Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

9 March 2017*

(Reference for a preliminary ruling — Freedom of lawyers to provide services — Possibility for Member States to reserve to prescribed categories of lawyers the drafting of formal documents for creating or transferring interests in land — Legislation of a Member State requiring that the authenticity of the signature on a request for entry in the land register be certified by a notary)

In Case C-342/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberster Gerichtshof (Supreme Court, Austria), made by decision of 19 May 2015, received at the Court on 8 July 2015, in the proceedings

Leopoldine Gertraud Piringer,

THE COURT (Fifth Chamber),

composed of J.L. da Cruz Vilaça, President of the Chamber, A. Tizzano (Rapporteur), Vice-President of the Court, M. Berger, A. Borg Barthet and F. Biltgen, Judges,

Advocate General: M. Szpunar,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 8 June 2016,

after considering the observations submitted on behalf of:

— Leopoldine Gertraud Piringer, by S. Piringer, W.L. Weh and S. Harg, Rechtsanwälte,

— the Austrian Government, by G. Eberhard, M. Aufner and C. Pesendorfer, acting as Agents,

— the Czech Government, by M. Smolek, J. Vláčil and M.D. Hadroušek, acting as Agents,

— the German Government, by T. Henze, J. Möller, D. Kuon and J. Mentgen, acting as Agents,

— the Spanish Government, by M. J. García-Valdecasas Dorrego and V. Ester Casas, acting as Agents,

— the French Government, by G. de Bergues, D. Colas and R. Coesme, acting as Agents,

— the Latvian Government, by I. Kalniņš and J. Treijs-Gigulis, acting as Agents,

— the Luxembourg Government, by D. Holderer, acting as Agent, and by F. Moyse, avocat,

* Language of the case: German.

— the Polish Government, by B. Majczyna, D. Lutostańska and A. Siwek, acting as Agents,

— the Slovenian Government, by B. Jovin Hrastnik, acting as Agent,

— the European Commission, by G. Braun and H. Støvlbæk, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 21 September 2016,

gives the following

Judgment

1 The present request for a preliminary ruling concerns the interpretation of the second subparagraph of Article 1(1) of Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (OJ 1977 L 78, p. 17) and of Article 56 TFEU.

2 The request has been made in proceedings between Ms Leopoldine Gertraud Piringer, an Austrian national, and the Bezirksgericht Freistadt (Freistadt District Court, Austria), concerning the latter's refusal to enter a planned sale of property in the Austrian land register.

Legal context

EU law

3 The second recital of Directive 77/249 reads as follows:

'... this Directive deals only with measures to facilitate the effective pursuit of the activities of lawyers by way of provision of services; ... more detailed measures will be necessary to facilitate the effective exercise of the right of establishment'.

4 Under Article 1(1) and (2) of that directive:

'1. This Directive shall apply, within the limits and under the conditions laid down herein, to the activities of lawyers pursued by way of provision of services.

Notwithstanding anything contained in this Directive, Member States may reserve to prescribed categories of lawyers the preparation of formal documents for obtaining title to administer estates of deceased persons, and the drafting of formal documents creating or transferring interests in land.

2. "Lawyer" means any person entitled to pursue his professional activities under one of the following designations:

... *Ireland:*	Barrister,Solicitor,
... *United Kingdom:*	Advocate,Barrister,Solicitor,

...'

5 Article 4 of that directive provides:

‘1. Activities relating to the representation of a client in legal proceedings or before public authorities shall be pursued in each host Member State under the conditions laid down for lawyers established in that State, with the exception of any conditions requiring residence, or registration with a professional organisation, in that State.

…

4. A lawyer pursuing activities other than those referred to in paragraph 1 shall remain subject to the conditions and rules of professional conduct of the Member State from which he comes without prejudice to respect for the rules, whatever their source, which govern the profession in the host Member State, especially those concerning the incompatibility of the exercise of the activities of a lawyer with the exercise of other activities in that State … The latter rules are applicable only if they are capable of being observed by a lawyer who is not established in the host Member State and to the extent to which their observance is objectively justified to ensure, in that State, the proper exercise of a lawyer’s activities, the standing of the profession and respect for the rules concerning incompatibility.’

6 Recital 10 of Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (OJ 1998 L 77, p. 36) states:

‘… provision should be made, as in Directive 77/249/EEC, for the option of excluding from the activities of lawyers practising under their home-country professional titles in the United Kingdom and Ireland the preparation of certain formal documents in the conveyancing and probate spheres; … this Directive in no way affects the provisions under which, in every Member State, certain activities are reserved for professions other than the legal profession; …’.

7 Article 5 of that directive, entitled ‘Area of activity’, provides, in paragraph 2 thereof:

‘Member States which authorise in their territory a prescribed category of lawyers to prepare deeds for obtaining title to administer estates of deceased persons and for creating or transferring interests in land which, in other Member States, are reserved for professions other than that of lawyer may exclude from such activities lawyers practising under a home-country professional title conferred in one of the latter Member States.’

Austrian law

8 Paragraph 31 of the Allgemeines Grundbuchsgesetz (Federal Law on the land register) of 2 February 1955, in the version applicable to the dispute in the main proceedings (BGBl. I, 87/2015 (‘the GBG’), provides:

‘1. An entry in the land register may be made … only on the basis of public instruments or such private instruments on which the signatures of the parties have been authenticated by a court or a notary and where, in the case of natural persons, the certificate of authenticity also contains their date of birth.

…

3. The authentication of foreign instruments is governed by international treaties. Instruments authenticated by the Austrian representative authority under whose jurisdiction those instruments were prepared or authenticated, or by the national representative authority in the State in which they were prepared or authenticated, do not require additional authentication.

…’

9 Paragraph 53 of the GBG provides:

‘1. The owner is entitled to require that a planned sale or pledge be entered in the register in order to establish that the rights to be entered as a result of that sale or pledge have priority as of the date of the request for entry.

…

3. However, entries relating to such requests may be granted only if, as the land register stands, entry of the right to be entered or deletion of the existing right would be permissible, and if the signature on the request has been authenticated by a court or a notary. The provisions of Paragraph 31(3) to (5) shall apply.

…’

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

10 Ms Piringer owns a half share in a property situated in Austria.

11 On 25 February 2009 she signed, in the Czech Republic, a request for entry in the Austrian land register of the planned sale of her share of that property with a view to establishing the priority of that entry. The applicant’s signature on that request was authenticated by a Czech lawyer who, in accordance with Czech law, issued a declaration for that purpose containing the applicant’s date of birth and specifying the documents submitted by her as proof of her identity. The lawyer who signed also confirms that Ms Piringer personally signed a single copy of that request in his presence.

12 On 15 July 2014 Ms Piringer submitted that request for entry to the Bezirksgericht Freistadt (Freistadt District Court, Austria), which is responsible for maintaining the land register. She attached to her request, inter alia, the Treaty between the Republic of Austria and the Czechoslovak Socialist Republic of 10 November 1961 on judicial cooperation in civil matters, the recognition of public instruments and the provision of legal information (BGBl. No 309/1962), which is still applicable in bilateral relations with the Czech Republic (BGBl. III No 123/1997 (‘the Austrian-Czech Treaty’)).

13 That court refused that request, by decision of 18 July 2014, on the ground that the signature of the applicant in the main proceedings had not been authenticated by a court or a notary, contrary to the requirements of Article 53(3) of the GBG. Moreover, according to that court, authentication of the signature by a Czech lawyer is not covered by the Austrian-Czech Treaty. In any event, it took the view that the endorsement submitted by Ms Piringer did not bear the stamp of an official seal, as required by Articles 21 and 22 of that treaty.

14 By an order of 25 November 2015, the Landesgericht Linz (Linz Regional Court, Austria) confirmed the decision delivered on 18 July 2014, finding in particular that, although the declaration of the authenticity of the signature constituted a public instrument under Czech law, the recognition of such a declaration in Austria was covered by Article 21(2) of the Austrian-Czech Treaty. Given that, under that provision, mutual recognition applies only to the certificate attesting the veracity of the signature of a private instrument that has been appended to that instrument by ‘a court, an administrative body or an Austrian notary’, extending the scope of its application to certificates appended by Czech lawyers would, it held, be contrary not only to Article 21(2) but to the intention of the contracting parties themselves.

15 The Oberster Gerichtshof (Supreme Court, Austria), before which Ms Piringer brought an appeal on a point of law ('Revision'), finds in essence that the Austrian-Czech Treaty is not applicable in the present case, and expresses doubts as to whether the requirement for notarial certification laid down in Paragraph 53(3) of the GBG is compatible with EU law.

16 In those circumstances, the Oberster Gerichtshof (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is Article 1(1), second sentence, of [Directive 77/249] to be interpreted as enabling a Member State to exclude certification of the authenticity of signatures on instruments which are necessary for the creation or transfer of rights to property from the freedom to provide services by lawyers and to reserve the provision of this service to public notaries?

(2) Is Article 56 TFEU to be interpreted as not precluding a national provision of the State of registry (Austria) under which certification of the authenticity of signatures on instruments which are necessary for the creation or transfer of rights to property is reserved to public notaries, with the effect that a declaration of the authenticity of a signature by a lawyer established in the Czech Republic made in his State of establishment is not recognised in the State of registry, despite this declaration being accorded the legal effect of an official certification under Czech law,

in particular because:

(a) the question of the recognition of a declaration of the authenticity of a signature on a request for entry in the land register of the State of registry made in the Czech Republic by a lawyer established there relates to the provision of a service by a lawyer the content of which is not possible for lawyers established in the State of registry, and the refusal to recognise it is therefore not subject to the prohibition of restrictions on recognition

or

(b) such a reservation is justified to ensure the legality and legal certainty of acts (instruments relating to legal transactions) and as a consequence is required for reasons of public interest and is also necessary to achieve this objective in the State of registry?'

The request for the oral procedure to be reopened

17 In accordance with Article 82(2) of the Rules of Procedure of the Court, the oral part of the procedure was closed following the delivery of the Opinion of the Advocate General on 21 September 2016.

18 By document lodged at the Court Registry on 31 October 2016, Ms Piringer requested that the oral procedure be reopened. In essence, she disputed certainfindings in the Opinion of the Advocate General and claimed that a number of arguments, presented as being vital in the context of the present reference for a preliminary ruling, had not been the subject of debate between the interested parties.

19 In that regard, it follows from the second paragraph of Article 252 TFEU that it is the duty of the Advocate General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which require his involvement. The Court is not bound either by the Advocate General's Opinion or by the reasoning on which it is based (judgment of 21 December 2016, *Council* v *Front Polisario*, C-104/16 P, EU:C:2016:973, paragraph 60 and the case-law cited).

20 As a consequence, the fact that a party disagrees with that Opinion, irrespective of the questions examined therein, cannot in itself constitute grounds justifying the reopening of the oral procedure (judgment of 21 December 2016, *Council* v *Front Polisario*, C-104/16 P, EU:C:2016:973, paragraph 61 and the case-law cited).

21 That said, it should be recalled that the Court, under Article 83 of the Rules of Procedure, may at any time, after hearing the Advocate General, order that the oral procedure be reopened, in particular if it considers that it lacks sufficient information or where the case must be decided on the basis of an argument that has not been debated between the parties or the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union.

22 In the present case, however, the Court considers that it has all the information necessary to answer the questions referred and that that information was raised during the proceedings and debated between the parties.

23 In those circumstances, the Court, after hearing the Advocate General, takes the view that there is no need to order the reopening of the oral part of the procedure.

Consideration of the questions referred

The first question

24 By its first question, the referring court asks, in essence, whether the second subparagraph of Article 1(1) of Directive 77/249 must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, under which authentication of signatures appended to the instruments necessary for the creation or transfer of rights to property is reserved to notaries and as consequently excluding the possibility of recognising in that Member State such authentication carried out by a lawyer established in another Member State.

25 In order to answer that question, it is appropriate as a preliminary step to determine whether Directive 77/249 applies in circumstances such as those of the case in the main proceedings.

26 In this regard, it must be borne in mind that Directive 77/249, the purpose of which is to facilitate the effective exercise by lawyers of the freedom to provide services (judgment of 19 January 1988, *Gullung*, 292/86, EU:C:1988:15, paragraph 15), applies, in accordance with the wording of Article 1(1) thereof, to the activities of lawyers pursued by way of provision of services.

27 It is therefore necessary to verify, in the first place, whether the authentication of a signature appended to a request for entry in the land register, such as that at issue in the main proceedings, constitutes a 'lawyer's activity' and, in the second place, whether that authentication was effected in the context of the free provision of services, within the meaning of that provision.

28 In the first place, it must be stated that Directive 77/249 does not expressly define what is covered by the term 'lawyer's activity' within its meaning. Even though that directive draws a distinction between, on the one hand, activities relating to the representation of a client in legal proceedings or before public authorities and, on the other hand, all other activities, pursuant to, inter alia, Article 4(4) thereof (see judgment of 30 November 1995, *Gebhard*, C-55/94, EU:C:1995:411, paragraph 14), it does not define the scope of those expressions.

29 However, with regard to the actual notion of 'lawyer', within the meaning of Directive 77/249, Article 1(2) thereof states that that notion is to be taken to mean 'any person entitled to pursue his professional activities under one of the ... designations' applicable in each Member State. By that definition, the EU legislature left it to the Member States to define that notion themselves and referred to the designations used in each Member State to identify the persons entitled to pursue those professional activities.

30 In those circumstances, the view must be taken that, so far as concerns also the definition of activities that may be pursued by lawyers, in the absence of any precise indication in Directive 77/249, the EU legislature wished to preserve the power of the Member States to determine the meaning of that notion by thus leaving them with a broad margin of discretion in that regard.

31 Accordingly, for the purposes of interpreting Directive 77/249, it should be noted that, contrary to what, among others, the Czech and Spanish Governments argue, the notion of 'lawyer's activity' within the meaning of that directive covers not only the legal services typically provided by lawyers, such as legal advice or representing and defending a client in court, but may also cover other kinds of services, such as the authentication of signatures. The fact that those latter services are not provided by lawyers in all Member States is of no relevance in that respect.

32 Moreover, it must be made clear, as is apparent from the file submitted to the Court, that certain Member States, including the Czech Republic, have indeed provided for the possibility for lawyers established in their national territory to provide these other kinds of services.

33 In the second place, it is necessary to determine whether a lawyer's activity consisting in authenticating a signature is subject to the rules on the freedom to provide services. The application of Directive 77/249 to lawyers' activities is, according to Article 1(1) thereof, also subject to the condition that those activities be pursued 'by way of provision of services'.

34 In that regard, it is necessary to recall, as the Court has held on numerous occasions, that, in order to enable services to be provided, the person providing the service may go to the Member State where the person for whom it is provided is established or else the latter may go to the State in which the person providing the service is established. Whilst the former case is explicitly mentioned in the third paragraph of Article 57 TFEU, which permits the person providing the service to pursue his activity temporarily in the Member State where the service is provided under the same conditions as are imposed by that State on its own nationals, the latter case, which fulfils the objective of making all gainful activity not covered by the free movement of goods, persons and capital subject to the freedom to provide services, is the necessary corollary thereof (see, inter alia, judgment of 24 September 2013, *Demirkan*, C-221/11, EU:C:2013:583, paragraph 34).

35 Accordingly, it is the Court's established case-law that the freedom to provide services conferred by Article 56 TFEU on Member State nationals, and thus on European Union citizens, includes 'passive' freedom to provide services, namely the freedom for recipients of services to go to another Member State in order to receive a service there, without being hindered by restrictions (see, inter alia, judgment of 24 September 2013, *Demirkan*, C-221/11, EU:C:2013:583, paragraph 35 and the case-law cited).

36 It follows that, to the extent to which it seeks to facilitate the effective exercise by lawyers of the freedom to provide services, Directive 77/249 must be interpreted as applying both in the typical case of the lawyer travelling to a Member State other than that in which he or she is established in order to provide his or her services and in the case where that professional does not travel, namely where, as in the case in the main proceedings, it is the recipient of the service who travels outside his or her Member State of residence in order to visit another Member State and to avail of the services of a lawyer established there.

37 In view of the foregoing, as the conditions for the application of Directive 77/249 are satisfied in the present case, it must be held that that directive is capable of applying in the circumstances of a case such as that in the main proceedings.

38 That having been determined, it must be noted that the question posed by the Oberster Gerichtshof (Supreme Court) relates specifically to the interpretation of the second subparagraph of Article 1(1) of Directive 77/249. That provision authorises a derogation from the freedom of lawyers to provide services by providing that Member States have the option of reserving to 'prescribed categories of lawyers' the preparation of formal documents for, inter alia, creating or transferring rights to property.

39 In particular, by its question the referring court essentially seeks to ascertain whether such a derogation is capable of justifying a reservation established in favour of Austrian notaries for the authentication of signatures appended to the instruments necessary for the creation or transfer of rights to property and of permitting the exclusion of lawyers from the exercise of such an activity.

40 It must be stated, however, that the derogation provided for in the second subparagraph of Article 1(1) of Directive 77/249 does not cover, in general terms, the various categories of legal professions, with the result that Member States would have the right, relying on that provision, to limit the pursuit of the activity of drafting formal documents for the creation or transfer of rights to property to certain categories of legal professionals — such as notaries — and thus to prohibit foreign lawyers from exercising the activities in question within the territory of those Member States.

41 By contrast, that provision provides for a derogation with a more limited scope aimed specifically at certain prescribed categories of lawyers, which are, moreover, explicitly identified in Article 1(2) of that directive itself.

42 In that regard, as the Commission and the German Government rightly note, the legislative history of Directive 77/249 provides an understanding of the origin and scope of that provision, which was inserted for the benefit of the United Kingdom and Ireland, to take into account the particular legal situation in those two Member States, in which there are different categories of lawyers, namely barristers and solicitors.

43 In particular, the derogation provided for in the second subparagraph of Article 1(1) of Directive 77/249 was designed to take into account the legislation applicable in those common-law countries, which provides for the exclusive competence of solicitors to draft certain legal instruments in the area of property law, whereas in the other Member States, at the time when that directive was adopted, the drafting of those instruments was reserved to notaries or to the courts. Moreover, it was undisputed that such activities did not come within the scope of Directive 77/249.

44 The purpose of that derogation, as the Advocate General notes in point 34 of his Opinion, is thus to prevent lawyers from other Member States from pursuing the activities concerned in the United Kingdom or in Ireland. That interpretation is supported by recital 10 of Directive 98/5, according to which provision should be made, as in Directive 77/249, for the option of excluding from the activities of lawyers practising under their home-country professional titles in the United Kingdom and Ireland the preparation of certain formal documents in the conveyancing and probate spheres.

45 Similarly, Article 5(2) of Directive 98/5 provides that 'Member States which authorise in their territory a prescribed category of lawyers to prepare deeds for obtaining title to administer estates of deceased persons and for creating or transferring interests in land which, in other Member States, are reserved for professions other than that of lawyer may exclude from such activities lawyers practising under a home-country professional title conferred in one of the latter Member States'.

46 In those circumstances, given that the derogation introduced by the second subparagraph of Directive 77/249 is aimed only at prescribed categories of lawyers, authorised by the Member State concerned to pursue their professional activities under one of the designations specifically identified by the directive itself, and not at professions other than that of lawyer, it must be concluded that that provision does not apply in the circumstances of the case in the main proceedings.

47 In view of the foregoing, the answer to the first question is that the second subparagraph of Article 1(1) of Directive 77/249 must be interpreted as not applying to legislation of a Member State, such as that at issue in the main proceedings, under which authentication of signatures appended to the instruments necessary for the creation or transfer of rights to property is reserved to notaries, and as consequently excluding the possibility of recognising in that Member State such authentication carried out by a lawyer established in another Member State.

The second question

48 By its second question, the referring court asks, in essence, whether Article 56 TFEU must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, under which authentication of signatures appended to the instruments necessary for the creation or transfer of rights to property is reserved to notaries and as consequently excluding the possibility of recognising in that Member State such authentication carried out, in accordance with his or her national law, by a lawyer established in another Member State.

49 In order to answer that question, it is necessary, in the first place, to bear in mind that Article 56 TFEU requires not only the elimination of all discrimination on grounds of nationality against providers of services who are established in another Member State, but also the abolition of any restriction on the freedom to provide services, even if that restriction applies without distinction to national providers of services and to those of other Member States, which is liable to prohibit, impede or render less attractive the activities of a service provider established in another Member State where it lawfully provides similar services (judgments of 18 July 2013, *Citroën Belux*, C-265/12, EU:C:2013:498, paragraph 35 and the case-law cited, and of 11 June 2015, *Berlington Hungary and Others*, C-98/14, EU:C:2015:386, paragraph 35).

50 In the present case, Paragraph 53(3) of the GBG confers on notaries and courts alone the power to authenticate signatures appended to the instruments necessary for the creation or transfer of rights to property. Application of that provision leads to the exclusion, in a non-discriminatory manner, of the possibility of recognising in Austria the authentication of such a signature both by a lawyer established in that State and by lawyers established in other Member States.

51 In so far as it does not permit recognition of signature authentication carried out by a lawyer established in another Member State, in this case the Czech Republic, where, in accordance with national law, that lawyer lawfully provides similar services, such a reservation of competence is liable to prevent such a professional from offering that kind of service to clients minded to avail of it in Austria. In addition, having regard to the case-law cited in paragraphs 34 and 35 of the present judgment, such a reservation of competence also restricts the freedom of an Austrian national, as the recipient of such a service, to travel to the Czech Republic in order to avail there of a service which cannot be used in Austria for the purposes of making an entry in the land register.

52 Therefore, it must be held that the national provision at issue in the main proceedings constitutes a restriction on the freedom to provide services guaranteed by Article 56 TFEU.

53 In the second place, it is appropriate to recall that, in accordance with the case-law of the Court, such a restriction may nevertheless be allowed as a derogation, on grounds of public policy, public security or public health, as expressly provided for under Articles 51 and 52 TFEU, which are also applicable in the area of freedom to provide services by virtue of Article 62 TFEU or may, if applied in a non-discriminatory manner, be justified by overriding reasons in the public interest (see judgment of 28 January 2016, *Laezza*, C-375/14, EU:C:2016:60, paragraph 31 and the case-law cited), provided that it is appropriate for securing the attainment of the objective which it pursues and does not go beyond what is necessary in order to attain it (see, inter alia, judgment of 17 March 2011, *Peñarroja Fa*, C-372/09 and C-373/09, EU:C:2011:156, paragraph 54 and the case-law cited).

54 In that regard, it must be noted, as the Advocate General does in point 48 of his Opinion, that the Court has already found, in its judgment of 24 May 2011, *Commission* v *Austria* (C-53/08, EU:C:2011:338, paragraphs 91 and 92), that the activity of authentication pursued by notaries does not, as such, involve a direct and specific connection with the exercise of official authority within the meaning of the first paragraph of Article 51 TFEU. Moreover, the fact that some documents or agreements are subject to mandatory authentication, failing which they are void, cannot call that finding into question.

55 Consequently, the exception provided for in that provision of the FEU Treaty cannot be invoked in the circumstances of the present case, which, moreover, concern only the authentication of the applicant's signature and not the content of the instrument to which that signature was appended.

56 At the same time, in view of the fact, alluded to in paragraph 50 of the present judgment, that the reservation of competence in favour of notaries provided for in Paragraph 53(3) of the GBG constitutes a non-discriminatory measure, it is necessary to determine whether it might not be justified, in accordance with the case-law cited in paragraph 53 of the present judgment, by overriding reasons in the public interest.

57 In the present case, the Austrian authorities argue that the national measure at issue in the main proceedings seeks to ensure the proper functioning of the land register system and to guarantee the legality and legal certainty of documents concluded between individuals.

58 First, however, as the Austrian and German Governments, among others, have noted, it should be stated that the land register is of crucial importance especially in certain Member States which operate a system of civil-law notaries, particularly in property transactions. In particular, each entry in a land register — such as the Austrian land register — alters rights, in so far as the rights of the person who has requested that entry arise only after the corresponding entry has been made therein. Maintaining the land register thus constitutes an essential component of the preventive administration of justice in the sense that it seeks to ensure proper application of the law and legal certainty of documents concluded between individuals, which are matters coming within the scope of the tasks and responsibilities of the State.

59 In those conditions, national provisions which require verification, by recourse to sworn professionals — such as notaries — of the accuracy of entries made in a land register contribute to guaranteeing the legal certainty of property transactions and the proper functioning of the land register and relate, more generally, to the safeguarding of the sound administration of justice, which, in accordance with the case-law of the Court, constitutes an overriding reason in the public interest (see, to that effect, judgment of 12 December 1996, *Reisebüro Broede*, C-3/95, EU:C:1996:487, paragraph 36).

60 Second, it is necessary to recall that the Court has already held, in its judgment of 24 May 2011, *Commission* v *Austria*, (C-53/08, EU:C:2011:338, paragraph 96), in relation to the freedom of establishment, that the fact that notarial activities pursue objectives in the public interest, in particular that of guaranteeing the legality and legal certainty of documents concluded between individuals, constitutes an overriding reason in the public interest capable of justifying restrictions of Article 49 TFEU resulting from the particular features of the activities of public notaries, such as the restrictions which derive from the procedures by which they are appointed, the limitation of their numbers and their territorial jurisdiction, or the rules governing their remuneration, independence, disqualification from other offices and protection against removal, provided that those restrictions make it possible for those objectives to be attained and are necessary for that purpose.

61 It must be considered, by analogy with what the Court held in that judgment, that such considerations also apply in relation to a restriction on the freedom to provide services, within the meaning of Article 56 TFEU.

62 Consequently, it must be held that the objectives invoked by the Austrian Government constitute an overriding reason in the public interest capable of justifying national legislation such as that at issue in the main proceedings.

63 It is, however, still necessary to verify whether the measure at issue in the main proceedings satisfies the requirement of proportionality within the meaning of the case-law set out in paragraphs 53 and 60 of the present judgment.

64 In the present case, as is apparent from the observations made by the Austrian authorities during the hearing, the notary's involvement is important and necessary for the purposes of entry in the land register, since the participation of that professional is not limited to confirming the identity of a person who has appended a signature to an instrument, but also involves the notary's becoming acquainted with the content of the instrument in question in order to ensure that the proposed transaction is lawful as well as verifying that the applicant enjoys legal capacity.

65 In those conditions, the act of reserving activities relating to the authentication of instruments for creating or transferring rights to property to a particular category of professionals in which there is public trust and over which the Member State concerned exercises particular control constitutes an appropriate measure for attaining the objectives of proper functioning of the land register system and for ensuring the legality and legal certainty of documents concluded between individuals.

66 Moreover, it is important to bear in mind that the activity of lawyers consisting in certifying the authenticity of signatures appended to instruments is not comparable to the authentication activity carried out by notaries and that stricter provisions govern the system of authentications.

67 In that regard, at the hearing in the present case, the Czech Government stated that, while a Czech lawyer is indeed authorised to certify the authenticity of a signature under precise conditions defined in specific legislation, it is nevertheless clear from the case-law of the Nejvyšší soud (Supreme Court, Czech Republic) that the certificate of authenticity of a signature appended by a Czech lawyer does not constitute a public instrument. Therefore, in the event of a dispute between parties, that certification will not have the same evidentiary value as authentication by a notary.

68 It follows, according to that Member State, that, if such a signature were to be recognised in Austria for the purposes of entry in the Austrian land register, that certification, in so far as it would be considered equivalent to authentication by a notary, would have the value of a public instrument. Accordingly, it would have a different strength in Austria to what it might have even in the Czech Republic.

69 In those circumstances, the act of dispensing in a general manner, for reasons relating to the freedom of lawyers to provide services, with State control functions and with an effective guarantee of control over entries in the land register would lead to disruption of the smooth functioning of the land register and of the legality and legal certainty of documents concluded between individuals.

70 It follows that the national measure at issue in the main proceedings does not go beyond what is necessary in order to attain the objectives invoked by the Austrian Government.

71 In view of the foregoing, the answer to the second question is that Article 56 TFEU must be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, under which authentication of signatures appended to the instruments necessary for the creation or transfer of rights to property is reserved to notaries, and as consequently excluding the possibility of recognition in that Member State of such authentication carried out, in accordance with his or her national law, by a lawyer established in another Member State.

Costs

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

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

1. **The second subparagraph of Article 1(1) of Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services must be interpreted as not applying to legislation of a Member State, such as that at issue in the main proceedings, under which authentication of signatures appended to the instruments necessary for the creation or transfer of rights to property is reserved to notaries, and as consequently excluding the possibility of recognising in that Member State such authentication carried out by a lawyer established in another Member State.**

2. **Article 56 TFEU must be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, under which authentication of signatures appended to the instruments necessary for the creation or transfer of rights to property is reserved to notaries, and as consequently excluding the possibility of recognition in that Member State of such authentication carried out, in accordance with his or her national law, by a lawyer established in another Member State.**

[Signatures]