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Press and Information

PRESS RELEASE No 8/06

1 February 2006

Advocate General's Opinion in Cases C-94/04 and C-202/04

Cipolla v Portolese
Macrino and Capodarte v Meloni

**ADVOCATE GENERAL POIARES MADURO SUGGESTS THAT THE FIXING OF
MINIMUM RATES FOR LAWYERS' FEES RESTRICTS THE FREEDOM TO
PROVIDE SERVICES**

The Italian legislation is not justified by an overriding reason in the public interest.

In Italy, compulsory minimum and maximum rates for lawyers' fees are fixed by legislation. The scales are established every two years by the National Council of the Bar and then approved by the Minister for Justice.

The Court of Justice of the European Communities has already considered the manner of fixing that scale in *Arduino*¹ and held it to be compatible with Community competition law. The Court held that the Italian State had not delegated responsibility for regulating an activity to private economic operators since the Bar Council submitted only a draft scale to the Minister for Justice, who had the power to have the draft amended or defer its application.

Following on from that judgment, two Italian courts referred questions to the Court of Justice asking whether other aspects of the legislation are also compatible with the competition rules and with the principle of freedom to provide services.

In *Macrino and Capodarte*, the Tribunale di Roma is asking whether the fixing of fees for out-of-court services complies with Community law. Mr Macrino and Ms Capodarte are in dispute with

¹ Case C-35/99. See [Press Release](#) No 16/02.

their lawyer, Mr Meloni, as to the amount of the fees he is claiming from them for out-of-court services.

In the *Cipolla* case, the Corte d'appello di Torino is asking the Court whether the prohibition on lawyers and their clients making agreements derogating from the fees laid down by the legislation fixing the scale of lawyers' fees complies with Community law. That question arises in the course of proceedings between Ms Portolese and Mr Cipolla, her lawyer, concerning the payment of his fees.

Advocate General Miguel Poiares Maduro delivered his Opinion today.

The application of the scale of fees to out-of-court services

The Advocate General suggests confirming the result of the *Arduino* judgment. It is based on the State nature of the Italian legislation as a whole and not on the specific nature of the potential anti-competitive effects of the different types of services.

The Advocate General is therefore of the opinion that a **measure fixing a scale of lawyers' fees for out-of-court services is compatible with Community competition law** provided that it has been subject to effective supervision by the State and the power of the court to derogate from that scale, where it rules on a dispute relating to the amount of fees, is interpreted in accordance with Community law in a way that limits its anti-competitive effect.

On the question of the **prohibition on derogating from the scale of fees**, the Advocate General is of the same opinion.

The compatibility of the scale of fees with the principle of freedom to provide services.

The Advocate General points out, first of all, that although the scale of fees applies without distinction to all lawyers wishing to provide services in Italy, it is established taking into account only the situation and the expenses incurred by Italian lawyers.

The **minimum fees** fixed by the scale prevent lawyers established outside Italy from providing legal services in Italy at rates below those minimum levels, even if they have the opportunity to do so.

In addition Italian citizens wishing to instruct a foreign lawyer are unable to benefit fully from the advantages of the common market, because access to legal services at a cost below that fixed by the Italian scale is denied them, even though those services are available in another Member State.

The minimum fees therefore **constitute a restriction on the freedom to provide services** because they neutralise the competitive advantage of lawyers established outside Italy. That restriction **is not justified** by an overriding reason in the public interest. Although the objective of ensuring the proper operation of the legal profession is legitimate, Italy has not demonstrated how the fixing of minimum fees is appropriate for attaining it.

IMPORTANT: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court of Justice of the European Communities are now beginning their deliberations in this case. Judgment will be given at a later date.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: CS, EN, ES, FR, DE, HU, IT, SK, NL, PL

The full text of the Opinion may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-94/04>

It can usually be consulted after midday (CET) on the day of delivery.

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