular by the Austrian chamber of veterinary surgeons, are a more flexible instrument for ensuring the protection of public health and the independence of members of that profession. The Commission also suggests that, instead of requiring the holding of 100% of the capital, national legislation could provide that only a majority of voting rights in companies of veterinary surgeons must be held by veterinary surgeons. It could also be required that companies of veterinary surgeons must belong to the chamber of veterinary surgeons, which would facilitate their supervision.

69 The Republic of Austria submits, with respect to companies of civil engineers, that the strict separation of the functions of planning and implementation is intended to guarantee the objectivity, independence and legal certainty of expert opinions and documents drawn up by civil engineers. It further submits that services of civil engineers may also be provided pursuant to the GewO by offices of engineers or master builders, so that it cannot be maintained that the possibility of providing such services is restricted. While Directive 2006/123 aims to regulate the freedom to provide services, it does not, according to the Republic of Austria, regulate the professional title under which a service may be supplied or the profession in which a service may be supplied.

70 The Republic of Austria submits that the only activity which can be exercised under the ZTG but not pursuant to the GewO is that of the authentification of documents. In its view, apart from the fact that, at least in connection with that activity, civil engineers are covered by Article 2(2)(l) of Directive 2006/123, the requirements imposed on that profession are in any case in the general interest, in particular for ensuring the protection of consumers.

71 As well as the possibility of the same services as those provided by civil engineers being provided under the GewO, the Republic of Austria submits that it has proposed an amendment to Paragraph 26 of the ZTG, in order to put an end to the complaint. It considers, on the other hand, that Paragraph 28(1) of the ZTG aims to preserve the impartiality and independence of civil engineers, so that the rules relating to the managers and representatives of companies of civil engineers should be maintained.

72 With respect to companies of parent agents, in addition to the arguments expressed in the pre-litigation procedure, a summary of which appeared in the Commission's application, the Republic of Austria informs the Court that it intends to amend Paragraph 29a(1)(b) to (e) of the PAG, to add a new subparagraph to that paragraph to extend the category of persons who may be members of those companies, and to repeal Paragraph 29a(4) of that law.

73 With respect to companies of veterinary surgeons, the Republic of Austria submits that it is not possible to maintain that there is no connection between the profession of veterinary surgeon and the protection of public health, in so far as that profession plays the part of guarantor as regards the

production of safe foodstuffs. The Republic of Austria submits that veterinary surgeons are obliged, not only under the TÄG but also under other legislation, to declare diseases of animals and certain human diseases or the suspicion of infection by one of those diseases.

74 The Republic of Austria further considers that the rules of professional conduct can have binding effects only on veterinary surgeons practising the profession, and are not suited to excluding relations of dependency on persons not belonging to the profession, unless a strict system of State supervision of those persons is put in place. The Republic of Austria takes the view that the Commission's position that the removal of Paragraph 15a of the TÄG would bring about price advantages for consumers is by no means clear, especially as that provision does not exclude the activity of companies in which persons who are not members of the profession of veterinary surgeon participate.

75 The Federal Republic of Germany intervenes in support of the form of order sought by the Republic of Austria, confining its observations, which are contested by the Commission, to an examination of the compatibility with Directive 2006/123 of the provisions of the ZTG. In this respect, the Federal Republic of Germany submits that Paragraph 26(1) and Paragraph 28(1) of the ZTG, if they are considered to be 'requirements' within the meaning of Article 15(2) of Directive 2006/123, fulfil the conditions set out in Article 15(3) of that directive, and are therefore justified.

76 On this point, the Federal Republic of Germany submits, first, that the restriction of access to the status of member of a company of civil engineers solely to civil engineers and companies of civil engineers is necessary to attain the objectives of the preservation of independence, preventive administration of justice, quality of services, protection of consumers and compliance with the obligation of confidentiality. It submits, second, that the requirement that only civil engineers may be managers and statutory representatives of companies of civil engineers ensures transparency and quality of service and makes it easier to determine the responsible person within such a company.

77 According to the Federal Republic of Germany, less restrictive measures such as internal rules and rules of professional conduct are not suitable for attaining the objectives stated in the same way as the national provisions at issue. Moreover, the provisions concerning insurance have a completely different function, namely providing compensation for damage already suffered, not the prevention of such damage.

Findings of the Court

78 In accordance with Article 15(1) of Directive 2006/123, the Member States must examine whether, under their legal system, any of the requirements listed in paragraph 2 of that article are imposed, and must ensure that any such requirements are compatible with the conditions laid down in paragraph 3 of that article.

79 Article 15(2)(b) of Directive 2006/123 mentions requirements which impose an obligation on a provider to take a specific legal form. Article 15(2)(c) mentions requirements which relate to the shareholding of a company.

80 It follows from Article 15(5) and (6) of the directive that the Member States are allowed to maintain or, as the case may be, introduce requirements of the kind listed in Article 15(2), provided that they satisfy the conditions laid down in Article 15(3) (see, to that effect, judgment of 16 June 2015, *Rina Services and Others*, C-593/13, EU:C:2015:399, paragraph 33).

81 The cumulative conditions set out in Article 15(3) of Directive 2006/123 relate, first, to the non-discriminatory nature of the requirements in question, which may not be directly or indirectly discriminatory according to nationality or, with regard to companies, according to the location of the registered office; second, to their necessity, in other words they must be justified by an overriding

reason relating to the public interest; and, third, to their proportionality, meaning that they must be suitable for securing the attainment of the objective pursued and 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.

82 It follows, in particular, that, while it is indeed for a Member State relying on an overriding reason of general interest to justify a requirement within the meaning of Article 15 of the directive to demonstrate that its rules are appropriate and necessary to attain the legitimate objective pursued, that burden of proof cannot extend to requiring the Member State to prove, positively, that no other conceivable measure could enable that objective to be attained under the same conditions (see, to that effect, judgments of 28 April 2009, *Commission* v *Italy*, C-518/06, EU:C:2009:270, paragraph 84 and the case-law cited; of 24 March 2011, *Commission* v *Spain*, C-400/08, EU:C:2011:172, paragraph 123; and of 23 December 2015, *Scotch Whisky Association and Others*, C-333/14, EU:C:2015:845, paragraph 55). Such a requirement would amount in practice to depriving the Member State concerned of its legislative power in the field in question.

83 In the present case, it follows from the national provisions that are the subject of the present complaint that, first, only natural persons and companies of civil engineers may be members of a company of civil engineers, and only natural persons who are members of the company of civil engineers and hold the majority of its shares can be appointed managers and representatives of such a company. Second, only patent agents themselves, members of their families and foundations established by those natural persons may hold shares in a company of patent agents, and patent agents must have a decisive influence within such a company. Third, only veterinary surgeons or companies of veterinary surgeons may operate a veterinary practice or clinic, persons not belonging to the profession may participate only as silent partners, and only veterinary surgeons holding substantial shares in such a company may become managers of a branch of the company.

84 Such requirements relate both to the legal form and to the holders of shares in companies of civil engineers, patent agents and veterinary surgeons, so that they come under Article 15(2)(b) and (c) of Directive 2006/123.

85 It must therefore be ascertained whether the national requirements at issue satisfy the conditions laid down in Article 15(3) of Directive 2006/123, namely that they must be non-discriminatory, necessary and proportionate to the attainment of an overriding reason relating to the public interest (see, to that effect, judgment of 1 March 2018, *CMVRO*, C-297/16, EU:C:2018:141, paragraph 54).

86 With respect, to begin with, to the first of those conditions, there is nothing in the documents before the Court to indicate that the requirements mentioned in paragraph 83 above are directly or indirectly discriminatory within the meaning of Article 15(3)(a) of Directive 2006/123.

87 Next, with respect to the second of those conditions, the Republic of Austria states essentially that the requirements at issue aim to achieve the objectives of guaranteeing the objectivity and independence of the professions concerned and of legal certainty, and also, as regards veterinary surgeons, the objective of protection of health.

88 It must be observed that the objectives of guaranteeing the objectivity and independence of the professions concerned and of legal certainty are connected with the objective of the protection of recipients of services, referred to in recital 40 of Directive 2006/123, and the objective of guaranteeing the quality of services.

89 The objectives of the protection of recipients of services, guaranteeing the quality of services and protection of health are overriding reasons relating to the public interest, capable of justifying restrictions of the freedoms guaranteed by EU law (see, to that effect, judgments of 3 October 2000, *Corsten*, C-58/98, EU:C:2000:527, paragraph 38, and of 1 March 2018, *CMVRO*, C-297/16, EU:C:2018:141, paragraph 57).

90 Finally, with respect to the third condition laid down in Article 15(3) of Directive 2006/123, three elements must be present, namely that the requirement is suitable for attaining the objective pursued, that it does not go beyond what is necessary to attain that objective, and that the objective cannot be attained by means of a less restrictive measure.

91 In this respect, it follows from the wording of Article 15(3) of Directive 2006/123 that it is for the Member State concerned to verify, and consequently to demonstrate, by relying on specific evidence substantiating its arguments, that requirements such as those at issue in the present case satisfy the conditions laid down by that provision (see, to that effect, judgment of 23 January 2014, *Commission* v *Belgium*, C-296/12, EU:C:2014:24, paragraph 33 and the case-law cited).

92 As regards the suitability of the requirements at issue for attaining the objectives mentioned, it must be stated that restrictions concerning the legal form and shareholding of a company, in so far as they ensure that the holding of shares in the company is transparent and that the persons holding shares are qualified and determine precisely the responsible persons in the company, are in principle suitable for attaining the objectives of the protection of recipients of services and of guaranteeing the quality of services.

93 As regards the objective of protection of public health, it follows from the Court's case-law that requirements relating to shares in companies of veterinary surgeons being held exclusively by members of that profession are suitable for reducing the risks that such companies may adopt economic strategies liable to undermine the objective of protection of health and the independence of veterinary surgeons (see, to that effect, judgment of 1 March 2018, *CMVRO*, C-297/16, EU:C:2018:141, paragraphs 82 and 83).

94 However, it must be recalled that, according to settled case-law of the Court, national legislation is suitable for securing the attainment of the objective pursued only if it genuinely reflects a concern to attain the objective in a consistent and systematic manner (see, to that effect, judgments of 10 March 2009, *Hartlauer*, C-169/07, EU:C:2009:141, paragraph 55; of 15 October 2015, *Grupo Itevelesa and Others*, C-168/14, EU:C:2015:685, paragraph 76; and order of 30 June 2016, *Sokoll-Seebacher and Naderhirn*, C-634/15, EU:C:2016:510, paragraph 27).

95 In the present case, it must be observed that, as the Commission rightly submitted without being challenged by the Republic of Austria, the shareholding requirements imposed on patent agents cannot be regarded as consistent within the meaning of that case-law, since Austrian legislation allows persons not belonging to the profession of patent agents, namely members of the family of a patent agent, to become members of a company of patent agents, whereas no such possibility is provided for in the case of companies active in that field which are established in Member States other than the Republic of Austria.

96 It follows that the Republic of Austria has not succeeded in showing that those requirements are suitable for securing the attainment of the objectives pursued.

97 Otherwise, on the other hand, it must be stated that the Commission does not put forward any specific arguments to deny that the requirements at issue are suitable for attaining the objectives stated, and confines itself to submitting that the requirements go beyond what is necessary for attaining those objectives.

98 As regards the second element in Article 15(3)(c) of Directive 2006/123, as set out in paragraph 90 above, the argument of the Republic of Austria that proposed laws, not yet in force at the time of bringing the present action, are intended to amend that legislation must be rejected as immaterial.

99 As follows from paragraph 48 above, the existence of a failure to fulfil obligations must be determined by reference to the situation obtaining in the Member State at the end of the period fixed in the reasoned opinion, and the Court cannot take account of any subsequent changes.

100 Consequently, the Court must examine whether the Republic of Austria's arguments concerning the requirements at issue, in force at the end of the period fixed in the reasoned opinion, can show that they do not go beyond what is necessary for attaining the objectives stated.

101 First, as regards the requirement set out in Paragraph 28(1) of the ZTG, it must be noted that the Commission suggested various less restrictive alternative measures, such as rules of conduct and rules concerning insurance and guarantees, which, especially if they were taken together, might allow the objectives pursued to be attained. While the Republic of Austria argues that that requirement appears indispensable for ensuring that managers of companies of civil engineers are personally liable for their services, it does not substantiate that argument in such a way as to allow the Court to conclude that the less restrictive measures would not suffice to attain those objectives.

102 Second, as regards Paragraph 29a of the PAG, it should be added, in addition to the considerations set out in paragraphs 95 and 96 above, that the Commission's arguments mentioned in paragraphs 62 to 64 above suggest that the requirements of that provision go beyond what is necessary to attain the objectives it pursues, and that the Republic of Austria has not put forward before the Court any arguments capable of refuting that argument.

103 Third, as regards Paragraph 15a of the TÄG, the Republic of Austria submits that veterinary surgeons are subject to a number of obligations relating to the protection of health, such as ensuring the production of safe foodstuffs and reporting diseases of animals and certain human diseases. The Republic of Austria further submits that the rules of conduct cannot, unless compliance with them is strictly supervised by the State, exclude relationships of dependency and the influence of persons not belonging to the profession, so that such rules are not suitable for attaining the objectives pursued.

104 It must be observed that the legitimate pursuit of the objectives of protection of health and the independence of veterinary surgeons cannot justify the complete exclusion of non-veterinary operators from holding shares in companies of veterinary surgeons, where it is not excluded that veterinary surgeons will be able to supervise such companies effectively even if they do not hold all the shares in those companies, in so far as the holding of a limited number of those shares by persons who are not veterinary surgeons will not necessarily prevent such supervision (see, to that effect, judgment of 1 March 2018, *CMVRO*, C-297/16, EU:C:2018:141, paragraph 86).

105 Consequently, national legislation which excludes from the holding of any shares in companies of veterinary surgeons all persons not having a professional qualification goes beyond what is necessary for attaining the objectives of the protection of public health and the independence of veterinary surgeons.

106 It follows from all the above considerations that the national requirements at issue go beyond what is necessary for attaining the objectives pursued, so that they infringe Article 15(3) of Directive 2006/123.

107 Consequently, the complaint relating to infringement of Article 15 of Directive 2006/123 is well founded. In those circumstances, there is no need to examine the legislation at issue from the point of view of Article 49 TFEU.

The complaint of infringement of Article 25 of Directive 2006/123

Arguments of the parties

108 The Commission submits that Paragraph 21(1) of the ZTG and Paragraph 29a(6) of the PAG require the professional companies concerned to confine themselves to carrying on the profession of civil engineer or patent agent respectively. However, Article 25 of Directive 2006/123 requires Member States to abolish requirements which oblige providers to exercise a given specific activity exclusively or which restrict the exercise jointly or in partnership of different activities. According to the Commission, those national provisions obstruct both the establishment by companies established in a Member State other than the Republic of Austria of secondary multidisciplinary establishments and the primary establishment of companies with their seat in Austria. Those provisions also hinder the freedom to provide services.

109 With respect to companies of civil engineers, the Commission submits that Paragraph 21(3) of the ZTG, under which the formation of a civil-law partnership with persons carrying on a trade is permissible for companies of civil engineers only if those persons are not authorised to perform implementing actions, infringes Article 25 of Directive 2006/123.

110 The Commission submits, first, that only architects and engineers can form joint companies, because it is possible to form civil-law partnerships with persons carrying on other professions only on condition that those persons are not authorised to perform implementing actions. Second, according to the Commission, an association with persons exercising other professions is not possible in the form of a company of civil engineers, but only in the form of a civil-law partnership in which the members are personally liable and do not enjoy the limited liability of a limited company. Third, the Commission observes that the approach that an engineer who provides his services in accordance with the ZTG may join with civil engineers to form a company of civil engineers, whereas an engineer who provides his services in accordance with the GewO can do that only in the form of a civil-law partnership, appears to be contradictory and disproportionate.

111 With respect to companies of patent agents, the Commission submits that under Paragraph 29a(6) of the PAG the activity of such a company must be confined to the exercise of the profession of patent agent, including ancillary activities, and the management of the company's assets. According to the Commission, the objectives of ensuring a high level of the quality of advice and defending the interests of consumers may be attained by measures that do not exclude absolutely the exercise of activities of patent agents jointly or in partnership with other professions.

112 The Republic of Austria submits that it follows from Directive 2006/123 that restrictions on multidisciplinary activities are permitted to the extent that they aim to preserve the impartiality, independence and integrity of regulated professions.

113 As regards companies of civil engineers, the Republic of Austria submits that Paragraph 21(1) of the ZTG allows the establishment of companies of civil engineers with different specialisations. It further observes that Paragraph 21(3) of the ZTG also allows association with other professions on condition that they are not authorised to carry out implementing activities.

114 According to the Republic of Austria, in view of the strict separation of planning and implementing activities, rules on internal organisation do not suffice to attain the objective of ensuring the impartiality and independence of the profession. Furthermore, the Republic of Austria takes the view that the Commission's idea that it would suffice to lay down guidelines on the prevention of conflicts of interest is not capable of attaining the objective sought, in that such guidelines do not have binding effect.

115 As regards companies of patent agents, the Republic of Austria informs the Court that the proposed amendments to Paragraph 29a(6) and (11) of the PAG consist simply in repealing those provisions, so that it cannot be accused of any restriction of multidisciplinary activities.

Findings of the Court

116 In accordance with Article 25(1) of Directive 2006/123, the Member States are to ensure that providers are not made subject to requirements which oblige them to exercise a given specific activity exclusively or which restrict the exercise jointly or in partnership of different activities. However, the providers mentioned in points (a) and (b) of Article 25(1) may be made subject to such requirements, in accordance with the conditions stated in those points.

117 In the present case, first, under Paragraph 21(1) of the ZTG, civil engineers can form companies of civil engineers for the exclusive purpose of exercising their profession, whereas, under Paragraph 21(3) of the ZTG, the formation by civil engineers of a company with persons carrying on a trade is permitted only if it is a civil-law partnership in which those persons are not authorised to perform implementing actions.

118 Second, under Paragraph 29(a)(6) of the PAG, the activities of companies of patent agents are limited to the exercise of that profession, ancillary activities, and the management of the company's assets.

119 It follows that those provisions subject the providers mentioned in them to requirements such as those concerned by Article 25(1) of Directive 2006/123. It therefore remains to be examined whether those requirements may be justified in accordance with points (a) and (b) of Article 25(1).

120 In this respect, the Republic of Austria submits that Paragraph 21 of the ZTG aims to preserve the impartiality, independence and integrity of the profession of civil engineer, and considers that those objectives cannot be guaranteed by rules of conduct. As regards patent agents, the Republic of Austria informs the Court of legislative amendments intended to repeal the provisions objected to by the Commission.

121 In accordance with the case-law cited in paragraph 48 above, the Republic of Austria's arguments relating to legislative amendments to the PAG made after the expiry of the period fixed in the reasoned opinion, which, moreover, had not entered into force at the time of bringing the present action, must be rejected.

122 With respect to Paragraph 21 of the ZTG, the Republic of Austria has given no explanation of precisely how the impartiality, independence and integrity of the profession of civil engineer could be affected if civil engineers were allowed, in a company such as those referred to in Paragraph 21(1) of the ZTG, to join with persons exercising other professions. That is all the more so as Paragraph 21(3) of the ZTG allows civil engineers, on certain conditions, to join with persons carrying on another activity in a civil-law partnership.

123 In any event, the Republic of Austria has not put forward any specific arguments to show that other less restrictive measures, such as the adoption of rules on the internal organisation of a multidisciplinary company suggested in argument by the Commission, would not be suitable for ensuring the impartiality, independence and integrity of a civil engineer carrying on his activity within such a company. It cannot therefore be accepted that the prohibition of forming such companies resulting from Paragraph 21 of the ZTG is 'necessary' to that end within the meaning of Article 25(1)(a) or (b) of Directive 2006/123.

124 It follows from the above observations that the complaint of infringement of Article 25 of Directive 2006/123 is well founded.

125 Consequently, it must be held that, by maintaining the requirements relating to the location of the seat for partnerships and companies of civil engineers and patent agents, the requirements relating to legal form and shareholding for partnerships and companies of civil engineers, patent agents and veterinary surgeons, and the restriction of multidisciplinary activities for partnerships and companies of civil engineers and patent agents, the Republic of Austria has failed to fulfil its obligations under Article 14(1), Article 15(1), (2)(b) and (c), and (3), and Article 25 of Directive 2006/123.

Costs

126 Under Article 138(1) of the Rules of Procedure of the Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs to be awarded against the Republic of Austria and the Republic of Austria has been unsuccessful, it must be ordered to bear its own costs and to pay those incurred by the Commission.

127 In accordance with Article 140(1) of the Rules of Procedure, the Federal Republic of Germany is to bear its own costs.

On those grounds, the Court (Fourth Chamber) hereby:

1. **Declares that, by maintaining the requirements relating to the location of the seat for partnerships and companies of civil engineers and patent agents, the requirements relating to legal form and shareholding for partnerships and companies of civil engineers, patent agents and veterinary surgeons, and the restriction of multidisciplinary activities for partnerships and companies of civil engineers and patent agents, the Republic of Austria has failed to fulfil its obligations under Article 14(1), Article 15(1), (2)(b) and (c), and (3), and Article 25 of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market;**

2. **Orders the Republic of Austria to bear its own costs and to pay those incurred by the European Commission;**

3. **Orders the Federal Republic of Germany to bear its own costs.**

[Signatures]