JUDGMENT OF THE COURT (Grand Chamber)

5 December 2006 *

In Joined Cases C-94/04 and C-202/04,

REFERENCES for a preliminary ruling under Article 234 EC from the Corte d'appello di Torino (Italy) and the Tribunale di Roma (Italy), the first made by decisions of 4 February and 5 May 2004 and the second by decision of 7 April 2004, received at the Court on 25 February, 18 May and 6 May 2004 respectively, in the proceedings

Federico Cipolla (C-94/04)

v

Rosaria Fazari, née Portolese,

and

Stefano Macrino,

Claudia Capodarte (C-202/04)

v

Roberto Meloni,

* Language of the case: Italian.

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, R. Schintgen, J. Klučka, Presidents of Chambers, J. Malenovský, U. Lõhmus (Rapporteur) and E. Levits, Judges,

Advocate General: M. Poiares Maduro,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 25 October 2005,

after considering the observations submitted on behalf of:

— Mr Cipolla, by G. Cipolla, avvocatessa,

— Mr Meloni, by S. Sabbatini, D. Condello, G. Scassellati Sforzolini and G. Rizza, avvocati,

— the Italian Government, by I.M. Braguglia, acting as Agent, and by P. Gentili, avvocato dello Stato,

— the German Government, by A. Dittrich, C.-D. Quassowski and M. Lumma, acting as Agents,

— the Austrian Government, by E. Riedl, acting as Agent,

— the Commission of the European Communities, by E. Traversa, R. Wainwright, F. Amato and K. Mojzesowicz, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 1 February 2006,

gives the following

Judgment

1 These references for a preliminary ruling concern the interpretation of Articles 10 EC, 49 EC, 81 EC and 82 EC.

2 The references were made in the course of proceedings between two lawyers and their respective clients in respect of the payment of fees.

Relevant provisions

3 Royal Decree-Law No 1578 of 27 November 1933 (GURI No 281 of 5 December 1933), converted into Law No 36 of 22 January 1934 (GURI No 24 of 30 January 1934), as subsequently amended ('the Royal Decree-Law'), provides that the Consiglio Nazionale Forense (National Lawyers' Council, 'the CNF') established under the auspices of the Minister of Justice, is to be composed of lawyers elected by their fellow members, with one representative for each appeal court district.

4 Article 57 of the Royal Decree-Law provides that the criteria for determining fees and emoluments payable to lawyers and 'procuratori' in respect of civil and criminal proceedings and out-of-court work are to be set every two years by decision of the CNF. When the CNF has decided upon the scale of lawyers' fees ('the scale'), it must be approved under Italian legislation by the Minister of Justice after he has obtained the opinion of the Comitato Interministeriale dei Prezzi (Interministerial Committee on Prices, the CIP) and consulted the Consiglio di Stato (Council of State).

5 Article 58 of the Royal Decree-Law provides that those criteria are to be based on the monetary value of disputes, the level of the court seised and, in criminal matters, the duration of the proceedings. For each procedural step, or series of steps, the scale sets maximum and minimum fees.

6 Article 60 of the Royal Decree-Law provides that fees are to be settled by the court on the basis of those criteria, having regard to the seriousness and number of the issues dealt with. That settlement must remain within the maximum and minimum limits set beforehand. However, in cases of exceptional importance, taking account

of the special nature of the disputes and where the inherent value of the service justifies it, the court may exceed the maximum limit set by the scale. Conversely, where the case is easy to deal with, the court may fix fees below the minimum limit. In both cases, the court must give reasons for its decision.

7 Article 2233 of the Italian Civil Code provides, generally, that remuneration under a contract for provision of services which has not been agreed between the parties and cannot be determined by reference to the applicable scales or custom and practice is to be determined by the court after it has heard the opinion of the professional association to which the provider of services belongs. However, as regards the profession of lawyer, Article 24 of Law No 794 of 13 June 1942 (GURI No 172 of 23 July 1942) provides that derogation may not be made from the minimum fees set by the scale for lawyers' court services and that any agreement to the contrary is void. According to the case-law of the Corte suprema di cassazione (Court of Cassation), that rule also applies to lawyers' out-of-court services.

8 The scale at issue in Case C-202/04 was set by decision of the CNF of 12 June 1993, as amended on 29 September 1994, and was approved by Ministerial Decree No 585 of 5 October 1994 (GURI No 247 of 21 October 1994). Article 2 of that decree provides that 'the increases set out in the tables in the annex shall apply with effect from 1 October 1994 as to 50%, and as to the remaining 50% with effect from 1 April 1995'. That staggered increase originated in the comments made by the CIP, which had taken particular account of the rise in inflation. Before approving the scale, the Minister of Justice had consulted the CNF a second time, which had accepted the proposal to postpone the application of the scale at its meeting of 29 September 1994.

9 The scale comprises three categories of remuneration: (a) fees, disbursements and emoluments in respect of lawyers' court services in civil and administrative proceedings; (b) fees in respect of legal services in criminal proceedings; (c) fees and emoluments in respect of out-of-court work.

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

Case C-94/04

10 Mrs Fazari (née Portolese) and two other owners of adjoining land located in the municipality of Moncalieri appointed a lawyer, Federico Cipolla, to bring proceedings against that municipality for compensation for the emergency occupation of that land which was ordered solely by decision of the mayor of Moncalieri and was not followed by an expropriation order. Mr Cipolla drew up three separate summonses and registered three actions against that municipality with the Tribunale di Torino (Turin District Court).

11 The dispute was subsequently resolved by means of a settlement made on the initiative of one of the owners in question but without Mr Cipolla's involvement.

12 Mr Cipolla, who before drawing up and notifying the three summonses had received ITL 1 850 000 from each of the three applicants in the main proceedings, apparently as advance payment for his professional services, issued Mrs Fazari with an invoice totalling ITL 4 125 000 covering his fees and various disbursements. Mrs Fazari refused to pay that sum. The ensuing dispute was brought before the Tribunale di Torino which, by judgment of 12 June 2003, took judicial notice of the payment of the sum of ITL 1 850 000 and rejected Mr Cipolla's demand for payment of ITL 4 125 000. Mr Cipolla appealed against that judgment before the Corte d'appello di Torino (Turin Court of Appeal) seeking, inter alia, application of the scale.

13 According to the decision of the national court, in the proceedings brought before that court the question arises whether, if the existence an agreement between the parties relating to the flat-rate remuneration of the lawyer is proved, that alleged

agreement relating to the flat-rate sum of ITL 1 850 000, such an agreement ought, despite the Italian legislation, to be deemed valid on the ground that it would be contrary to the Community competition rules for it to be automatically replaced by a calculation of the lawyer's remuneration on the basis of the scale.

14 In addition, the national court notes that, if a professional who did not live in Italy supplied legal services to a recipient living in that Member State and the contract concerning those services was subject to Italian law, that provision of legal services would be subject to the absolute prohibition of derogation from the remuneration set by the scale. Therefore in that case the binding minimum amount would have to be applied. That prohibition would therefore have the consequence of hindering other lawyers' access to the Italian services market.

15 In those circumstances, the Corte d'appello di Torino decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

'(1) Does the principle of competition under Community law, as set out in Articles 10 EC, 81 EC and 82 EC, also apply to the provision of legal services?

(2) Does that principle permit a lawyer's remuneration to be agreed between the parties, with binding effect?

(3) Does that principle preclude an absolute prohibition of derogation from the lawyers' fees?

(4) Does the principle of free movement of services, as laid down in Articles 10 EC and 49 EC, also apply to the provision of legal services?

(5) If so, is that principle compatible with the absolute prohibition of derogation from lawyers' fees?'

Case C-202/04

16 On the basis of an opinion from the lawyers' association and in accordance with the scale, Mr Meloni, a lawyer, sought and obtained an order that Ms Capodarte and Mr Macrino pay fees relating to certain out-of-court services he had provided to them concerning copyright, comprising inter alia oral opinions and letters to the opposing party's lawyer.

17 Ms Capodarte and Mr Macrini contested that order before the Tribunale di Roma (District Court of Rome), pleading inter alia that the fees demanded by Mr Meloni were disproportionate having regard to the importance of the case dealt with and the services actually performed by the latter.

18 In order to determine the amount of the fees payable to Mr Meloni for those services, the Tribunale di Roma considers that it must assess whether that scale, in so far as it applies to lawyers in respect of out-of-court work, is compatible with the rules of the EC Treaty, having regard in particular to the fact that the persons concerned did not have to appoint a lawyer in order to obtain the out-of-court services in question.

19 Accordingly, the Tribunale di Roma decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

'Do Articles 5 and 85 of the EC Treaty (now Articles 10 EC and 81 EC) preclude a Member State from adopting a law or regulation which approves, on the basis of a draft produced by a professional body of lawyers, a scale fixing minimum and maximum fees for members of the profession in respect of services rendered in connection with activities (so-called out-of-court work) that are not reserved to lawyers but may be performed by anyone?'

20 On account of the connection between the two main proceedings, they should be joined for the purposes of the judgment under Article 43 of the Rules of Procedure, read in conjunction with Article 103 of those Rules.

The questions referred to the Court

Admissibility

Case C-94/04

— Observations submitted to the Court

21 According to Mr Cipolla, the questions referred by the national court are inadmissible on the grounds that they are not relevant to the resolution of the dispute in the main proceedings and are hypothetical.

22 As regards the first plea of inadmissibility, Mr Cipolla maintains that the applicable national law does not require the national court to decide on the existence and lawfulness of an agreement between a lawyer and his client, contrary to what is stated in the decision making the reference. The absence of agreement between those parties and the description of the sum paid by the client as an 'advance payment' for professional services have become res judicata since they were not challenged on appeal.

23 As for the second plea of inadmissibility, Mr Cipolla claims that the validity of an agreement made between a lawyer and his client must be assessed only if it is shown that such an agreement exists. However, that is not the case here. Accordingly, the questions referred by the Corte d'appello di Torino should be treated in the same way as a request for an advisory opinion.

24 The German Government considers that since the facts at issue in the main proceedings do not include any transborder element, Article 49 EC does not apply. The Commission of the European Communities, for its part, relying on recent case-law of the Court, and takes the view that the reference for a preliminary ruling is admissible as it concerns the interpretation of Article 49 EC.

— The Court's answer

25 As regards Mr Cipolla's pleas of inadmissibility, it should be recalled that questions on the interpretation of Community law referred by a national court in the factual and legislative context which that court is responsible for defining and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance (see Case C-300/01 *Salzmann* [2003] ECR I-4899, paragraphs 29 and 31). The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no

relation to the actual facts of the main action or its purpose, 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 (see, inter alia, Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 39, and Case C-466/04 *Acereda Herrera* [2006] ECR I-5341, paragraph 48).

26 That presumption of relevance cannot be rebutted by the simple fact that one of the parties to the main proceedings contests certain facts, such as those set out in paragraph 22 of this judgment, the accuracy of which is not a matter for the Court to determine and on which the delimitation of the subject-matter of those proceedings depend.

27 Accordingly, it must be considered that, as is clear from the decision making the reference, the main proceedings concern whether there was an agreement concluded between a lawyer and his clients relating to the lawyer's flat-rate remuneration and whether it should be deemed valid on the ground that it would be contrary to the Community competition rules for it to be automatically replaced by a calculation of the lawyer's remuneration on the basis of the scale in force in the Member State concerned.

28 In that regard, it must be stated that it is not manifest that the interpretation of Community law sought by the national court bears no relation to the actual facts of the main action or its purpose or that the questions on the interpretation of those rules are hypothetical.

29 Accordingly, even if the existence of the agreement at issue in the main proceedings is not established, it is conceivable that the interpretation of Community law sought by the national court, which may make it possible for the latter to assess the compatibility of the scale with the competition rules introduced by the Treaty, will be of use to that court for the purpose of deciding the dispute before it. That dispute

relates principally to the settlement of lawyer's fees which, as stated in paragraph 6 of this judgment, is to be decided by the court and, subject to certain exceptions, within the maximum and minimum limits set beforehand by the Minister of Justice.

30 Finally, as regards particularly the questions concerning the interpretation of Article 49 EC, although it is common ground that all aspects of the main proceedings before the national court are confined within a single Member State, a reply might none the less be useful to the national court, in particular if its national law were to require, in proceedings such as those in this case, that an Italian national must be allowed to enjoy the same rights as those which a national of another Member State would derive from Community law in the same situation (see, in particular, Case C-451/03 *Servizi Ausiliari Dottori Commercialisti* [2006] ECR I-2941, paragraph 29).

31 It must therefore be considered whether the provisions of the Treaty on freedom to provide services, of which the interpretation is sought by that court, preclude the application of national legislation law such as that at issue in the main proceedings in so far as it applies to persons who live in Member States other than the Italian Republic.

32 Having regard to the foregoing, it must be held that the reference for a preliminary ruling is admissible.

— Observations submitted to the Court

33 Mr Meloni pleads the inadmissibility of the question referred by the Tribunale di Roma on the ground that there is no link between that question and the outcome of the proceedings before that court, which concerns the application of the scale to the provision of out-of-court services by a lawyer enrolled at the Bar.

34 In addition, the national court did not indicate the precise reasons for its uncertainty as to the interpretation of Community law.

35 The Italian Government submits that, when the parties have not fixed the fees by contract and the client unilaterally challenges the fees invoiced by the professional, as in the dispute in the main proceedings, under Italian law it is for the court before which the dispute has been brought to set those fees as it sees fit. Accordingly, the question of the compatibility of the scale in respect of out-of-court services provided by lawyers with Article 10 EC and 81 EC is irrelevant for the purposes of the outcome of the main proceedings.

36 That government also challenges the relevance of the question referred by the national court in the light of the fact that there is no anti-competitive practice in the case in the main proceedings, either in establishing the scale or on account of the conduct of operators.

— The Court's answer

37 In respect of the first plea of inadmissibility relied on by Mr Meloni, it should be noted that the dispute relates to the application of the scale to out-of-court services provided by a lawyer enrolled at the Bar. By its question, the national court asks whether the competition rules preclude such application where that same scale does not apply to out-of-court services provided by a person not enrolled at the Bar. In those circumstances, the presumption of relevance attaching to the questions on the interpretation of Community law referred by the national court cannot be rebutted.

38 The plea of inadmissibility alleging that the national court did not indicate the precise reasons for its uncertainty as to the interpretation of Community law cannot succeed either. According to the case-law of the Court, it is essential that the national court should give at the very least some explanation of the reasons for the choice of the Community provisions which it requires to be interpreted and on the link it establishes between those provisions and the national legislation applicable to the dispute (see, inter alia, order in Case C-116/00 *Laguillaumie* [2000] ECR I-4979, paragraph 16). The decision making the reference fully satisfies such a requirement, as moreover the Advocate General pointed out in paragraph 24 of his Opinion.

39 As regards the first plea of inadmissibility put forward by the Italian Government, the national court takes as its premise that, in the context of the dispute before it, under Italian law it must set the fee payable to the lawyer by reference to the scale applicable to lawyers in respect of out-of-court work.

40 As is recalled at paragraph 25 of this judgment, it is not a matter for the Court to determine the accuracy of the factual and legislative context defined by the national court and in which the questions on the interpretation of Community law which it submits to the Court arise.

41 In those circumstances, the presumption of relevance attaching to the question referred to the Court has not been rebutted.

42 As regards the second plea of inadmissibility raised by the Italian Government, it should be recalled that, as was stated in paragraph 37 of this judgment, by its question the national court asks whether the competition rules established by the Treaty preclude application of the scale in the dispute before it. Accordingly, whether there is an anti-competitive practice in the case in the main proceedings is part of the very subject-matter of the question of interpretation referred by the national court and cannot be regarded as irrelevant in this case.

43 It follows that the reference for a preliminary ruling from the Tribunale di Roma is admissible.

Substance

The first three questions referred in Case C-94/04 and the question referred in Case C-202/04

44 By those questions, which can conveniently be dealt with together by way of a reformulation which takes account of the relevant aspects of the two cases and in

particular of the fact that, in the disputes in the main proceedings, minimum fees are at issue, the national courts ask, essentially, whether Articles 10 EC, 81 EC and 82 EC preclude a Member State from adopting a legislative measure which approves, on the basis of a draft produced by a professional body of lawyers such as the CNF, a scale fixing a minimum fee for members of the legal profession from which there can generally be no derogation in respect of either services reserved to those members or those such as out-of-court services which may also be provided by any other economic operator not subject to that scale.

45 As a preliminary point, it should be noted that, since the scale extends to the whole of the territory of a Member State, it may affect trade between Member States within the meaning of Articles 81(1) EC and 82 EC (see, to that effect, Case 8/72 *Vereeniging van Cementhandelaren* v *Commission* [1972] ECR 977, paragraph 29; Case C-179/90 *Merci convenzionali porto di Genova* [1991] ECR I-5889, paragraphs 14 and 15; and Case C-35/99 *Arduino* [2002] ECR I-1529, paragraph 33).

46 According to settled case-law, although it is true that Articles 81 EC and 82 EC are, in themselves, concerned solely with the conduct of undertakings and not with laws or regulations emanating from Member States, those articles, read in conjunction with Article 10 EC, which lays down a duty to cooperate, none the less require Member States not to introduce or maintain in force measures, even of a legislative or regulatory nature, which may render ineffective the competition rules applicable to undertakings (see, in particular, the order in Case C-250/03 *Mauri* [2005] ECR I-1267, paragraph 29, and the case-law cited).

47 The Court has held, in particular, that Articles 10 EC and 81 EC are infringed where a Member State requires or encourages the adoption of agreements, decisions or concerted practices contrary to Article 81 EC or reinforces their effects, or where it

divests its own rules of the character of legislation by delegating to private economic operators responsibility for taking decisions affecting the economic sphere (order in *Mauri*, paragraph 30, and the case-law cited).

48 In that respect, the fact that a Member State requires a professional organisation composed of lawyers, such as the CNF, to produce a draft scale of fees does not, in the circumstances specific to the cases in the main proceedings, appear to establish that that State has divested the scale finally adopted of its character of legislation by delegating to lawyers responsibility for taking decisions concerning them.

49 Although the national legislation at issue in the main proceedings does not contain either procedural arrangements or substantive requirements capable of ensuring with reasonable probability that, when producing the draft scale, the CNF conducts itself like an arm of the State working in the public interest, it does not appear that the Italian State has waived its power to make decisions of last resort or to review implementation of that scale (see *Arduino*, paragraphs 39 and 40).

50 First, the CNF is responsible only for producing a draft scale which, as such, is not binding. Without the Minister of Justice's approval, the draft scale does not enter into force and the earlier approved scale remains applicable. Accordingly, that Minister has the power to have the draft amended by the CNF. Furthermore, the Minister is assisted by two public bodies, the Consiglio di Stato and the CIP, whose opinions he must obtain before the scale can be approved (see *Arduino*, paragraph 41).

51 Secondly, Article 60 of the Royal Decree-Law provides that fees are to be settled by the courts on the basis of the criteria referred to in Article 57 of that decree-law, having regard to the seriousness and number of the issues dealt with. Moreover, in certain exceptional circumstances and by duly reasoned decision, the court may depart from the maximum and minimum limits fixed pursuant to Article 58 of the Royal Decree-Law (see, to that effect, *Arduino*, paragraph 42).

52 In those circumstances, the view cannot be taken that the Italian State has waived its power by delegating to private economic operators responsibility for taking decisions affecting the economic sphere, which would have the effect of depriving the provisions at issue in the main proceedings of the character of legislation (see *Arduino*, paragraph 43, and the order in *Mauri*, paragraph 36).

53 Nor, for the reasons set out in paragraphs 50 and 51 of this judgment, is the Italian State open to the criticism that it requires or encourages the adoption by the CNF of agreements, decisions or concerted practices contrary to Article 81 EC of the Treaty or reinforces their effects, or requires or encourages abuses of a dominant position contrary to Article 82 EC or reinforces the effects of such abuses (see, to that effect, *Arduino*, paragraph 43, and the order in *Mauri*, paragraph 37).

54 The answer to the first three questions referred to the Court in Case C-94/04 and to the question referred in Case C-202/04 must be that Articles 10 EC, 81 EC and 82 EC do not preclude a Member State from adopting a legislative measure which approves, on the basis of a draft produced by a professional body of lawyers such as the CNF, a scale fixing a minimum fee for members of the legal profession from which there can generally be no derogation in respect of either services reserved to those members or those such as out-of-court services which may also be provided by any other economic operator not subject to that scale.

The fourth and fifth questions referred in Case C-94/04

55 By those two questions, the Corte d'appello di Torino asks, essentially, whether Article 49 EC precludes legislation containing an absolute prohibition of derogation, by agreement, from the minimum fees set by a scale, such as that at issue in the main proceedings, for services which are (a) court services and (b) reserved to lawyers.

56 Article 49 EC requires not only the elimination of all discrimination on grounds of nationality against providers of services who are established in another Member State but also the abolition of any restriction, even if it applies without distinction to national providers of services and to those of other Member States, which is liable to prohibit or further impede the activities of a provider of services established in another Member State where he lawfully provides similar services (see, in particular, Case C-17/00 *De Coster* [2001] ECR I-9445, paragraph 29, and Joined Cases C-544/03 and C-545/03 *Mobistar and Belgacom Mobile* [2005] ECR I-7723, paragraph 29).

57 Furthermore, the Court has already held that Article 49 EC precludes the application of any national rules which have the effect of making the provision of services between Member States more difficult than the provision of services purely within one Member State (see *De Coster*, paragraph 30, and the case-law cited, and *Mobistar and Belgacom Mobile*, paragraph 30).

58 The prohibition of derogation, by agreement, from the minimum fees set by a scale such as that laid down by the Italian legislation is liable to render access to the Italian legal services market more difficult for lawyers established in a Member State other than the Italian Republic and therefore is likely to restrict the exercise of their

activities providing services in that Member State. That prohibition therefore amounts to a restriction within the meaning of Article 49 EC.

59 That prohibition deprives lawyers established in a Member State other than the Italian Republic of the possibility, by requesting fees lower than those set by the scale, of competing more effectively with lawyers established on a stable basis in the Member State concerned and who therefore have greater opportunities for winning clients than lawyers established abroad (see, by analogy, Case C-442/02 *CaixaBank France* [2004] ECR I-8961, paragraph 13).

60 Likewise, the prohibition thus laid down limits the choice of service recipients in Italy, because they cannot resort to the services of lawyers established in other Member States who would offer their services in Italy at a lower rate than the minimum fees set by the scale.

61 However, such a prohibition may be justified where it serves overriding requirements relating to the public interest, is suitable for securing the attainment of the objective which it pursues and does not go beyond what is necessary in order to attain it (see, inter alia, Case C-398/95 *SETTG* [1997] ECR I-3091, paragraph 21, and *Servizi Ausiliari Dottoro Commercialisti*, paragraph 37).

62 In order to justify the restriction on freedom to provide services which stems from the prohibition at issue, the Italian Government submits that excessive competition between lawyers might lead to price competition which would result in a deterioration in the quality of the services provided to the detriment of consumers, in particular as individuals in need of quality advice in court proceedings.

63 According to the Commission, no causal link has been established between the setting of minimum levels of fees and a high qualitative standard of professional services provided by lawyers. In actual fact, quasi-legislative measures such as, inter alia, rules on access to the legal profession, disciplinary rules serving to ensure compliance with professional ethics and rules on civil liability have, by maintaining a high qualitative standard for the services provided by such professionals which those measures guarantee, a direct relationship of cause and effect with the protection of lawyers' clients and the proper working of the administration of justice.

64 In that respect, it must be pointed out that, first, the protection of consumers, in particular recipients of the legal services provided by persons concerned in the administration of justice and, secondly, the safeguarding of the proper administration of justice, are objectives to be included among those which may be regarded as overriding requirements relating to the public interest capable of justifying a restriction on freedom to provide services (see, to that effect, Case C-3/95 *Reisebüro Broede* [1996] ECR I-6511, paragraph 31, and the case-law cited, and Case C-124/97 *Läärä and Others* [1999] ECR I-6067, paragraph 33), on condition, first, that the national measure at issue in the main proceedings is suitable for securing the attainment of the objective pursued and, secondly, it does not go beyond what is necessary in order to attain that objective.

65 It is a matter for the national court to decide whether, in the main proceedings, the restriction on freedom to provide services introduced by that national legislation fulfils those conditions. For that purpose, it is for that court to take account of the factors set out in the following paragraphs.

66 Thus, it must be determined, in particular, whether there is a correlation between the level of fees and the quality of the services provided by lawyers and whether, in particular, the setting of such minimum fees constitutes an appropriate measure for attaining the objectives pursued, namely the protection of consumers and the proper administration of justice.

67 Although it is true that a scale imposing minimum fees cannot prevent members of the profession from offering services of mediocre quality, it is conceivable that such a scale does serve to prevent lawyers, in a context such as that of the Italian market which, as indicated in the decision making the reference, is characterised by an extremely large number of lawyers who are enrolled and practising, from being encouraged to compete against each other by possibly offering services at a discount, with the risk of deterioration in the quality of the services provided.

68 Account must also be taken of the specific features both of the market in question, as noted in the preceding paragraph, and the services in question and, in particular, of the fact that, in the field of lawyers' services, there is usually an asymmetry of information between 'client-consumers' and lawyers. Lawyers display a high level of technical knowledge which consumers may not have and the latter therefore find it difficult to judge the quality of the services provided to them (see, in particular, the Report on Competition in Professional Services in Communication from the Commission of 9 February 2004 (COM(2004) 83 final, p. 10)).

69 However, the national court will have to determine whether professional rules in respect of lawyers, in particular rules relating to organisation, qualifications, professional ethics, supervision and liability, suffice in themselves to attain the objectives of the protection of consumers and the proper administration of justice.

70 Having regard to the foregoing, the answer to the fourth and fifth questions referred in Case C-94/04 must be that legislation containing an absolute prohibition of derogation, by agreement, from the minimum fees set by a scale of lawyer's fees such as that at issue in the main proceedings for services which are (a) court services and (b) reserved to lawyers constitutes a restriction on freedom to provide services laid down in Article 49 EC. It is for the national court to determine whether such

legislation, in the light of the detailed rules for its application, actually serves the objectives of protection of consumers and the proper administration of justice which might justify it and whether the restrictions it imposes do not appear disproportionate in the light of those objectives.

Costs

71 Since these proceedings are, for the parties to the main proceedings, a step in the actions before the national courts, the decisions on costs are a matter for those courts. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **Articles 10 EC , 81 EC and 82 EC do not preclude a Member State from adopting a legislative measure which approves, on the basis of a draft produced by a professional body of lawyers such as the Consiglio nazionale forense (National Lawyers' Council), a scale fixing a minimum fee for members of the legal profession from which there can generally be no derogation in respect of either services reserved to those members or those, such as out-of-court services, which may also be provided by any other economic operator not subject to that scale.**

2. **Legislation containing an absolute prohibition of derogation, by agreement, from the minimum fees set by a scale of lawyers' fees, such as that at issue in the main proceedings, for services which are (a) court services and (b) reserved to lawyers constitutes a restriction on freedom to provide services laid down in Article 49 EC. It is for the national court to determine whether such legislation, in the light of the detailed rules for its application, actually serves the objectives of protection of consumers and the proper administration of justice which might justify it and whether the restrictions it imposes do not appear disproportionate having regard to those objectives.**

[Signatures]