Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

17 October 2013 *

(Directive 2002/92/EC — Insurance mediation — Exclusion of the activities pursued by an insurance undertaking or an employee acting under the responsibility of such an undertaking — Whether it is possible for such an employee to pursue insurance mediation activities on an incidental basis — Professional requirements)

In Case C-555/11,

REQUEST for a preliminary ruling under Article 267 TFEU from the Simvoulio tis Epikratias (Greece), made by decision of 29 August 2011, received at the Court on 3 November 2011, in the proceedings

Enosi Epangelmation Asfaliston Ellados (EEAE),

Sillogos Asfalistikon Praktoron N. Attikis (SPATE),

Panellinios Sillogos Asfalistikon Simboulon (PSAS),

Sindesmos Ellinon Mesiton Asfaliseon (SEMA),

Panellinios Sindesmos Sintoniston Asfalistikon Simboulon (PSSAS)

v

Ipourgos Anaptixis,

Omospondia Asfalistikon Sillogon Ellados,

THE COURT (Third Chamber),

composed of M. Ilešič (Rapporteur), President of the Chamber, C.G. Fernlund, A. Ó Caoimh, C. Toader and E. Jarašiūnas, Judges,

Advocate General: N. Jääskinen,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 20 June 2013,

* Language of the case: Greek.

after considering the observations submitted on behalf of:

— the Enosi Epangelmation Asfaliston Ellados (EEAE), the Sillogos Asfalistikon Praktoron N. Attikis (SPATE), the Panellinios Sillogos Asfalistikon Simboulon (PSAS), the Sindesmos Ellinon Mesiton Asfaliseon (SEMA) and the Panellinios Sindesmos Sintoniston Asfalistikon Simboulon (PSSAS), by A. K. Sinis, dikigoros,

— the Ipourgos Anaptixis, by N. Amiralis, acting as Agent,

— the Omospondia Asfalistikon Sillogon Ellados, by C. Theodorou and C. Synodinos, dikigoroi,

— the Greek Government, by M. Germani, F. Dedousi, G. Karipsiades and N. Amiralis, acting as Agents,

— the Belgian Government, by M. Jacobs and L. Van den Broeck, acting as Agents,

— the Cypriot Government, by N. Kyriakou, acting as Agent,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the European Commission, by I. Zervas, K.-Ph. Wojcik and N. Yerrell, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 September 2013,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of the second subparagraph of Article 2(3) of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (OJ 2003 L 9, p. 3).

2 The request has been made in proceedings between a number of professional associations in the insurance mediation sector, namely the Enosi Epangelmation Asfaliston Ellados (EEAE) (Hellenic Association of Insurance Professionals), the Sillogos Asfalistikon Praktoron N. Attikis (SPATE) (Attika Association of Insurance Agents), the Panellinios Sillogos Asfalistikon Simboulon (PSAS) (Hellenic Association of Insurance Advisors), the Sindesmos Ellinon Mesiton Asfaliseon (SEMA) (Hellenic Insurance Broker Association) and the Panellinios Sindesmos Sintoniston Asfalistikon Simboulon (PSSAS) (Hellenic Association of Insurance Advisor Coordinators) (together, ‘the EEAE and Others’), the applicants in the main proceedings, and the Ipourgos Anaptixis (Minister for Development) and the Omospondia Asfalistikon Sillogon Ellados (Federation of Hellenic Insurance Associations), concerning an action for annulment in part of Decision K3-8010 of the State Secretary for Development of 8 August 2007, which defines the requirements to be met by insurance intermediaries in order to prove their experience, skills and general commercial and professional knowledge.

Legal context

European Union law

3 Recitals 6 to 9 of Directive 2002/92 are worded as follows:

‘(6)Insurance and reinsurance intermediaries should be able to avail themselves of the freedom of establishment and the freedom to provide services which are enshrined in the Treaty.(7)The inability of insurance intermediaries to operate freely throughout the Community hinders the proper functioning of the single market in insurance.(8)The coordination of national provisions on professional requirements and registration of persons taking up and pursuing the activity of insurance mediation can therefore contribute both to the completion of the single market for financial services and to the enhancement of customer protection in this field.(9)Various types of persons or institutions, such as agents, brokers and “bancassurance” operators, can distribute insurance products. Equality of treatment between operators and customer protection requires that all these persons or institutions be covered by this Directive.’

4 Article 1(1) of Directive 2002/92 provides as follows:

‘This Directive lays down rules for the taking-up and pursuit of the activities of insurance and reinsurance mediation by natural and legal persons which are established in a Member State or which wish to become established there.’

5 Article 2(3) and (5) of Directive 2002/92 states as follows:

‘For the purpose of this Directive:

…

(3) “insurance mediation” means the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim.

These activities when undertaken by an insurance undertaking or an employee of an insurance undertaking who is acting under the responsibility of the insurance undertaking shall not be considered as insurance mediation.

…

(5) “insurance intermediary” means any natural or legal person who, for remuneration, takes up or pursues insurance mediation.’

6 Article 4(1) of Directive 2002/92 provides as follows:

‘Insurance and reinsurance intermediaries shall possess appropriate knowledge and ability, as determined by the home Member State of the intermediary.

Home Member States may adjust the required conditions with regard to knowledge and ability in line with the activity of insurance or reinsurance mediation and the products distributed, particularly if the principal professional activity of the intermediary is other than insurance mediation. In such cases, that intermediary may pursue an activity of insurance mediation only if an insurance intermediary fulfilling the conditions of this Article or an insurance undertaking assumes full responsibility for his actions.

…

Member States need not apply the requirement referred to in the first subparagraph of this paragraph to all the natural persons working in an undertaking who pursue the activity of insurance or reinsurance mediation. Member States shall ensure that a reasonable proportion of the persons within the management structure of such undertakings who are responsible for mediation in respect of insurance products and all other persons directly involved in insurance or reinsurance mediation demonstrate the knowledge and ability necessary for the performance of their duties.'

7 Article 12 of Directive 2002/92 sets out the information which an insurance intermediary must provide to the customer prior to the conclusion of any initial insurance contract and, if necessary, upon amendment or renewal of the contract, such as his identity and address, the register in which he has been included and the means of verifying that he has been registered and whether he has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in a given insurance undertaking.

Greek law

Presidential Decree 190/2006

8 The provisions of Directive 2002/92 were transposed into Greek law by Presidential Decree 190/2006, the first and second subparagraphs of Article 2(3) of which provides as follows:

'"Insurance mediation" means the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim.

When undertaken by an insurance undertaking or an employee of an insurance undertaking who is bound to that undertaking by an employment contract and is acting under the responsibility of that insurance undertaking, these activities shall not be considered to be insurance mediation ...'

9 Article 4 of Presidential Decree 190/2006 identifies the documents to be submitted by any person wishing to be included on the special register as an insurance or reinsurance intermediary. Article 4(1A)(e) of the decree provides that, for the purposes of such registration, it is necessary, inter alia, to submit 'documents proving that [the person concerned] has general, commercial or professional knowledge'.

Law 3557/2007

10 Presidential Decree 190/2006 was amended by Law 3557/2007.

11 Article 15(2) of Law 3557/2007 added a new subparagraph after the second subparagraph of Article 2(3) of Presidential Decree 190/2006, which is worded as follows:

'By way of exception, an employee of an insurance undertaking as referred to in the previous subparagraph may pursue the activity of insurance mediation without being subject to the provisions of the present decree, provided that his gross annual income from such activity does not exceed, in total, the sum of five thousand euros (EUR 5 000).'

12 As regards the documents referred to in Article 4 of Presidential Decree 190/2006, Article 11(3)(b) of Law 3557/2007 provides as follows:

'The documents proving the general commercial or professional knowledge of candidate insurance and reinsurance intermediaries, tied insurance and reinsurance intermediaries and employees of insurance undertakings and of insurance and reinsurance mediation undertakings, as well as the circumstances in which those persons must undergo additional training, shall be stipulated by decision of the Minister for Development, to be adopted within 30 days of publication of this law.'

Decision K3-8010 of 8 August 2007

13 Decision K3-8010 of 8 August 2007 was adopted on the basis of Article 11(3)(b) of Law 3557/2007.

14 Paragraph XI of Decision K3-8010 is worded as follows:

'An employee of an insurance undertaking may pursue the activity of insurance intermediary without the need to register with the competent professional association, provided that his gross annual income paid in commission from such activity does not exceed, in total, the sum of five thousand euros (EUR 5 000).

If the gross annual income from such activity exceeds the above sum, such a person must register with the competent professional association in accordance with the requirements applicable to the category of insurance intermediary for which he chooses to register.

The status of employee in the insurance sector is incompatible with the status of insurance advisor.'

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

15 The EEAE and Others are professional associations whose purpose is to protect the professional and financial interests of their members, who are engaged in insurance mediation as self-employed professionals, not as employees of undertakings. On 29 October 2007, the EEAE and Others brought an action before the referring court for the annulment in part of Decision K3-8010 of 8 August 2007. By that application, they claim, inter alia, that paragraph XI of that decision is incompatible with Directive 2002/92, in so far as it permits employees of insurance undertakings, under certain circumstances, to pursue the activity of insurance intermediary without possessing the qualifications required under Article 4(1) of the directive.

16 The Simvoulio tis Epikratias has reservations as to the merits of the action for annulment of paragraph XI of Decision K3-8010 of 8 August 2007. According to that court, as it is possible within the framework of Greek legislation, interpreted in accordance with Directive 2002/92, to ensure that an employee of an insurance undertaking pursuing the activity of mediation on an incidental basis always acts under the responsibility and supervision of the undertaking – which also provides the employee with the necessary training – for the purpose of such activity, the requirements laid down in the directive should be deemed to have been met and the nature of the relationship between the employee concerned and the undertaking when that person pursues that activity is immaterial.

17 However, since a different chamber of the referring court appears not to share that view, the Simvoulio tis Epikratias decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Is the second subparagraph of Article 2(3) of Directive 2002/92 … to be interpreted as meaning that an employee of an insurance undertaking who does not possess the qualifications required under Article 4(1) of the directive is permitted to pursue the activity of insurance mediation on an incidental

basis, and not as his main professional activity, even if that employee does not act as a subordinate of the undertaking, bearing in mind that, in any event, the latter supervises his activities, or does the directive permit that activity to be pursued only in the context of an employer/employee relationship?'

Consideration of the question referred

18 By its question, the referring court asks, in essence, whether the second subparagraph of Article 2(3), in conjunction with Article 4(1), of Directive 2002/92 is to be interpreted as precluding an employee of an insurance undertaking who does not possess the qualifications required under the latter provision from pursuing – on an incidental basis and not as his main professional activity – the activity of insurance mediation where such an employee does not act as a subordinate of the undertaking, even though the latter in any event supervises that person's activities.

19 The EEAE and Others and the Belgian and Austrian Governments are of the view that the second subparagraph of Article 2(3) of Directive 2002/92 must be interpreted as meaning that an employee of an insurance undertaking who does not possess the qualifications required under Article 4(1) of the directive cannot pursue insurance mediation activities on an incidental basis. The Omospondia Asfalistikon Sillogon Ellados and the Greek and Cypriot Governments maintain, on the other hand, that such an employee may pursue those activities. The European Commission submits that the second subparagraph of Article 2(3) of the directive covers activities pursued by the employee of an insurance undertaking who is acting under the responsibility of that undertaking, irrespective of the type of contract by which the employee is bound to the undertaking.

20 It should be noted, first of all, that it is clear from the second subparagraph of Article 2(3) of Directive 2002/92 that activities which are classified as insurance mediation under the first subparagraph of that provision are not regarded as such when undertaken by an insurance undertaking or an employee of an insurance undertaking who is acting under the responsibility of the insurance undertaking.

21 For the purpose of determining the scope of the exclusion established in that provision, it should be noted that, according to established case-law, in interpreting a provision of European Union law, it is necessary to consider not only its wording but also its context and the objectives pursued by the rules of which it is part (see Case C-33/11 *A* [2012] ECR, paragraph 27 and the case-law cited).

22 As regards the wording of the second subparagraph of Article 2(3) of Directive 2002/92, it must be noted that the activities of an employee of an insurance undertaking are not excluded from the scope of the directive when such an employee 'acts under the responsibility' of that undertaking.

23 The words 'acts under the responsibility' of an insurance undertaking as used in that provision mean not only that such an undertaking may be bound by the acts of its employees, who, as observed by the Advocate General at point 45 of his Opinion, act for and on behalf of the undertaking, but also that the undertaking may be held liable for the employee's activities.

24 However, where the employee of an insurance undertaking pursues insurance mediation activities independently of the relationship of subordination by which he is bound to the undertaking, he should not, in principle, be regarded as acting under the responsibility of that undertaking and should therefore be regarded as acting in a personal capacity as an insurance intermediary within the meaning of Article 2(5) of Directive 2002/92 and, as a consequence, he must meet the requirements laid down in Article 4 of the directive. The fact that the insurance undertaking supervises the intermediary's activities is not sufficient to exempt such a person from the obligation to meet the professional requirements laid down in the directive.

25 That interpretation is not only clear from the wording of Directive 2002/92 but is also consistent with both the objective of the second subparagraph of Article 2(3) of the directive and the objectives of the directive as a whole.

26 The objective of the second subparagraph of Article 2(3) of Directive 2002/92 is to exclude from the scope of the directive only those insurance activities in which services are offered and sold to customers directly by an insurance undertaking and its employees, not those activities in which such services are offered by an insurance intermediary.

27 Directive 2002/92, taken as a whole, pursues a dual objective, as stated in recitals 6 to 8 of the directive, namely, on the one hand, the completion and proper functioning of the single market in insurance by removing obstacles to freedom of establishment and freedom to provide services and, on the other, the enhancement of consumer protection in this field.

28 Any interpretation which permits a certain category of persons to offer mediation services even though such persons do not meet the requirements laid down by Article 4(1) of Directive 2002/92 for the provision of such services would undermine that dual purpose.

29 First, to accept such an interpretation of Directive 2002/92 would give rise to significant differences between intermediaries acting on the single market in insurance, since intermediaries could engage in mediation activities for the same types of contract irrespective of whether or not they met those requirements. Furthermore, that interpretation runs counter to the objective of ensuring equal treatment of all categories of insurance intermediaries, an objective that is apparent from recital 9 of Directive 2002/92.

30 Second, it would not be possible on the basis of such an interpretation to ensure a high level of protection for consumers on the insurance market, namely insurance policyholders. The employees of an insurance undertaking who are engaged in the direct sale of insurance services within that undertaking cannot, in any event, be regarded as possessing the appropriate knowledge and skills required for pursing, on an individual basis, the activity of insurance mediation and thus as being able to guarantee the quality of such mediation services. Nor can it be assumed that, in the absence of such knowledge and skills, such employees will be able to provide their customers with the information set out in Article 12 of Directive 2002/92 when concluding, amending or renewing customers' insurance contacts.

31 Finally, contrary to the submissions made by the Greek Government at the hearing, such an interpretation is not called into question by the content of the fourth subparagraph of Article 4(1) of Directive 2002/92. While it is true that that provisions states that the Member States need not apply the professional requirements to all the natural persons working in an undertaking who pursue the activity of insurance mediation, the fact nevertheless remains that that provision governs the situation of undertakings which themselves engage in insurance mediation activities, not insurance undertakings which engage in the direct sale of insurance services.

32 It follows from all the foregoing considerations that the answer to the question referred is that the second subparagraph of Article 2(3), in conjunction with Article 4(1), of Directive 2002/92 must be interpreted as precluding an employee of an insurance undertaking who does not possess the qualifications required under the latter provision from pursuing – on an incidental basis and not as his main professional activity – the activity of insurance mediation where such an employee does not act as a subordinate of that undertaking, even though the latter in any event supervises that person's activities.

Costs

33 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 (Third Chamber) hereby rules:

The second subparagraph of Article 2(3), in conjunction with Article 4(1), of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation must be interpreted as precluding an employee of an insurance undertaking who does not possess the qualifications required under the latter provision from pursuing – on an incidental basis and not as his main professional activity – the activity of insurance mediation where such an employee does not act as a subordinate of that undertaking, even though the latter in any event supervises that person's activities.

[Signatures]