

Freedom to provide services and freedom of establishment: infringement procedures against Spain, Italy and France

The European Commission has decided to bring Spain before the Court of Justice of the European Communities in connection with its legislation on the transfer of insurance portfolios between operators, which the Commission regards as discriminatory against non-Spanish insurers. The Commission has also formally asked Italy to amend its legislation on "labour consultants" ('consulenti del lavoro') and extrajudicial debt collection. Italy has also been asked to bring the rules of Italy's central gliding club into line with the EC Treaty by deleting the provisions that constitute discrimination on the basis of nationality and an obstacle to the freedom of cross-border establishment. In addition, the Commission has asked France to apply its arrangements for aerial photography without discrimination. Under the system as it stands, only non-French nationals are required to obtain authorisation. These requests are in the form of reasoned opinions - the second stage in the infringement procedure provided for in Article 226 of the EC Treaty. Should a Member State that has received a reasoned opinion fail to give a satisfactory response within the deadline (usually two months), the Commission may refer the matter to the European Court of Justice. The Commission has also terminated two infringement procedures against Belgium (satellite dishes) and Portugal (laboratories), which have been satisfactorily resolved.

Services account for around 70% of GDP in the European Union. If national regulations impede the free movement of services, businesses, and particularly SMEs, are deprived of outlets, and their potential clients - be they private individuals or other businesses - are deprived of choice and, in many cases, better value for money. The competitiveness of the European economy is therefore compromised.

Spain - transfer of insurance portfolios

Under the third Directives on life and non-life insurance (92/96/EEC and 92/49/EEC), Member States may give policy-holders the option of cancelling contracts after a transfer of portfolios. If, however, a Member State allows this option, it may not, when doing so, distinguish between the elements involved in the operation that are within the country in question and those (the economic operators, or the operations forming the subject of the transfer) that have a cross-border dimension.

Spanish law does not in principle provide for the option of cancelling contracts following a total portfolio transfer between two Spanish insurers. This option is, however, explicitly provided for policy-holders in the event of total or partial transfer to a company from another Member State operating in Spain under the freedom of establishment or the freedom to provide services. This right of cancellation also applies if a company established in another Member State transfers its portfolio of risks or commitments in Spain to a Spanish insurance company.

Moreover, in the latter two cases, the companies in question must inform policy-holders individually of their right to cancel their contracts and to have an appropriate part of the premium refunded.

After examining the reply by the Spanish authorities to the reasoned opinion sent in December 2003 (see [IP/03/1764](#)), the Commission considers that Spain's legislation constitutes manifest discrimination against non-Spanish insurance companies, in violation of the third Directives on insurance and the principle of the freedom to provide services. It has decided to bring the matter before the Court of Justice.

Italy - labour consultants

The Commission has decided to send a reasoned opinion to Italy, which restricts the activity of preparing and printing pay slips to "*consulenti del lavoro*" or equivalent persons. Principally on the basis on the Court's case-law (Judgment of 17 October 2002 in the Payroll case - C-79/01), the Commission considers this restriction to be unjustified, since these services essentially involve carrying out instructions.

The Commission particularly contests the idea that any services to businesses with fewer than 250 employees must be provided by data-processing centres established and staffed exclusively by "*consulenti del lavoro*", as this prevents Community operators that meet other criteria in their country of establishment from performing such activities.

Moreover, the obligation to have a residence certificate in order to be entered in Italy's register of "*consulenti del lavoro*" means that operators must set up in Italy or have an address there, in violation of the principle of freedom to provide cross-border services.

Finally, the very need to be entered in Italy's registers in order to be allowed to provide the services of "*consulenti del lavoro*" in Italy constitutes an additional restriction on the freedom to provide services.

All these national provisions have the effect of discouraging or preventing any operators that are legally established in another Member State from offering their services in Italy where preparing and printing pay slips is concerned.

Italy - extrajudicial debt-collection

In Italy, in order to carry out extrajudicial debt-collection activities, operators must obtain a licence from the police authority competent at province level - the *questore*. The right to perform such activities is therefore limited to the territory of the province in which authorisation was obtained, and the only option outside this territory is to conclude agreements with persons authorised in each of the other provinces concerned.

Moreover, the activity is restricted to the places specified in the licence, must be publicly announced and is subject to a regulated tariff, and some financial activities are incompatible with the performance of this activity. The *questore* also has the discretionary power to lay down additional rules with a view to respecting the expectations of the public.

Under the rules set out in the EC Treaty to guarantee the freedom to provide services (Article 49), any operator providing a service in a Member State in accordance with the national law of that State should be allowed to provide the same service without hindrance in the other Member States and, under the rules on the freedom of establishment (Article 43), should also be able set up there without restrictions. Italy's rules violate these principles. Firstly, they do not take account of the conditions already met in the Member State of establishment and, what is more, because of all the provisions mentioned above, they make it extremely difficult for a debt-collector established in another Member State to perform any activities in Italy. This restrictive effect results primarily from the need to obtain specific authorisation for the territory of each of the 103 provinces in Italy in which a person wishes to operate. The Commission will send the Italian authorities a reasoned opinion with a view to putting an end to this situation.

Italy - Aero Club centrale di volo a vela

The Commission has also decided to send the Italian authorities a reasoned opinion on the grounds that the rules of the *Aero Club centrale di volo a vela* (central gliding club) are incompatible with the EC Treaty. Article 17 of these rules stipulates that membership of the elective bodies is restricted to Italian nationals. This is incompatible with Article 12 of the Treaty, which sets out the general principle of prohibiting any discrimination on grounds of nationality, and with the freedom of cross-border establishment (Article 43), in that it prevents any non-Italian Community national from occupying elected posts and hence from performing the functions associated with these posts as part of the activities of the club. Exclusion on grounds of nationality therefore has the effect of discouraging nationals of other Member States and limiting their scope for stable and continuous integration into economic life in Italy.

France - aerial photography

Article D-133-10 of France's Civil Aviation Code stipulates that aerial photography is not subject to a general authorisation requirement except in the case of non-French nationals. This is incompatible with the general principle of non-discrimination laid down in Articles 43 and 49 of the EC Treaty as regards the freedom of establishment and the freedom to provide services within the internal market respectively.

Moreover, France's Civil Aviation Code also lays down an administrative procedure for operators who are not resident on French territory that is particularly complicated compared with the procedure for residents. The Commission considers that such arrangements are also discriminatory. According to the Court's case-law, discrimination on the basis of the place of residence is equivalent to discrimination on grounds of nationality.

Termination of infringement procedures against Belgium (satellite dishes) and Portugal (clinical biology laboratories)

Following a Commission infringement procedure (see [IP/99/281](#) and [IP/00/237](#)), Belgium abolished the taxes that certain local authorities had introduced on the installation of satellite dishes. Following the Commission's Communication of July 2001 ([IP/01/913](#)) setting out the right of anyone wishing to do so to use a satellite dish, the Court of Justice upheld the view that the Treaty prohibited any hindrance to the reception of services via such devices. Since then, the three Belgian regions (Flanders, Wallonia and Brussels-Capital) have in turn each amended their legislation by also abolishing the systematic prior-authorisation requirement for the installation of a satellite dish. The Commission can now, therefore, terminate this procedure.

In March 2002, the Commission sent Portugal a letter of formal notice because of a number of provisions that made it impossible for laboratories in other Member States to provide services or to set up secondary establishments in Portugal. Decree-law No 111/2004 of 12 May 2004 has amended the old legislation and brought it into line with the Treaty: medical laboratories can now take full advantage of the principles of freedom to provide services and freedom of establishment. In particular, Portugal's laboratories can cooperate with laboratories in other Member States that specialise in certain types of analysis, thus making the use of up-to-the-minute techniques more economically viable. This will not only ensure greater reliability in analyses and hence improvements in public health, but will also result in low prices because better use will be made of investments in technology. It has therefore been possible to terminate the infringement procedure.

Up-to-date information on all infringement proceedings against Member States can be found at the following address:

http://europa.eu.int/comm/secretariat_general/sgb/droit_com/index_en.htm