Reports of Cases

OPINION OF ADVOCATE GENERAL
SZPUNAR
delivered on 10 October 2019[1]

**Case C-384/18**

**European Commission**
**v**

**Kingdom of Belgium**

(Failure of a Member State to fulfil obligations — Directive 2006/123/EC — Article 25 — Restrictions on multidisciplinary activities of accountants)

1. By this action for failure to fulfil obligations, the Commission asks the Court to find that, by (1) prohibiting the exercise of accounting activities in conjunction with the activities of an insurance broker or agent, or of an estate agent, or with any banking or financial services activity, and (2) permitting approved chambers of the Institut professionnel des comptables et fiscalistes agrées (professional institute of approved accountants and tax consultants; 'IPCF') to prohibit the exercise of accounting activities in conjunction with any artisanal, agricultural or commercial activity, the Kingdom of Belgium has failed to fulfil its obligations under Article 25 of Directive 2006/123/EC[2] and Article 49 TFEU.

2. As requested by the Court, this Opinion is limited to the issue of whether the approach taken by the Court in the judgment in *Wouters and Others*[3] can be applied in the present case.

## Legal background

### *EU law*

3. Recitals 97 and 101 of Directive 2006/123 state:

'(97) It is necessary to provide in this Directive for certain rules on high quality of services, ensuring in particular information and transparency requirements. These rules should apply both in cases of cross border provision of services between Member States and in cases of services provided in a Member State by a provider established there, without imposing unnecessary burdens on SMEs. They should not in any way prevent Member States from applying, in conformity with this Directive and other Community law, additional or different quality requirements.

…

1 Original language: French.

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

3 Judgment of 19 February 2002 (C-309/99, EU:C:2002:98).

(101) It is necessary and in the interest of recipients, in particular consumers, to ensure that it is possible for providers to offer multidisciplinary services and that restrictions in this regard be limited to what is necessary to ensure the impartiality, independence and integrity of the regulated professions. This does not affect restrictions or prohibitions on carrying out particular activities which aim at ensuring independence in cases in which a Member State entrusts a provider with a particular task, notably in the area of urban development, nor should it affect the application of competition rules.'

4. Article 25 of that 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.'

### *Belgian law*

5. At the relevant time, Article 21 of the IPCF code of ethics, which had been approved by Royal Decree of 22 October 2013 ('the IPCF code of ethics'), read as follows:

'1. The profession of external IPCF accountant is incompatible with any artisanal, agricultural or commercial activity, whether exercised directly or indirectly, individually or through a partnership, association or company, as sole trader or as manager, director, executive officer or active shareholder or partner.

2. Save as regards the activities mentioned in paragraph 3, the Chambers may derogate from this rule at the request of an external IPCF accountant, made in advance and in writing, provided that the independence and impartiality of the member are not jeopardised and that the activity in question is ancillary. Such a decision is always capable of being revoked by the chambers.

Furthermore, the Council may always make provision concerning derogations by way of a general directive, in relation to specified activities in the artisanal, agricultural or commercial sector, outside the particular areas referred to in paragraph 3. The Council may also adopt directives under which incompatibilities are temporarily disregarded in cases of business transfer. The external IPCF accountant, who will be subject to Council directives, must inform the Chamber in writing.

3. The following professional activities are always regarded as jeopardising the independence and impartiality of the external accountant: those of an insurance broker or agent; those of an estate agent (other than that of a managing agent), and all banking and financial services activities requiring registration with the Autorité des Services et Marchés Financiers (Financial markets and services authority; 'FSMA').'

6. The Royal Decree of 22 October 2013 was repealed by the Royal Decree of 18 July 2017 approving the IPCF code of ethics ('the new IPCF code of ethics'). The new Article 21 of the IPCF code of ethics provides:

'1. Except for the activities referred to in paragraph 2, the exercise of multidisciplinary activities, as a natural or a legal person, shall be authorised by the Chambers at the written request of an external IPCF accountant, provided that the independence and impartiality of the member are not jeopardised.

2. The following professional activities, whether exercised as a natural or a legal person, are always regarded as jeopardising the independence and impartiality of the external IPCF accountant: those of an insurance broker or agent; those of an estate agent (other than that of a managing agent), and all banking and financial services activities requiring registration with the [FSMA].'

7. Article 458 of the Criminal Code of 8 June 1867, in the version which was in force at the relevant time,[4] provides:

'Medical practitioners, surgeons, health officers, pharmacists, midwives and all other persons who, by virtue of their position or profession, are in receipt of confidential information shall, except where called to give evidence in a court of law or before a Parliamentary commission of enquiry, or where required by law to disclose such information, be punished, in the event of such disclosure, by a term of imprisonment of 8 days to 6 months and a fine of EUR 100 to EUR 500.'

## Background to the dispute

### *Pre-litigation procedure*

8. On 17 March 2015, the Commission initiated EU Pilot procedure 7402/15/GROW by asking the Kingdom of Belgium to provide it with information on the prohibition on approved accountants combining their accounting activities with certain other activities, and to state the grounds on which activities in the artisanal, agricultural or commercial sectors could be regarded as incompatible with the profession of accountant.

9. The Member State responded to the Commission's questions by letter of 29 May 2015.

10. The Commission was not satisfied with that response and, on 11 December 2015, sent the Member State a letter of formal notice in which it maintained that Article 21 of the IPCF code of ethics did not conform to Article 25 of Directive 2006/123 and Article 49 TFEU.

4 This article was amended, with effect from 3 August 2017, so as to provide for more severe penalties, with breach of the obligation of professional secrecy now punishable either by a term of imprisonment of one to 3 years or by a fine of EUR 100 to EUR 1000, or both.

11. By letters of 12 April and 6 July 2016, the Kingdom of Belgium denied the alleged infringement, explaining why it considered that the national legislation was in conformity with EU law.

12. On 18 November 2016, the Commission sent a reasoned opinion to the Member State, which replied on 12 January 2017. The Commission was not satisfied with the reply, and on 13 July 2017, it decided to bring an action for failure to fulfil obligations. On 4 August 2017, the Kingdom of Belgium notified the Commission of the new IPCF code of ethics, which it regarded as being in conformity with EU law.

### *Procedure before the Court*

13. The Commission does not share the Member State's view, and has accordingly brought this action for failure to fulfil obligations. Its application was lodged on 8 June 2018.

14. The Kingdom of Belgium and the Commission made oral submissions at a hearing held on 23 May 2019.

## Analysis

### *Arguments of the parties*

#### *The Commission*

15. The Commission argues that the objective of Article 25 of Directive 2006/123 is to ensure that Member States do not prevent the provision of multidisciplinary services. It points out that, until it was amended, Article 21(1) of the IPCF code of ethics prohibited the activities of an IPCF accountant being exercised in conjunction with any artisanal, agricultural or commercial activity, or with the activities of an insurance broker or agent, or of an estate agent, or with any banking or financial services activity.

16. The Commission considers that less restrictive measures than those contained in Article 21(1) of the IPCF code of ethics could have been taken, and accordingly that that provision is contrary to both Article 25 of Directive 2006/123 and Article 49 TFEU.

17. As regards the amendment of Article 21 of the IPCF code of ethics, the Commission observes that this took place after the date set for the reply to the reasoned opinion and that, in any event, it did not put an end to the infringement in question. In that respect, the Commission argues, Article 21(2) of the new IPCF code of ethics is identical to Article 21(3) of the previous version. The Commission submits that Article 25(2)(a) of Directive 2006/123 subjects requirements that restrict the exercise of regulated professions to evaluation, such requirements being permissible only in so far as is justified in order to ensure conformity with different rules of ethics reflecting the specific nature of each profession, and with the need to guarantee the independence and impartiality of those professions. However, according to the Commission, the complete prohibition on the exercise of accounting activities in conjunction with the activities of an insurance broker or agent, or of an estate agent, or with any banking or financial services activity, by its very nature, goes beyond what is necessary to ensure compliance with the rules of ethics of the accounting profession.

18. The Commission considers that the total prohibition is not a measure which is necessary to achieve the desired objectives, in so far as there are less restrictive measures, such as internal procedures, which would serve to prevent conflicts of interest as regards the transfer of information, and to guarantee that the rules of professional secrecy were properly applied.

19. The Commission submits that the Kingdom of Belgium's reliance on the judgment in *Wouters and Others*[5] is misplaced in that, on the facts, the approach adopted by the Court is not applicable to the present case.

20. It argues that, in any event, an absolute prohibition is not proportionate to the objective pursued. Further, the reasons given by the Member State, namely the concern to avoid the administrative burden that would arise if internal measures and procedures were put in place to safeguard the independence and impartiality of accountants, and the claimed inadequacy of ex post review, cannot be accepted.

21. With regard to Article 21(1) and (2) of the IPCF code of ethics, which state that the profession of accountant is incompatible with any artisanal, agricultural or commercial activity, except where the professional chambers approve such an activity, the Commission submits that this provision falls within the scope of Article 25 of Directive 2006/123. The prohibition contained in Article 21(1) of the code does not cease to exist, it argues, just because Article 21(2) gives the professional chambers discretion to derogate from it.

22. With regard to Article 21 of the new IPCF code of ethics, introduced on 18 July 2018, the Commission maintains that the procedure under which multidisciplinary activities are authorised by the professional chambers continues under this new version.

23. As regards the necessity and proportionality of the restriction in Article 21 of the new IPCF code of ethics, the Commission maintains that it is not clear from this provision that the exercise of any artisanal, agricultural or commercial activity or, under the new wording, 'any other activity', in conjunction with accounting activities, would give rise to conflicts of interest, and always disadvantages customers, other service providers and society as a whole. Even supposing that to be the case, the Commission argues, these restrictions would not be acceptable for the reasons given in relation to the restrictions on exercising the multidisciplinary activities of accountant in conjunction with those of an insurance broker or agent, or of an estate agent, or with any banking or financial services activity.

24. The Commission states that the Kingdom of Belgium has not demonstrated that less restrictive measures than the prohibition in Article 21 would not be as effective in terms of achieving the stated objectives.

25. While the Commission accepts that accountants in Belgium have an increased level of involvement as regards a category of undertakings, it nevertheless maintains that their function has not changed, such that accountants have not taken on the functions of auditors, or acquired the right to represent clients before the tax authorities.

*The Kingdom of Belgium*

26. The Kingdom of Belgium submits, first, that Article 25 of Directive 2006/123 does not prevent Member States from prohibiting the joint exercise of certain regulated professions, subject to certain conditions. It also points out that Article 25 is contained in Chapter V of the directive, which relates to 'Quality of Services' and is mainly concerned with consumer protection. Thus, restrictions on multidisciplinary activities ought to be limited to what is necessary to ensure the impartiality, independence and integrity of regulated professions.

5 Judgment of 19 February 2002 (C-309/99, EU:C:2002:98).

27. According to the Member State, the prohibitions contained in Article 21(2) of the new IPCF code of ethics (which corresponds to the former Article 21(3) of the IPCF code of ethics) are necessary to guarantee the independence and impartiality of IPCF accountants and ensure compliance with strict professional secrecy. A corollary of that independence, it argues, is an obligation to act exclusively on behalf of the client; and combining different activities could lead to accountants having regard to considerations other than those relating purely to the interests of the client. It submits that this is particularly important given the fact that estate agents, insurance brokers and stockbrokers are remunerated on a commission basis, with the amount of the commission potentially being higher than the fees received for accounting services, such that a conflict of interest might arise.

28. Furthermore, IPCF accountants are subject to an obligation of professional secrecy, breach of which is punishable as a criminal offence, and it would jeopardise their ability to ensure compliance with that obligation if the activity of IPCF accountants were to be exercised in conjunction with other professions which are not subject to such an obligation.

29. The Kingdom of Belgium does not accept the Commission's argument that the fact that the obligation of professional secrecy is limited means that the prohibition in question is not necessary. It submits that it is apparent from the judgment in *Wouters and Others*[6] that 'a degree of incompatibility' between the obligations of a member of the Bar and those of an accountant is sufficient to justify a prohibition on collaboration between those professions.

30. As regards the proportionality of the restriction at issue, the Member State maintains that Article 25(1)(a) of Directive 2006/123 does not contain any prohibition which should be regarded as being unjustified by its very nature. Furthermore, it submits, the restriction in Article 21 of the IPCF code of ethics is proportionate in so far as it does not introduce a general, absolute prohibition on all multidisciplinary activities, but relates only to closely defined activities. Alternative measures would not be as effective in terms of preserving the independence of the profession of IPCF accountant and the obligation of professional secrecy to which such accountants are subject.

31. As regards the incompatibility of the accounting profession with any artisanal, agricultural or commercial activity, the Kingdom of Belgium observes that Article 21 of the IPCF code of ethics allowed for the possibility of derogating from the prohibition by way of an authorisation granted by the professional chambers, provided that two conditions were met: that the parallel activity in question was ancillary, and that the independence and impartiality of the member were not jeopardised. In practice, authorisation is said to have been given in every case.

32. The Member State maintains that Article 21 of the new IPCF code of ethics provides that permission will always be given, upon written request addressed to the professional chambers, for the profession of accountant to be exercised in conjunction with other, broadly defined, activities, provided that the independence and impartiality of the accountant is not jeopardised. Accordingly, it argues, this provision introduces a system under which permission is always granted and can be refused in exceptional cases, where the condition of independence, which is now the only prerequisite, is not fulfilled.

33. The Kingdom of Belgium submits that, given that Article 25 of Directive 2006/123 goes as far as to permit multidisciplinary activities to be prohibited, where this is proportionate and justified in the light of the objective of preserving independence and impartiality, the authorisation procedure, which exists purely as a means of verifying that the independence and impartiality of accountants is preserved, does not infringe the requirements of that article.

6 Judgment of 19 February 2002 (C-309/99, EU:C:2002:98, paragraph 104).

34. The Member State also contests the Commission's rejection of its argument that alternative measures would not be as effective as a prohibition. It submits that this argument arises out of the Opinion of Advocate General Léger in *Wouters and Others*,[7] in which he considered whether the objective of protecting the independence of members of the Bar could, in practice, be similarly attained through measures less restrictive than a total prohibition, concluding that alternative measures would give rise to practical difficulties.

35. According to the Kingdom of Belgium, the Commission has put theoretical alternative measures forward without demonstrating that they are apt to achieve the objective pursued. By contrast, the Member State considers that by showing that the measures proposed by the Commission would not be effective in a market such as the Belgian market for the services of IPCF accountants, which has a low level of market concentration and is characterised by the presence of micro-businesses, it has proved both that the implementation of the alternative measures would give rise to practical difficulties, and that they would be ineffective.

36. With regard to Article 21(1) of the new IPCF code of ethics, the Member State denies that the new wording aggravates the alleged failure to fulfil obligations. It submits that both Article 21 and the preamble of the new IPCF code of ethics make clear that the general rule is for authorisation to be granted, except where independence and impartiality is jeopardised — this being a matter for the professional chambers to demonstrate. The Member State observes that the criteria for refusal are non-discriminatory, known in advance and limited to those contemplated by Article 25 of Directive 2006/123.

## *Appraisal*

37. As requested by the Court, my analysis will be devoted mostly to the issue of whether the judgment in *Wouters and Others*[8] is applicable in the present case. I will accordingly focus on the issue of the prohibition on the exercise of accounting activities in conjunction with other activities.

### *In general — Article 25 of Directive 2006/123*

38. I think some brief general remarks on the interpretation of Article 25 of Directive 2006/123 are in order.

39. Article 25 of Directive 2006/123 contemplates a three-step examination. First, Member States are to ensure that providers[9] are not subjected to requirements which oblige them to exercise a given specific activity exclusively or which restrict the exercise jointly or in partnership of different activities.[10] Secondly, the regulated professions may nevertheless be made subject to such requirements,[11] 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.[12] Thirdly, where such

7 C-309/99, EU:C:2001:390.

8 Judgment of 19 February 2002 (C-309/99, EU:C:2002:98).

9 The term 'provider' is defined in Article 4(2) of Directive 2006/123 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'.

10 See Article 25(1) of Directive 2006/123.

11 As regards the definition of 'regulated profession', Article 4(11) of Directive 2006/123 refers to Article 3(1)(a) of 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), according to which a regulated profession is a 'professional activity or group of professional activities, access to which, the pursuit of which, or one of the modes of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications; in particular, the use of a professional title limited by legislative, regulatory or administrative provisions to holders of a given professional qualification shall constitute a mode of pursuit'.

12 See Article 25(1)(a) of Directive 2006/123.

multidisciplinary activities are authorised, Member States are to ensure that conflicts of interest and incompatibilities between certain activities are prevented, that the independence and impartiality required for certain activities is secured, and that the rules governing professional ethics and conduct for different activities are compatible with one another, especially as regards matters of professional secrecy.

40. Article 25 of Directive 2006/123 aims to remove obstacles to service providers carrying out multidisciplinary activities. The legislature considers that it is necessary and in the interest of recipients, in particular consumers, to ensure that it is possible for providers to offer multidisciplinary services. [13] It follows in my view that, in line with the directive's general aim of removing barriers to the freedom of establishment for providers and barriers to the free movement of services, [14] the Member States' obligation is not dependent on there being a concrete barrier to a fundamental freedom. [15]

41. The relationship between the rule and the exception, which underlies the entirety of Directive 2006/123, and more fundamentally the internal market as a whole, is equally germane here: the fundamental freedom, expressing the interests of the European Union, constitutes the rule, while the possibility left to the Member States of limiting that rule constitutes the exception. It follows that this exception is to be interpreted narrowly, unlike the rule, which is to be interpreted broadly. Furthermore, the exception is subject to the other principles of EU law, in particular the principle of proportionality.

42. Thus, in the context of Article 25 of Directive 2006/123, the same reasoning should be applied, in relation to derogations from the rule, as regards the burden of proof, which is borne by the Member State. This also follows from the words 'in so far as' in Article 25(1)(a) of Directive 2006/123. In this respect, the argument advanced by the Kingdom of Belgium, in its defence and elsewhere, on the basis that the objective of Article 25 of Directive 2006/123 is to regulate the freedom of Member States to prohibit the exercise of multidisciplinary activities, is based on a false premise. On the contrary, as the Commission rightly points out, the purpose of that provision is to ensure that service providers are not subjected to requirements which restrict, amongst other things, the exercise jointly or in partnership of different activities.

*More specifically — prohibition of joint exercise of different activities*

43. As I stated in setting out the legal framework, the regulations at issue, namely the IPCF code of ethics as approved by the Royal Decree of 22 October 2013, have been repealed and replaced by the IPCF code of ethics as approved by the Royal Decree of 18 July 2017.

44. Article 21(2) of the new IPCF code of ethics is essentially identical to Article 21(3) of the former IPCF code of ethics. [16]

45. These provisions contain an absolute prohibition on exercising the activity of accountant in conjunction with the activities of an insurance broker or agent, or of an estate agent, or with any banking or financial services activity. This is a restriction on multidisciplinary activities that limits the range of services available and makes it more difficult to establish new business models.

46. Such a prohibition comes within the scope of Article 25(1) of Directive 2006/123.

13 See recital 101 of Directive 2006/123.

14 See Article 1(1) and recital 5 of Directive 2006/123.

15 See also, to this effect, Schlachter, M. and Ohler, C., *Europäische Dienstleistungsrichtlinie, Handkommentar*, Nomos, Baden-Baden, 2008, Article 25(1).

16 My analysis therefore applies to both versions of the code.

47. Since IPCF accountants are engaged in a regulated profession, it is open to the Kingdom of Belgium to rely on Article 25(1)(a) of Directive 2006/123. The question then arises of whether the prohibition at issue is, first, 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 secondly, necessary to ensure the independence and impartiality of those professions. These are cumulative conditions.

48. I consider that the Kingdom of Belgium has not proved that the measure at issue is necessary.

49. It relies, in seeking to demonstrate that the prohibition at issue is necessary, on the judgment in *Wouters and Others*.[17]

50. However, I find its submissions unconvincing, given that the situation of accountants in Belgium in the present case differs appreciably from that of lawyers in the Netherlands, at issue in the case giving rise to that judgment.

51. Among the numerous issues addressed in the judgment in *Wouters and Others*[18] — a judgment which would no doubt have been drawn on by the EU legislature in drafting Article 25 of Directive 2006/123 — was whether national legislation prohibiting multidisciplinary partnerships between members of the Bar and accountants was compatible with EU law.[19]

52. In that context, the Court held, first of all, that on the approach taken by the national legislation,[20] members of the Bar are in a situation of independence vis-à-vis the public authorities, other operators and third parties, by whom they must never be influenced. Members of the Bar must furnish, in that respect, guarantees that all steps taken in a case were taken in the sole interest of the client.[21] The Court also observed that, by contrast, the profession of accountant is not subject, in general, and more particularly in the relevant Member State, to comparable requirements of professional conduct.

53. Referring to the Opinion of Advocate General Léger in that case,[22] the Court then pointed out that there may be a degree of incompatibility between the 'advisory' activities carried out by a member of the Bar and the 'supervisory' activities carried out by an accountant. In the situation considered in that case, accountants performed a task of certification of accounts, which involved undertaking an objective examination and audit of their clients' accounts, so as to be able to impart to interested third parties their personal opinion concerning the reliability of those accounts. It followed that they were not bound by a rule of professional secrecy comparable to that of members of the Bar.[23]

54. In those circumstances, the Court held that the effects restrictive of competition did not go beyond what was necessary in order to ensure the proper practice of the legal profession.[24]

55. For the reasons set out below, I do not see how the judgment in *Wouters and Others*[25] assists in resolving the present dispute.

56. In that judgment, the Court was not ruling on the professional obligations of accountants in the context of multidisciplinary activities encompassing other professions, such as those at issue here.

17 Judgment of 19 February 2002 (C-309/99, EU:C:2002:98).

18 Judgment of 19 February 2002 (C-309/99, EU:C:2002:98).

19 The fact that the Court addressed the compatibility of the national legislation from the perspective of competition law (Article 101 TFEU) has no bearing on the present case.

20 Which, in that case, was Dutch.

21 See judgment of 19 February 2002, *Wouters and Others* (C-309/99, EU:C:2002:98, paragraph 102).

22 See the Opinion of Advocate General Léger in *Wouters and Others* (C-309/99, EU:C:2001:390, points 185 and 186).

23 See judgment of 19 February 2002, *Wouters and Others* (C-309/99, EU:C:2002:98, paragraph 104).

24 See judgment of 19 February 2002, *Wouters and Others* (C-309/99, EU:C:2002:98, paragraph 109).

25 Judgment of 19 February 2002 (C-309/99, EU:C:2002:98).

57. Rather, it was addressing the accounting profession in the context of a distinction between that profession and the Bar, so as to assess the consequences for the structure of the market for legal advice and the justification for the prohibition on members of the Bar practising jointly with accountants.

58. Far from making general observations on the concepts of independence and impartiality in the regulated professions, the Court was carrying out a circumscribed examination, in that case, of the specific situation of members of the Bar and accountants in the Netherlands.

59. In other words, even if the situation of a member of the Bar and that of an accountant, as in the judgment in *Wouters and Others*, were to be regarded [26] as falling within the scope of Article 25 of Directive 2006/123, it would not follow that the conclusion reached by the Court in that judgment applied to all situations falling within that provision. In this respect, I note that the judgment is referred to only by way of example in the Commission's Handbook on implementation of the Services Directive. [27]

60. The argument advanced by the Kingdom of Belgium treats accountants and lawyers as being in the same position as regards independence and impartiality. However, the profession of accountant differs appreciably from that of lawyer, and this argument must therefore be rejected.

61. The independence of lawyers is fundamental in the context of their provision of legal assistance and representation before the courts. As Advocate General Léger pointed out in his Opinion in *Wouters and Others* [28] 'in a State governed by the rule of law, lawyers ensure the effectiveness of the principle of access to the law and to the courts'. The purpose of the requirements of independence, professional secrecy and the need to avoid conflicts of interest is precisely to facilitate this.

62. On the other hand, as the Commission rightly points out, an IPCF accountant does not perform the function of representing clients before the public authorities. The function of an accountant relates to the consistency and reliability of accounts. Against that background, accountants may offer the entities they advise technical responses to economic constraints, or prepare tax or social security declarations or technical documents.

63. In those circumstances, the approach taken by the Court in its judgment in *Wouters and Others* [29] cannot be relied on to justify an absolute prohibition on multidisciplinary activities being imposed on accountants, in order to secure their independence and impartiality.

64. Accordingly, I do not consider that Article 21 of the IPCF code of ethics is necessary to secure the independence and impartiality of the accounting profession.

## Conclusion

65. In light of the considerations set out above, I suggest that the Court should not apply the reasoning of its judgment of 19 February 2002, *Wouters and Others* (C-309/99, EU:C:2002:98) in determining whether or not the Kingdom of Belgium, by prohibiting the exercise of accounting activities in conjunction with the activities of an insurance broker or agent, or of an estate agent, or with any banking or financial services activity, has failed to fulfil its obligations under 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.

26 Judgment of 19 February 2002 (C-309/99, EU:C:2002:98).

27 See point 8.4.1 of the handbook.

28 Opinion of Advocate General Léger in *Wouters and Others* (C-309/99, EU:C:2001:390, point 175).

29 Judgment of 19 February 2002 (C-309/99, EU:C:2002:98).