Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

4 October 2024*

(Reference for a preliminary ruling – Freedom to provide services – Directive 2006/123/EC – Article 25(1) – Restrictions on multidisciplinary activities – Regulated profession – National legislation providing for, as a general rule, the incompatibility of the joint exercise of the activity of property brokerage and that of property manager – Requirements of independence and impartiality – Proportionality of the restriction – Consequences of the closure of an infringement procedure brought by the European Commission against a Member State)

In Case C-242/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Consiglio di Stato (Council of State, Italy), made by decision of 11 April 2023, received at the Court on 18 April 2023, in the proceedings

Tecno*37

v

Ministero dello Sviluppo economico,

Camera di Commercio Industria Artigianato e Agricoltura di Bologna,

intervener:

FIMAA – Federazione Italiana Mediatori Agenti D'Affari,

THE COURT (First Chamber),

composed of A. Arabadjiev, President of the Chamber, L. Bay Larsen (Rapporteur), Vice-President of the Court, T. von Danwitz, A. Kumin and I. Ziemele, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: C. Di Bella, Administrator,

having regard to the written procedure and further to the hearing on 9 April 2024,

* Language of the case: Italian.

after considering the observations submitted on behalf of:

– Tecno*37, by A. Reggio D'Aci, avvocato,

– Camera di Commercio Industria Artigianato e Agricoltura di Bologna, by C. Carpani, avvocata,

– FIMAA – Federazione Italiana Mediatori Agenti D'Affari, by G. Passalacqua, avvocato,

– the Italian Government, by G. Palmieri, acting as Agent, and F. Varrone, avvocato dello Stato,

– the Czech Government, by M. Smolek, T. Suchá and J. Vláčil, acting as Agents,

– Ireland, by M. Browne, Chief State Solicitor, A. Joyce and M. Tierney, acting as Agents, and by I. Boyle Harper, Barrister-at-Law,

– the French Government, by R. Bénard and M. Guiresse, acting as Agents,

– the European Commission, by L. Armati and M. Mataija and P.A. Messina, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 13 June 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 49 TFEU, Article 25(1) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36), and Article 59(3) 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), as amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 (OJ 2013 L 354, p. 132) ('Directive 2005/36').

2 The request has been made in proceedings between Tecno*37, a company established in Italy, on the one hand, and the Ministero dello Sviluppo economico (Ministry of Economic Development, Italy) and the Camera di Commercio Industria Artigianato e Agricoltura di Bologna (Chamber of Commerce, Industry, Crafts and Agriculture of Bologna, Italy; 'the CCIAA'), on the other, concerning the general prohibition on the joint exercise of the activity of property brokerage and that of property management imposed on that company.

Legal context

European Union law

Directive 2005/36

3 The first paragraph of Article 1 of Directive 2005/36 provides:

'This Directive establishes rules according to which a Member State which makes access to or pursuit of a regulated profession in its territory contingent upon possession of specific professional qualifications … shall recognise professional qualifications obtained in one or more other Member States … and which allow the holder of the said qualifications to pursue the same profession there, for access to and pursuit of that profession.'

4 The first subparagraph of Article 2(1) of that directive states:

'This Directive shall apply to all nationals of a Member State wishing to pursue a regulated profession in a Member State, including those belonging to the liberal professions, other than that in which they obtained their professional qualifications, on either a self-employed or employed basis.'

5 Article 4 of that directive, entitled 'Effects of recognition', provides in paragraph 1:

'The recognition of professional qualifications by the host Member State shall allow beneficiaries to gain access in that Member State to the same profession as that for which they are qualified in the home Member State and to pursue it in the host Member State under the same conditions as its nationals.'

6 Article 59(3) of that directive provides:

'Member States shall examine whether requirements under their legal system restricting the access to a profession or its pursuit to the holders of a specific professional qualification, including the use of professional titles and the professional activities allowed under such title, referred to in this Article as 'requirements' are compatible with the following principles:

(a) requirements must be neither directly nor indirectly discriminatory on the basis of nationality or residence;

(b) requirements must be justified by overriding reasons of general interest;

(c) requirements must be suitable for securing the attainment of the objective pursued and must not go beyond what is necessary to attain that objective.'

Directive 2006/123

7 Recitals 2, 5, 7 and 101 of Directive 2006/123 state:

‘(2) A competitive market in services is essential in order to promote economic growth and create jobs in the European Union. … A free market which compels the Member States to eliminate restrictions on cross-border provision of services while at the same time increasing transparency and information for consumers would give consumers wider choice and better services at lower prices.

…

(5) It is therefore necessary to remove barriers to the freedom of establishment for providers in Member States and barriers to the free movement of services as between Member States and to guarantee recipients and providers the legal certainty necessary for the exercise in practice of those two fundamental freedoms of the Treaty. Since the barriers in the internal market for services affect operators who wish to become established in other Member States as well as those who provide a service in another Member State without being established there, it is necessary to enable providers to develop their service activities within the internal market either by becoming established in a Member State or by making use of the free movement of services. Providers should be able to choose between those two freedoms, depending on their strategy for growth in each Member State.

…

(7) This Directive establishes a general legal framework which benefits a wide variety of services while taking into account the distinctive features of each type of activity or profession and its system of regulation. …

…

(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. …’

8 Article 1 of that directive, headed ‘Subject matter’, provides, in paragraph 1:

‘This Directive establishes general provisions facilitating the exercise of the freedom of establishment for service providers and the free movement of services, while maintaining a high quality of services.’

9 Article 25 of that directive, entitled ‘Multidisciplinary activities’, provides, in paragraph 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.'

Italian law

10 Article 5(3) and (3*bis*) of legge n. 39 – Modifiche ed integrazioni alla legge 21 marzo 1958, n. 253, concernente la disciplina della professione di mediatore (Law No 39 amending and implementing Law No 253 of 21 March 1958 on the rules governing the profession of broker) of 3 February 1989 (GURI No 33 of 9 February 1989) ('Law No 39/89') is worded as follows:

'3. The pursuit of the activity of property brokerage shall be incompatible with the pursuit of entrepreneurial activities involving the production, sale, representation, or promotion of goods in the same product sector in which the brokerage activity is carried on, as well as with any activity pursued as an employee of a public or private body or as an associate of undertakings offering the financial services set out in Article 4 of Legislative Decree No 59 of 26 March 2010, or with the pursuit of intellectual professions in the same product sector in the context of which the activity of brokerage is carried on and, in any case, in the event of a conflict of interest.

3-*bis*. By way of derogation from the provisions of paragraph 3, the pursuit of the activity of estate agent shall be compatible with that of employee or associate of undertakings carrying on the activity of credit intermediary governed by Article 128*sexies* et seq. of the Consolidated Law on Banking and Credit, within the meaning of Legislative Decree No 385 of 1 September 1993. The pursuit of the activity of credit intermediary shall remain subject to sector-specific regulations and related controls.'

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

11 Tecno*37 is a sole trader who pursues jointly the activities of property management and property brokerage, in the capacity of estate agent.

12 On 17 March 2020, the Ministry of Economic Development, further to a complaint, requested the CCIAA to verify whether there was a possible incompatibility or conflict of interest owing to the combined pursuit by Tecno*37 of the activities of property broker and of property manager.

13 After finding that Tecno*37 was responsible, since 1 January 1988, in the context of the exercise of an activity of an entrepreneurial nature, for the administration and management of properties, and that, since 1 July 1988, it pursued, at the same time, the activity of property brokerage, the CCIAA considered that that circumstance amounted to a situation of incompatibility for the purposes of Article 5(3) of Law No 39/89.

14 Consequently, the CCIAA decided to register Tecno*37 in the economic and administrative register of property managing agents and prohibited it from pursuing the activity of property brokerage.

15 Tecno*37 brought an action against that decision before the Tribunale Amministrativo Regionale per l'Emilia-Romagna (Regional Administrative Court, Emilia-Romagna, Italy), which was dismissed on the ground that the buildings managed in the context of the activity of property manager may be unduly put at an advantage compared with those available on the market, with consequences as regards the impartiality which a property broker should display.

16 Tecno*37 brought an appeal against that judgment before the Consiglio di Stato (Council of State, Italy), the referring court, arguing in particular that the prohibition on the combined pursuit of the activities in question infringed EU law.

17 In particular, Article 5(3) of Law No 39/89 is applied in a general and abstract manner with the result that the activity of property brokerage is always found to be incompatible with that of property management and precludes any case-by-case assessment of the risk of conflict of interest since such incompatibility is contrary to the case-law of the Court.

18 The referring court observes, first of all, that the European Commission initiated an infringement procedure (INFR(2018)2175) against the Italian Republic concerning whether Article 5(3) of Law No 39/89 is consistent with EU law.

19 In that procedure, the Commission criticised the Italian Republic for the infringement – by several provisions of Italian law, including Article 5(3) of Law No 39/89 – of Article 25(1) of Directive 2006/123, Article 59(3) of Directive 2005/36 and Article 49 TFEU, in that that national provision provided for the absolute incompatibility of, on the one hand, the exercise of the activity of property brokerage and, on the other, any public or private employment and any other entrepreneurial or professional activity carried on as a self-employed person or as an entrepreneur.

20 That court states that the Italian authorities, acknowledging that Article 5(3) of Law No 39/89 may have disproportionate effects, amended that provision several times.

21 That court notes that, consequently, the infringement procedure was closed by the Commission on 29 September 2022 since Article 5(3) of Law No 39/89 no longer provided for an absolute prohibition on the joint exercise of multidisciplinary activities.

22 In that regard, the referring court is uncertain as to the consequences of such a closure as regards the consistency with EU law of Article 5(3) of Law No 39/89, in the version resulting from the amendment adopted in response to the infringement procedure.

23 Furthermore, the referring court considers, first, that where a property broker jointly exercises the activity of property manager, this may affect his or her impartiality. That broker may indeed be led to direct potential purchasers towards the immovable property which he or she manages, at the expense of other comparable products which he or she does not manage.

24 Second, that court considers that the purpose of Article 5(3) of Law No 39/89 is to guarantee consumer protection, in that that provision ensures that all conflicts of interest are averted.

25 Nevertheless, for the purposes of resolving the dispute brought before that court, a doubt remains as to whether the restrictions provided for by that legislation are consistent with EU law.

26 In those circumstances, the Consiglio di Stato (Council of State) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must Article 5(3) of Law No 39/89 as reworded following infringement [procedure] No 2018/2175 now be regarded as fully consistent with [EU] law, in particular in light of the closure of the infringement [procedure] itself?

(2) Do the principles and objectives of Article 59(3) of Directive [2005/36] and Article 25(1) of Directive [2006/123] and, more generally, of Article 49 TFEU preclude rules such as the Italian rule contained in Article 5(3) of Law No 39/89, which establishes, as a preventive and general provision, incompatibility between [the activity of property brokerage and that of property management] due to the mere fact that the two activities are carried [on] jointly and, therefore, without there being any need for chambers of commerce [subsequently to] ascertain on a case-by-case basis the nature of the brokerage carried out, without this being based on a specifically identified and [proven] “overriding reason in the public interest” or, in any event, on a demonstration of the proportionality of the general incompatibility provided for with regard to the objective pursued?

(3) Can [an estate] agent in any case also act as a property manager, provided he or she does not seek to sell or purchase the property he or she manages since a conflict of interest would arise in this case?’

Consideration of the questions referred

The first question

27 According to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court of Justice should, where necessary, reformulate the questions referred to it (judgment of 16 May 2024, *Toplofikatsia Sofia (Concept of the defendant’s domicile)*, C-222/23, EU:C:2024:405, paragraph 63 and the case-law cited).

28 In those circumstances, the first question referred must be reformulated and it must be considered that, by that question, the referring court asks, in essence, whether Article 258 TFEU is to be interpreted as meaning that the closure by the Commission of an infringement procedure against a Member State results in the national legislation which was the subject matter of that procedure being consistent with EU law.

29 In that regard, it should be noted that, according to settled case-law, the decision of the Commission to initiate, or not, an infringement procedure amounts to the exercise of a discretion it enjoys, which is not for review by the Court (see, to that effect, judgment of 16 July 2020, *Commission* v *Romania (Anti-money laundering)*, C-549/18, EU:C:2020:563, paragraph 49 and the case-law cited). In view of the Commission’s role as guardian of the Treaties, that institution alone is competent to decide whether it is appropriate to initiate an infringement procedure. It also alone is competent to decide whether it is appropriate to continue the pre-litigation procedure by delivering a reasoned opinion, just as it has the power, but not the duty, on completion of that procedure, to bring an action before the Court for a

declaration that the Member State concerned has failed to fulfil its obligations as alleged (judgment of 16 July 2015, *Commission* v *Bulgaria*, C-145/14, EU:C:2015:502, paragraph 24 and the case-law cited).

30 Therefore that discretion is characteristic of the adoption by the Commission of the decision to close such a procedure.

31 In view of that discretion, the decision to pursue or to close an infringement procedure cannot be decisive for the purposes of determining whether national legislation is consistent with EU law.

32 In that regard, the Court has already held that the Commission does not have the power to determine conclusively, in the context of an infringement procedure, the rights and obligations of a Member State or to afford that State guarantees concerning the compatibility of a given line of conduct with EU law (see, to that effect, judgment of 20 March 2003, *Commission* v *Germany*, C-135/01, EU:C:2003:171, paragraph 24 and the case-law cited). Under Article 260(1) TFEU, the Court alone has jurisdiction to find that a Member State has failed to fulfil an obligation under the Treaties.

33 In the light of the foregoing considerations, the answer to the first question is that Article 258 TFEU must be interpreted as meaning that the closure by the Commission of an infringement procedure against a Member State does not result in the national legislation which was the subject matter of that procedure being consistent with EU law.

The second and third questions

34 By its second and third questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 49 TFEU, Article 25(1) of Directive 2006/123 and Article 59(3) of Directive 2005/36 must be interpreted as precluding national legislation which provides, as a general rule, that the activity of property brokerage and that of property management are incompatible.

Admissibility

35 As regards, in the first place, the referring court's questions on the interpretation of Article 49 TFEU, it should be borne in mind that the provisions of the FEU Treaty on the freedom of establishment do not, in principle, apply to a situation which is confined in all respects within a single Member State (see, to that effect, judgment of 18 January 2022, *Thelen Technopark Berlin*, C-261/20, EU:C:2022:33, paragraph 50 and the case-law cited).

36 Thus, the Court, on a question referred to it by a national court in connection with a situation which is confined in all respects within a single Member State, cannot, where the referring court gives no indication to that effect, consider that a request for a preliminary ruling concerning the interpretation of the provisions of the FEU Treaty relating to the fundamental freedoms is necessary for the purpose of resolving the dispute pending before that court. The specific factors that allow a link to be established between the subject matter or circumstances of a dispute which is confined in all respects within the Member State concerned and Article 49 TFEU must be apparent from the order for reference (see, to that effect, judgment of 18 January 2022, *Thelen Technopark Berlin*, C-261/20, EU:C:2022:33, paragraph 52 and the case-law cited).

37 Consequently, in a situation which is confined in all respects within a single Member State, it is for the referring court to indicate to the Court, in accordance with the requirements of Article 94 of the Rules of Procedure of the Court of Justice, in what way the dispute pending before it, despite its purely domestic character, has a connecting factor with the provisions of EU law relating to the fundamental freedoms that makes the requested preliminary ruling concerning the interpretation of those provisions necessary for the purpose of resolving that dispute (judgment of 18 January 2022, *Thelen Technopark Berlin*, C-261/20, EU:C:2022:33, paragraph 53 and the case-law cited).

38 As is apparent from the file before the Court, the dispute in the main proceedings is characterised by factors that are all confined within Italy. Furthermore, the referring court does not state how, despite its purely domestic character, the dispute pending before it has a connecting factor with Article 49 TFEU that would make the requested preliminary ruling on interpretation necessary for the purpose of resolving that dispute.

39 Consequently, the second and third questions referred are inadmissible in so far as they seek the interpretation of Article 49 TFEU.

40 As regards, in the second place, the interpretation sought of Article 59(3) of Directive 2005/36, it follows from that provision that the Member States examine whether requirements under their legal system restricting, inter alia, the pursuit of a profession to the holders of a specific professional qualification – including the use of professional titles and the professional activities allowed under such title – are neither directly nor indirectly discriminatory on the basis of nationality or residence, are justified by overriding reasons of general interest and are suitable for securing the attainment of the objective pursued and do not go beyond what is necessary to attain that objective.

41 In that connection, it should be borne in mind that, as follows from Article 2(1) thereof, that directive applies to all nationals of a Member State wishing to pursue a regulated profession in a Member State, including those belonging to the liberal professions, other than that in which they obtained their professional qualifications.

42 Moreover, the Court has already held that it is clear from Articles 1 and 4 of that directive that the fundamental purpose of mutual recognition is to allow the holder of a professional qualification giving access to a regulated profession in the holder's home Member State to gain access, in the host Member State, to the same profession as that for which he or she is qualified in the home Member State, and to practise that profession in the host Member State under the same conditions as its own nationals (judgment of 8 July 2021, *Lietuvos Respublikos sveikatos apsaugos ministerija*, C-166/20, EU:C:2021:554, paragraph 25 and the case-law cited).

43 In this instance, it is not disputed that the present case does not concern the recognition of a professional qualification awarded in a Member State other than Italy.

44 In those circumstances, the second and third questions referred for a preliminary ruling are also inadmissible in so far as they seek the interpretation of Article 59(3) of Directive 2005/36.

45 In the third place, it should be noted that Ireland claims that the third question is inadmissible in so far as it seeks to obtain an advisory opinion from the Court on the basis of factual premisses which do not correspond to those of the dispute in the main proceedings.

46 In particular, Ireland submits that, although the third question refers to the activity of estate agent, the dispute in the main proceedings in fact concerns the activity of property broker, a distinction which is not apparent from the order for reference.

47 In addition, that Member State considers that the third question is based on the incorrect assumption that a conflict of interest would necessarily arise if an estate agent were engaged in the purchase or sale of a property which he or she manages as a shared ownership property manager and that, therefore, as formulated, the third question exceeds the scope of the issues which arise in the main proceedings.

48 In that connection, it should be observed that, according to the Court's settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only, inter alia, where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its object or where the problem is hypothetical (judgment of 8 May 2024, *Asociația 'Forumul Judecătorilor din România' (Associations of judges)*, C-53/23, EU:C:2024:388, paragraph 21 and the case-law cited).

49 Moreover, it should be noted that, in its request for a preliminary ruling, the referring court makes explicit reference to the simultaneous exercise of the activity of estate agent and that of property management, without referring to the activity of property brokerage.

50 As regards the considerations relating to the risk of a conflict of interest on account of combining the activities of property brokerage and property management, they must be regarded as concerning the substance of the question referred for a preliminary ruling and not its admissibility (see, to that effect, judgment of 18 January 2024, *Lietuvos notarų rūmai and Others*, C-128/21, EU:C:2024:49, paragraph 43).

51 So far as concerns Ireland's claims that the third question goes beyond the scope of the issues arising in the main proceedings, it should be noted that, according to settled case-law, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions that it submits to the Court. Consequently, where the questions referred concern the interpretation or the validity of a rule of EU law, the Court is in principle bound to give a ruling. It follows that questions referred by national courts enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it appears that the interpretation sought bears no relation to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 21 December 2023, *Cofidis*, C-340/22, EU:C:2023:1019, paragraph 18).

52 Furthermore, it is for the Court, in the procedure for cooperation with the national courts laid down by Article 267 TFEU, to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court of Justice should, where necessary, reformulate the questions referred to it (see, to that effect, judgment of 30 January 2024, *Direktor na Glavna direktsia 'Natsionalna politsia' pri MVR – Sofia*, C-118/22, EU:C:2024:97, paragraph 31 and the case-law cited).

53 In the light of the foregoing, the Ireland's arguments as to the inadmissibility of the third question cannot succeed.

54 It follows from all the foregoing considerations that the second and third questions referred must be regarded as inadmissible only in so far as they concern the interpretation of Article 49 TFEU and Article 59(3) of Directive 2005/36.

Substance

55 As a preliminary point, it is necessary to determine whether Article 25(1) of Directive 2006/123 applies to a purely domestic situation such as that at issue in the main proceedings.

56 In that regard, it should be noted that, under the first subparagraph of that provision, Member States are to ensure that providers are not made subject to requirements which oblige them to exercise a specific activity exclusively or which restrict the exercise jointly or in partnership of different activities. The second subparagraph of that provision states that the providers referred to in points (a) and (b) thereof may be made subject to such requirements, in accordance with the conditions laid down in those points.

57 Article 25(1) of Directive 2006/123 clearly does not refer to a cross-border element and does not lay down any condition relating to the existence of such an element.

58 As the Commission submitted in its written observations, the application of that provision does not require the existence of an international element, since the measures which it contains provide a common basis for facilitating the free movement of services in order to ensure a better quality of services, whether providers supply their services exclusively in the territory of their Member State or also in other Member States.

59 In that regard, the Court has held that, as is apparent from Article 1(1) of Directive 2006/123, read together with recitals 2 and 5 thereof, that directive lays down general provisions that are intended to remove restrictions on the freedom of establishment for service providers in Member States and on the free movement of services between the Member States, in order to contribute to the completion of a free and competitive internal market. If, however, the internal market in services is to be fully achieved, that requires, above all, the elimination of obstacles which are encountered by providers in becoming established in the Member States, whether in their own Member State or in another Member State, and which are liable to affect adversely their ability to supply services to recipients located throughout the European Union (judgment of 30 January 2018, *X and Visser*, C-360/15 and C-31/16, EU:C:2018:44, paragraphs 104 and 105 and the case-law cited).

60 In order to achieve a genuine internal market in services, the approach adopted by the EU legislature in Directive 2006/123 is based, as set out in recital 7 thereof, on a general legal framework composed of a mix of various measures designed to ensure a high degree of legal integration within the European Union. Consequently, to ensure that the *effet utile* of the specific legal framework that the EU legislature intended to establish in adopting Directive 2006/123 is not undermined, it must be accepted that the scope of that directive may extend, in certain cases, beyond what is strictly laid down in the provisions of the FEU Treaty relating to freedom of establishment and the free movement of services (see, to that effect, judgment of 30 January 2018, *X and Visser*, C-360/15 and C-31/16, EU:C:2018:44, paragraphs 106 and 107 and the case-law cited).

61 Therefore, since Article 25(1) of Directive 2006/123 may apply to a situation where all the relevant elements are confined within a single Member State, it is in the light of that provision that an answer must be given to the referring court.

62 As was noted in paragraph 56 of the present judgment, under the first subparagraph of that provision, Member States are to ensure that providers are not made subject to requirements which oblige them to exercise a specific activity exclusively or which restrict the exercise jointly or in partnership of different activities.

63 However, the second subparagraph of Article 25(1) of that directive states that the providers covered by points (a) and (b) of that provision may be made subject to such requirements, in accordance with the conditions set out therein.

64 In the present case, as is apparent from the order for reference, Article 5(3) of Law No 39/89 is interpreted and applied as prohibiting the joint exercise of the activities of property brokerage and property management, whether or not they are carried out in relation to the same property, where they are entrepreneurial activities.

65 It follows that Article 5(3) of Law No 39/89 makes those providers subject to requirements such as those laid down in the first subparagraph of Article 25(1) of Directive 2006/123.

66 It is therefore necessary to examine whether those requirements may, in the present case, be permitted on the basis of point (a) of the second subparagraph of Article 25(1) of that directive.

67 While it is ultimately for the national court, which has sole jurisdiction to assess the facts and interpret national legislation, to determine whether the requirements laid down by national legislation meet the conditions provided for in point (a) of the second subparagraph of Article 25(1) of Directive 2006/123, the Court, in the context of a reference for a preliminary ruling, may provide the referring court with guidance, on the basis of the documents relating to the main proceedings and the written and oral observations which have been submitted to it, in order to enable that court to resolve the dispute before it (see, to that effect, judgment of 2 March 2023, *PrivatBank and Others*, C-78/21, EU:C:2023:137, paragraph 71 and the case-law cited).

68 In the present case, it is apparent from the order for reference that the activity of brokerage is a regulated profession in Italy. Point (a) of the second subparagraph of Article 25(1) of Directive 2006/123 provides that requirements relating to the regulated professions are permitted only in so far as they are 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 are necessary in order to ensure the independence and impartiality of those professions.

69 The Italian Government has relied in that regard on the objectives of consumer protection and the preservation of the independence and impartiality of property brokers, the latter objective going hand in hand with the prevention of conflicts of interest.

70 It considers that, without a prohibition on combining activities, such as that at issue in the main proceedings, there would be a risk that property owners for whom a single person exercises the role of managing agent and property broker will be unduly favoured. Such a property broker not subject to the prohibition at issue could steer potential buyers towards the properties which he or she manages personally.

71 Furthermore, the Italian Government submits that it is not possible to place on chambers of commerce, industry, crafts and agriculture the task of ascertaining that there is no conflict of interest in each transaction.

72 In that regard, it should be noted that Article 25 of Directive 2006/123, including the conditions to which the requirements that it refers to are subject, forms part of Chapter V of that directive, entitled 'Quality of services'. The Court has held that that chapter, in general, seeks to safeguard the interests of consumers by improving the quality of the services of the regulated professions in the internal market (see, to that effect, judgment of 5 April 2011, *Société fiduciaire nationale d'expertise comptable*, C-119/09, EU:C:2011:208, paragraph 28).

73 Moreover, that objective is reflected in recital 101 of that directive, according to which 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 that regard be limited to what is necessary to ensure the impartiality, independence and integrity of the regulated professions.

74 In order to guarantee consumer protection, Member States may adopt measures to ensure the independence and impartiality of the regulated professions, in accordance with point (a) of the second subparagraph of Article 25(1) of Directive 2006/123.

75 In the present case, since a property broker must be a third party in relation to the parties to a property transaction, it is apparent that the prohibition on the joint exercise of the activities of property brokerage and property management, in that it seeks to avert the risk of a conflict of interest, may, in principle, be regarded as appropriate for the purpose of ensuring the independence and impartiality of the regulated profession at issue, which it is for the referring court to ascertain.

76 That being so, a general prohibition on the joint exercise of the activity of property brokerage and that of property management, such as that at issue in the main proceedings, must not go beyond what is necessary to attain that objective. In that regard, it should be explored whether other less restrictive measures could achieve the same result.

77 In the present case, as the Commission pointed out in its written observations, although it cannot be ruled out that a conflict of interest may arise, in particular where the activities of property brokerage and property management are pursued in respect of the same or comparable properties, such a risk will not necessarily materialise in all circumstances, with the result that the existence of such a conflict of interest cannot be presumed.

78 Moreover, the prohibition at issue does not appear to be the only measure making it possible to ensure the independence and impartiality of the regulated profession in question. As the Advocate General observed in point 66 of his Opinion, and as the Commission and Tecno*37 submitted in their written observations, measures less restrictive of the freedom to provide services than a general prohibition on the joint exercise of the two activities, such as a prohibition on the joint exercise of activities restricted to the situation in which the same property is concerned, and/or specific obligations of transparency and information concerning that joint exercise, accompanied by an *ex post* review by the competent professional chambers, may make it possible to ensure that independence and impartiality.

79 Last, it must be held that the practical difficulties raised by the Italian Government with regard to the implementation of measures alternative to the general prohibition on the joint exercise of the activity of property brokerage and that of property management, and, in particular, the impossibility of verifying that there is no conflict of interest in each transaction when those activities are performed in respect of the same property, are not insurmountable. As the Advocate General noted in point 65 of his Opinion, deeds of sale may, for example, include express declarations that the estate agent, acting as property broker, does not at the same time perform the role of manager of the shared ownership property of which the building acquired forms part.

80 In any event, the Court has held that such practical difficulties cannot justify failure to observe obligations arising under EU law (see, to that effect, judgment of 27 February 2020, *Commission* v *Belgium (Accountants)*, C-384/18, EU:C:2020:124, paragraph 58).

81 Consequently, and subject to the checks to be carried out by the referring court, it appears that a general prohibition on combining the activity of property brokerage and that of property manager, such as that at issue in the main proceedings, goes beyond what is necessary and proportionate to achieve the objective which it pursues.

82 In those circumstances, the answer to the second and third questions is that Article 25(1) of Directive 2006/123 must be interpreted as precluding national legislation which provides, as a general rule, that the combined pursuit of the activity of property brokerage and that of property management are incompatible.

Costs

83 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (First Chamber) hereby rules:

1. **Article 258 TFEU**

   must be interpreted as meaning that the closure by the European Commission of an infringement procedure against a Member State does not result in the national legislation which was the subject matter of that procedure being consistent with EU law.

2. **Article 25(1) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market**

   must be interpreted as precluding national legislation which provides, as a general rule, that the combined pursuit of the activity of property brokerage and that of property management are incompatible.

[Signatures]