Operative part

Article 49 TFEU does not preclude national legislation, such as that at issue in the main proceedings, which limits the establishment of new pharmacies by providing that

— in towns with a population of fewer than 4000 inhabitants, one pharmacy only may be set up and

— in towns with more than 4000 inhabitants, the establishment of a new pharmacy is subject to conditions, such as the exceeding by at least 50% of the number of inhabitants needed for a pharmacy and a minimum distance from already existing pharmacies,

on condition that such legislation permits, by way of derogation from its basic rules, the establishment of a sufficient number of pharmacies to guarantee an appropriate pharmaceutical service in areas with special demographic or geographical characteristics, something which it is for the national court to ascertain.

Judgment of the Court (Fourth Chamber) of 29 September 2011 — Commission v Ireland

(Case C-82/10)

(Failure of a Member State to fulfil obligations — Directive 73/239/EEC — Articles 6, 8, 9, 13 and 15 to 17 — Directive 92/49/EEC — Articles 22 and 23 — Direct insurance other than life assurance — Amendment of statutes of an insurance body as regards its capacity — Non-application of the European Union insurance legislation in respect of insurance other than life assurance)

1. *Freedom of movement for persons — Freedom of establishment — Freedom to provide services — Direct insurance other than life assurance — Directive 73/239 — Insurance undertakings obliged to obtain authorisation — Exemption of certain undertakings — Restrictive interpretation (Council Directive 73/239, as amended by Directive 2005/68, Arts 4 and 6) (see paras 42-44, 47-48)*

2. *Actions for failure to fulfil obligations — Examination of the merits by the Court — Situation to be taken into consideration — Situation on expiry of the period laid down in the reasoned opinion (Art. 258 TFEU) (see para. 57)*

3. *Member States — Obligations — Implementation of directives — Failure to fulfil obligations — National system pleaded as justification — Not permissible (Art. 258 TFEU) (see para. 58)*

Re:

Failure of a Member State to fulfil its obligations — Infringement of Articles 6, 8, 9, 13, 15, 16 and 17 of First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance (OJ 1973 L 228, p. 3) and Articles 22 and 23 of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) (OJ 1992 L 228, p. 1).

Operative part

The Court:

1. Declares that, by failing to apply to all insurance undertakings, on a non-discriminatory basis, the insurance legislation of the Union in its entirety, particularly Articles 6, 8, 9, 13 and 15 to 17 of First Council Directive 73/239/EEC

of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance, as amended by Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 and Articles 22 and 23 of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239 and 88/357/EEC (third non-life insurance Directive), as amended by Directive 2005/68, Ireland has failed to fulfil its obligations under those directives;

2. Orders Ireland to pay the costs.

Judgment of the Court (Seventh Chamber) of 29 September 2011 — Commission v Austria

(Case C-387/10)

(Failure of a Member State to fulfil obligations — Freedom to provide services — Legislation of a Member State concerning investment funds and real property investment funds — Evidence relating to revenue regarded as distributed — Evidence provided through a tax representative — 'National' financial institutions and business trustees recognised as tax representatives)

Freedom to provide services — Restrictions — National legislation limiting the tax representation of investment funds and real property investment funds to national financial institutions and national business trustees — Not permissible — Not justified by the general interest (Art. 49 EC; EEA Agreement, Art. 36) (see paras 25, 31-34, operative part)