



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

19 December 2024*

(Reference for a preliminary ruling – Article 49 TFEU – Freedom of establishment – Article 63 TFEU – Free movement of capital – Establishing the applicable freedom – Services in the internal market – Directive 2006/123/EC – Article 15 – Requirements which relate to the shareholding of a company – A purely financial investor’s holding in a law firm – Revocation of that law firm’s registration with the professional body on account of that holding – Restriction on freedom of establishment and on the free movement of capital – Justifications based on protecting the independence of lawyers and recipients of legal services – Necessity – Proportionality)

In Case C-295/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bayerischer Anwaltsgerichtshof (Higher Bavarian Lawyers’ Court, Germany), made by decision of 20 April 2023, received at the Court on 9 May 2023, in the proceedings

Halmer Rechtsanwaltsgesellschaft UG

v

Rechtsanwaltskammer München,

intervening parties:

SIVE Beratung und Beteiligung GmbH,

Daniel Halmer,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, F. Biltgen, K. Jürimäe, C. Lycourgos, I. Jarukaitis, M.L. Arastey Sahún, S. Rodin, D. Gratsias and M. Gavalec (Rapporteur), Presidents of Chambers, E. Regan, I. Ziemele, Z. Csehi and O. Spineanu-Matei, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: N. Mundhenke, Administrator,

having regard to the written procedure and further to the hearing on 30 April 2024,

* Language of the case: German.

after considering the observations submitted on behalf of:

- Halmer Rechtsanwaltsgesellschaft UG, SIVE Beratung und Beteiligung GmbH and Daniel Halmer, by M. Quecke and D. Uwer, Rechtsanwälte,
- the Rechtsanwaltskammer München, by C. Wolf, Professor,
- the German Government, by J. Möller, M. Hellmann, A. Sahner and J. Simon, acting as Agents,
- the Spanish Government, by Á. Ballesteros Panizo, M. Morales Puerta and A. Pérez-Zurita Gutiérrez, acting as Agents,
- the French Government, by R. Bénard, B. Fodda and T. Lechevallier, acting as Agents,
- the Croatian Government, by G. Vidović Mesarek, acting as Agent,
- the Austrian Government, by A. Posch, J. Schmoll, M. Aufner, A. Kögl and P. Thalmann, acting as Agents,
- the Slovenian Government, by V. Klemenc and T. Mihelič Žitko, acting as Agents,
- the European Commission, by L. Armati, M. Mataija and G. von Rintelen, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 July 2024,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 49 and Article 63(1) TFEU and Article 15(3) 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).
- 2 The request has been made in proceedings between Halmer Rechtsanwaltsgesellschaft UG ('HR'), on the one hand, and the Rechtsanwaltskammer München (Munich Bar Association, Germany) ('the Munich Bar Association'), on the other, concerning the latter's decision to revoke HR's registration with the bar association.

Legal context

European Union law

- 3 Recitals 6, 33, 39, 40, 55, 56, 73 and 101 of Directive 2006/123 state:
 - '(6) Those barriers cannot be removed solely by relying on direct application of Articles 43 and 49 of the Treaty [Articles 49 and 56 TFEU], since, on the one hand, addressing them on a case-by-case basis through infringement procedures against the Member States concerned would, especially following enlargement, be extremely complicated for national

and Community institutions, and, on the other hand, the lifting of many barriers requires prior coordination of national legal schemes, including the setting up of administrative cooperation. As the European Parliament and the Council have recognised, a Community legislative instrument makes it possible to achieve a genuine internal market for services.

...

- (33) The services covered by this Directive concern a wide variety of ever-changing activities ... The services covered are also services provided both to businesses and to consumers, such as legal or fiscal advice ...

...

- (39) The concept of “authorisation scheme” should cover, inter alia, the administrative procedures for granting authorisations, licences, approvals or concessions, and also the obligation, in order to be eligible to exercise the activity, to be registered as a member of a profession or entered in a register ...

- (40) The concept of “overriding reasons relating to the public interest” to which reference is made in certain provisions of this Directive has been developed by the Court of Justice in its case-law in relation to Articles 43 and 49 of the Treaty [Articles 49 and 56 TFEU] and may continue to evolve. The notion as recognised in the case-law of the Court of Justice covers at least the following grounds: ... the protection of recipients of services; consumer protection; ... safeguarding the sound administration of justice ...

...

- (55) This Directive should be without prejudice to the possibility for Member States to withdraw authorisations after they have been issued, if the conditions for the granting of the authorisation are no longer fulfilled.

- (56) According to the case-law of the Court of Justice, public health, consumer protection, animal health and the protection of the urban environment constitute overriding reasons relating to the public interest. Such overriding reasons may justify the application of authorisation schemes and other restrictions. However, no such authorisation scheme or restriction should discriminate on grounds of nationality. Further, the principles of necessity and proportionality should always be respected.

...

- (73) The requirements to be examined include national rules which, on grounds other than those relating to professional qualifications, reserve access to certain activities to particular providers. These requirements also include obligations on a provider to take a specific legal form, in particular to be a legal person, to be a company with individual ownership, to be a non-profit making organisation or a company owned exclusively by natural persons, and requirements which relate to the shareholding of a company, in particular obligations to hold a minimum amount of capital for certain service activities or to have a specific qualification in order to hold share capital in or to manage certain companies. ...

...

(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. ...’

4 Article 1(1) of that directive provides:

‘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.’

5 Article 2(1) of that directive states:

‘This Directive shall apply to services supplied by providers established in a Member State.’

6 Article 4 of Directive 2006/123 provides as follows:

‘For the purposes of this Directive, the following definitions shall apply:

(1) “service” means any self-employed economic activity, normally provided for remuneration, as referred to in Article 50 of the Treaty [Article 57 TFEU];

(2) “provider” means any natural person who is a national of a Member State, or any legal person as referred to in Article 48 of the Treaty [Article 54 TFEU] and established in a Member State, who offers or provides a service;

...

(5) “establishment” means the actual pursuit of an economic activity, as referred to in Article 43 of the Treaty [Article 49 TFEU], by the provider for an indefinite period and through a stable infrastructure from where the business of providing services is actually carried out;

(6) “authorisation scheme” means any procedure under which a provider or recipient is in effect required to take steps in order to obtain from a competent authority a formal decision, or an implied decision, concerning access to a service activity or the exercise thereof;

(7) “requirement” means any obligation, prohibition, condition or limit provided for in the laws, regulations or administrative provisions of the Member States or in consequence of case-law, administrative practice, the rules of professional bodies, or the collective rules of professional associations or other professional organisations, adopted in the exercise of their legal autonomy; rules laid down in collective agreements negotiated by the social partners shall not as such be seen as requirements within the meaning of this Directive;

(8) “overriding reasons relating to the public interest” means reasons recognised as such in the case-law of the Court of Justice, including the following grounds: ... the protection of consumers, recipients of services ...;

(9) “competent authority” means any body or authority which has a supervisory or regulatory role in a Member State in relation to service activities, including, in particular, administrative authorities, including courts acting as such, professional bodies, and those professional associations or other professional organisations which, in the exercise of their legal autonomy, regulate in a collective manner access to service activities or the exercise thereof;

...

- (11) “regulated profession” means a professional activity or a group of professional activities as referred to in Article 3(1)(a) 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)];

...’

- 7 Article 9(1) of Directive 2006/123 provides:

‘Member States shall not make access to a service activity or the exercise thereof subject to an authorisation scheme unless the following conditions are satisfied:

- (a) the authorisation scheme does not discriminate against the provider in question;
- (b) the need for an authorisation scheme is justified by an overriding reason relating to the public interest;
- (c) the objective pursued cannot be attained by means of a less restrictive measure, in particular because an a posteriori inspection would take place too late to be genuinely effective.’

- 8 Under Article 11(4) of that directive:

‘This Article shall be without prejudice to the Member States’ ability to revoke authorisations, when the conditions for authorisation are no longer met.’

- 9 Article 15 of the directive, which is headed ‘Requirements to be evaluated’, states:

‘1. Member States shall examine whether, under their legal system, any of the requirements listed in paragraph 2 are imposed and shall ensure that any such requirements are compatible with the conditions laid down in paragraph 3. Member States shall adapt their laws, regulations or administrative provisions so as to make them compatible with those conditions.

2. Member States shall examine whether their legal system makes access to a service activity or the exercise of it subject to compliance with any of the following non-discriminatory requirements:

...

- (c) requirements which relate to the shareholding of a company;

...

3. Member States shall verify that the requirements referred to in paragraph 2 satisfy the following conditions:

- (a) non-discrimination: requirements must be neither directly nor indirectly discriminatory according to nationality nor, with regard to companies, according to the location of the registered office;

- (b) necessity: requirements must be justified by an overriding reason relating to the public interest;
- (c) proportionality: requirements must be suitable for securing the attainment of the objective pursued; they must not go beyond what is necessary to attain that objective and it must not be possible to replace those requirements with other, less restrictive measures which attain the same result.

...

5. In the mutual evaluation report provided for in Article 39(1), Member States shall specify the following:

- (a) the requirements that they intend to maintain and the reasons why they consider that those requirements comply with the conditions set out in paragraph 3;

...

6. From 28 December 2006 Member States shall not introduce any new requirement of a kind listed in paragraph 2, unless that requirement satisfies the conditions laid down in paragraph 3.

...'

10 Article 25 of that directive, entitled 'Multidisciplinary activities', provides in paragraphs 1 and 2 thereof:

'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;

...

2. Where multidisciplinary activities between providers referred to in points (a) and (b) of paragraph 1 are authorised, Member States shall ensure the following:

- (a) that conflicts of interest and incompatibilities between certain activities are prevented;
- (b) that the independence and impartiality required for certain activities is secured;
- (c) that the rules governing professional ethics and conduct for different activities are compatible with one another, especially as regards matters of professional secrecy.'

German law

The former Federal Lawyers' Code

- 11 Under Paragraph 7 of the Bundesrechtsanwaltsordnung (Federal Lawyers' Code), in the version in force until 31 July 2022, which applies to the facts in the main proceedings ('the former Federal Lawyers' Code), admission to the bar association was refused if there were doubts as to the applicant's capacity to exercise his or her activity as an independent agent of the administration of justice.
- 12 Paragraph 59a(1) and (2) of that code was worded as follows:

'(1) Lawyers may set up a partnership with members of a bar association, industrial property agents, tax advisers, tax representatives, accountants and certified auditors to practise their profession jointly in the framework of their respective areas of professional competence. ...

(2) Lawyers may also practise their profession jointly:

 1. with members of the legal profession of other States who ... are authorised to establish themselves in accordance with this law and have their law firm abroad,
 2. with industrial property agents, tax advisers, tax representatives, accountants and certified auditors from other States who practise an equivalent profession, in terms of training and areas of competence, to the professions referred to in the Patentanwaltsordnung [(Regulation on industrial property agents)], the Steuerberatungsgesetz [(Law on the provision of tax advice)] and the Wirtschaftsprüferordnung [(Regulation on the auditing of accounts)] and who are entitled to practise their professions jointly with industrial property agents, tax advisers, accountants and certified auditors in accordance with this law.'
- 13 By decision of 12 January 2016, the Bundesverfassungsgericht (Federal Constitutional Court, Germany) held that the first sentence of Paragraph 59a(1) of that code was incompatible with Article 12(1) of the Grundgesetz (Basic Law) in so far as it prohibited lawyers from forming professional partnership practice companies with doctors and pharmacists for the pursuit of their profession.
- 14 Paragraph 59c of the former Federal Lawyers' Code permitted law firms to practise law in the form of limited liability companies.
- 15 In accordance with Paragraph 59d of that code, it was necessary to refuse applications for admission to the bar association by a law firm which did not satisfy the requirements set out in Paragraph 59e of that code.
- 16 Paragraph 59e of that code provided:

'(1) Only lawyers and members of the professions referred to in the first sentence of Paragraph 59a(1) and in Paragraph 59a(2) may be members in a law firm. They must carry on a professional activity in the law firm. The third and fourth sentences of Paragraph 59a(1), and Paragraph 172a shall apply *mutatis mutandis*.

- (2) The majority of the shares and voting rights must be held by lawyers. In so far as members are not authorised to practise one of the professions referred to in the first sentence of subparagraph 1, they shall not have the right to vote.
- (3) The shares in a law firm must not be held on behalf of third parties and third parties must not share in the profits of the law firm.
- (4) A member may appoint as a proxy to exercise his or her voting rights only a member who has the right to vote and is a member of the same profession or is a lawyer.'
- 17 In order to guarantee the independence of the management of a law firm, Paragraph 59f of the former Federal Lawyers' Code provided as follows:
- '(1) Law firms must be managed responsibly by lawyers. The majority of the directors must be lawyers.
- (2) Only persons authorised to practise a profession referred to in the first sentence of Paragraph 59e(1) may be directors.
- (3) The second sentence of subparagraph 1 and subparagraph 2 shall apply *mutatis mutandis* to authorised officers and business agents for the entire undertaking.
- (4) The independence of lawyers who are directors or representatives in accordance with subparagraph 3 must be guaranteed when they practise as lawyers. Any influence exerted by members, in particular through instructions or contractual links, is prohibited.'
- 18 Paragraph 59(3) of that code stated:
- 'Registration with the bar association must be revoked if the law firm no longer fulfils the conditions laid down in Paragraphs 59c, 59e, 59f, 59i and 59j unless the law firm makes itself compliant with the law within a reasonable period to be fixed by the bar association. ...'

The new Federal Lawyers' Code

- 19 The Gesetz zur Neuregelung des Berufsrechts der anwaltlichen und steuerberatenden Berufsausübungsgesellschaften sowie zur Änderung weiterer Vorschriften im Bereich der rechtsberatenden Berufe (Law for new regulation of professional practice companies of lawyers and tax advisers and amending other provisions relating to professions providing legal advice) of 7 July 2021 (BGBl. 2021 I, p. 2363) amended, with effect from 1 August 2022, the federal legislation regarding the Federal Lawyers' Code.
- 20 Under Paragraph 59c of those rules, as amended ('the new Federal Lawyers' Code'), entitled 'Professional practice companies with members of other professions':
- '(1) Lawyers are also permitted to form partnerships for the joint exercise of the profession in a professional practice company pursuant to Paragraph 59b,
1. with members of a bar association, members of a professional association of industrial property agents, tax advisers, tax agents, accountants and certified auditors,

2. with members of the legal profession from other States who, under the Law on the activity of European lawyers in Germany or Paragraph 206 [of the new Federal Lawyers' Code], are permitted to establish themselves within the scope of that law,
3. with industrial property agents, tax advisers, tax agents, accountants and certified auditors from other States who, pursuant to the legislation on industrial property agents, the Law on the profession of tax adviser or the legislation on the profession of accountant, are entitled to practise their professions jointly with industrial property agents, tax advisers, tax agents, accountants and certified auditors falling within the scope of this law.
4. with persons exercising within the professional practice company a liberal profession as provided for in Paragraph 1(2) of the Partnerschaftsgesellschaftsgesetz [(Law on professional partnership practice companies)], unless such involvement is incompatible with the profession of practising as a lawyer, in particular with a lawyer's position as an independent agent of the administration of justice, or could jeopardise the trust placed in its independence.

Involvement as provided for in the first sentence of point 4 may in particular be excluded if the other person puts forward a reason which, in the case of a lawyer, would lead to a refusal of admission to the bar association under Paragraph 7.

(2) The objects of the professional practice company referred to in subparagraph 1 shall be legal advice and representation. In addition, it is possible to exercise a profession other than that of lawyer. Paragraphs 59d to 59q shall apply only to professional practice companies seeking to practise law.'

The Criminal Code

- 21 In accordance with point 3 of Paragraph 203(1) of the Strafgesetzbuch (Criminal Code), lawyers are bound by legal professional privilege in respect of matters of which they are aware by reason of their professional activity. However, in accordance with Paragraph 203(3), lawyers may communicate legally privileged information to persons with whom they work in a professional capacity or in the context of public administration, in so far as is necessary for the activity of those persons.

The Law on limited liability companies

- 22 Paragraph 37(1) of the Gesetz betreffend die Gesellschaften mit beschränkter Haftung (Law on limited liability companies) provides:

'The directors are required to observe, as regards the company, the limitations imposed on their power of representation by the articles of association or, unless otherwise stated in the articles of association, by the decisions of the members.'

- 23 It follows from Paragraph 46, points 5 and 7 of that law that the members' meeting must decide on the appointment and dismissal of directors and authorised officers. Paragraph 46 provides, at point 6 thereof, that members must decide on measures for the monitoring and supervision of management.

24 Paragraph 51a of that law provides as follows:

‘(1) Directors are required to provide immediately to any member who so requests information concerning the company’s business and to allow that member to consult the accounts and other documents.

(2) Directors may refuse such requests for information and consultation if there is reason to believe that the member will use them for purposes other than the purposes of the company and thereby cause not insignificant harm to the company or an associated undertaking. A refusal to provide information or to permit consultation shall require a decision by members.

(3) The company’s articles of association may not derogate from these provisions.’

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

25 HR is a law firm with its registered office in Höhenmoos (Germany), which takes the form of an Unternehmergesellschaft (UG), that is to say, a limited liability entrepreneurial company subject to the Law on limited liability companies, but the minimum share capital of which is below the EUR 25 000 amount normally laid down for that type of company. Its director and sole member was originally Mr Daniel Halmer, who practised as a lawyer.

26 HR, which was created by a contract dated 30 January 2020, was entered in the commercial register of the Amtsgericht Traunstein (Local Court, Traunstein, Germany) on 16 July 2020 and at the Munich Bar Association on 6 August 2020 by decision of the latter dated 28 July 2020.

27 By a transfer agreement of 31 March 2021, Mr Halmer transferred 51 of the 100 shares in HR to SIVE Beratung und Beteiligung GmbH (‘SIVE’), a limited liability company governed by Austrian law.

28 HR’s articles of association were then amended in order to allow shares to be transferred to a limited liability company which was not registered with the bar association, while reserving the management of HR only to lawyers registered with the bar association, in order to guarantee its independence. The relevant provisions of those articles of association, as amended, contain the following passages:

‘Article 2 – The objects of the company

(1) The objects of the company are to deal with legal affairs of third parties, including the provision of legal advice, by performing the tasks of a lawyer which are performed only by lawyers registered with the bar association and allocated to the company’s services, independently, without being subject to instructions and under their own responsibility, in accordance with the rules governing their profession. To that end, the company shall create the necessary conditions in terms of staff, equipment and premises and carry out related operations; in particular, it shall take out professional indemnity insurance prescribed by the rules governing the profession of practising as a lawyer.

(2) The company must not contravene the requirements and prohibitions in force of the [Federal Lawyers’ Code] or other rules governing the profession of practising as a lawyer. In particular, it must not impede the freedom of lawyers working for it to exercise their profession. The company shall be permitted to advertise only within the limits set by the rules governing the profession of

practising as a lawyer. The company shall not be authorised to carry on commercial or banking activities or any other industrial activity.

...

Article 8 – Transfer of shares

The transfer of shares and parts of shares shall be valid only with the written agreement of the members' meeting. The agreement is given by a decision of the members which requires a majority of 75% of the votes of those entitled to vote.

Article 9 – Management and representation

(1) The company's affairs shall be managed responsibly and exclusively by lawyers, in accordance with the law, the applicable professional rules and these articles of association. The company shall have one or more directors. The company shall have at its registered office a firm in which at least one directing lawyer works, in a responsible fashion, for whom the firm is the centre of that lawyer's activity.

(2) If only one director is appointed, that director shall represent the company alone. If more than one director is named, the company shall be represented by two directors together or by a director together with an authorised officer.

...

(4) Directors shall practise their profession as lawyers independently and under their own responsibility. Any influence exerted by members, the members' meeting or other directors on the directors' exercise of their profession, for example through instructions, contractual links or threat or imposition of disadvantages (for example, cancellation ... or measures as provided for in point 6 of Paragraph 46 of the Law on limited liability companies), are thereby prohibited. This applies in particular to the acceptance, refusal and practical management of a mandate of the firm. In addition, directors must not be prevented by the members, the members' meeting or other directors from practising their profession as a lawyer at any time in accordance with their professional obligations (in particular under the Federal Lawyers' Code and the Lawyers' code of professional conduct). The removal of a director shall require, except in the event of removal for serious reasons, a unanimous decision by the members. Members undertake – even if they are not themselves registered with the bar association – always to act, when exercising their rights as members, in such a way that their own conduct, as well as that of the company following from it, complies with the rules governing the profession of practising as a lawyer (in particular the Federal Lawyers' Code and the lawyers' code of professional conduct). The directors shall advise members on matters arising from the rules governing the profession of practising as a lawyer.

(5) Only lawyers may be named as authorised officers and business agents. Paragraph 4 shall apply *mutatis mutandis* to authorised officers and business agents; the power of instruction which the directors derive from an employment relationship or from a mandate vis-à-vis the authorised officer or the business agent shall not be affected.

...

Article 11 – Decision-making

(1) Decisions of the members shall be taken by simple majority, unless another majority is provided for by law or by these articles of association. Each share gives the right to one vote. Decisions which contravene Article 9(4) or (5) are inadmissible.

...

Article 13 – Exercise of the right to information and consultation within the meaning of Paragraph 51a of the Law on limited liability companies

Directors, authorised officers and business agents are required to comply with their obligation of legal professional privilege as far as is possible also as regards (i) the members' meeting and (ii) any member with whom they do not work in a professional capacity and who is not him or herself subject to an obligation of professional privilege, which can be the subject of a criminal penalty for non-compliance. In so far as a member requests to consult documents or to obtain information on facts which are subject to legal professional privilege, that member must be represented by a person who is subject to an obligation of professional privilege (for example, a lawyer, a tax adviser, an auditor), including as regards that member. As regards consultation or information relating to matters subject to lawyers' professional privilege, the members are themselves directly and immediately bound to legal professional privilege by the firm's governing documents, in accordance with point 1 of the second sentence of Paragraph 203(4) of the Criminal Code. In all cases, before the member himself or herself becomes aware, by consulting or obtaining information, of facts subject to legal professional privilege, that member shall himself or herself be placed under a formal obligation to respect professional privilege by the competent director, in accordance with point 1 of the second sentence of Paragraph 203(4) of the Criminal Code. By way of derogation from the second sentence of Paragraph 51a(2) of the Law on limited liability companies, a refusal to provide information or to permit consultation does not require a decision by members.

...

Article 17 – Amendments to the articles of association; winding up; reporting requirement

(1) Decisions concerning amendments to these articles of association and to the winding up of the company shall be valid only if they are taken by a majority of 75% of the votes cast at a members' meeting which has been duly convened and is quorate. Amendments to Article 9(4) and (5) and to Article 13 of these articles of association shall require unanimity.

(2) Any amendment to the articles of association or to members or persons having power of representation, any decision relating to directors' right to individual representation or the establishment or dissolution of branches must be notified immediately to the competent bar association, accompanied by the necessary supporting documents.'

- 29 The amendment of HR's articles of association and the transfer of shares in HR were entered in the commercial register of the Amtsgericht Traunstein (District Court, Traunstein) on 6 April 2021.
- 30 By letters of 9 April 2021 and 9 May 2021, HR informed the Munich Bar Association of the amendment to its articles of association and of the transfer of 51 of its 100 shares to SIVE.

- 31 By letter of 19 May 2021, the Munich Bar Association informed HR that the transfer of shares to SIVE was prohibited pursuant to Paragraphs 59a and 59e of the former Federal Lawyers' Code and that, therefore, HR's registration with the bar association would be revoked if that transfer were not undone.
- 32 By letter of 26 May 2021, HR informed the Munich Bar Association that that transfer would not be undone.
- 33 By decision of 9 November 2021, which was notified to HR on 11 November 2021, the Munich Bar Association revoked HR's registration pursuant to the combined provisions of the first sentence of Paragraph 59e(1) in conjunction with the first sentence of the Paragraph 59h(3) of the former Federal Lawyers' Code, on the ground, in essence, that only lawyers and members of the professions referred to in the first sentence of Paragraph 59a(1) and in Paragraph 59a(2) of that code, as well as doctors and pharmacists, may be members in a law firm. According to the Munich Bar Association, the provisions of the former Federal Lawyers' Code, which it was required to apply without any discretion, do not infringe Articles 49 and 63 TFEU or Article 15 of Directive 2006/123, since point (a) of the second subparagraph of Article 25(1) of that directive authorises equivalent restrictions for regulated professions.
- 34 On 26 November 2021, HR brought an action before the Bayerischer Anwaltsgerichtshof (Higher Bavarian Lawyers' Court, Germany), which is the referring court, against the decision adopted by the Munich Bar Association to revoke HR's registration with the bar association. In support of its action, HR submits that the first sentence of Paragraph 59e(1) and the first sentence of Paragraph 59h(3) of the former Federal Lawyers' Code infringe, inter alia, the right to free movement of capital, guaranteed in Article 63(1) TFEU, and the rights which it derives from Article 15 of Directive 2006/123. It submits that that decision also infringes SIVE's right to freedom of establishment, as guaranteed by Articles 49 and 54 TFEU.
- 35 The referring court points out that the acquisition of shares in a legal person governed by private law falls within the scope of the free movement of capital, guaranteed in Article 63 TFEU. By contrast, the freedom of establishment and the freedom to provide services ought to prevail where the acquirer intends, by means of that transaction, to exert influence over an undertaking, which may be established from, inter alia, the volume of shares acquired and the structure of the company's governing documents.
- 36 That court indicates that, in the present case, 51 of the 100 shares in HR were transferred to SIVE, which enabled SIVE to obtain a majority holding in the capital of HR. However, the articles of association of HR comply with Paragraph 59f(4) of the former Federal Lawyers' Code, which requires that the independence of lawyers who, as directors or in accordance with articles of association, are empowered to act in the name of the company must be guaranteed when practising as a lawyer. Those articles of association contain a number of provisions capable of ensuring that independence, in particular as regards the removal of directors, the powers of the members' meeting and the inadmissibility of resolutions which do not comply with those provisions.
- 37 In that context, the referring court has doubts, in the first place, regarding the compatibility of Paragraphs 59a and 59e to 59h of the former Federal Lawyers' Code with Article 63 TFEU.

- 38 According to that court, first, the first sentence of Paragraph 59e(1) of that code limits the class of potential members in law firms to lawyers and members of certain liberal professions, referred to in the first sentence of Paragraph 59a(1) and Paragraph 59a(2) of that code. Second, the second sentence of Paragraph 59e(1) of that code requires members to exercise a professional activity within the law firm. Third, in accordance with the first sentence of Paragraph 59e(2) of the former Federal Lawyers' Code, where members of liberal professions other than lawyers hold part of the share capital of a law firm, the majority of the shares and voting rights must belong to lawyers. Fourth, according to the second sentence of Paragraph 59e(2) of that code, members who are not authorised to practise as a lawyer or to practise one of the other liberal professions referred to in the first sentence of Paragraph 59a(1) and in Paragraph 59a(2) of that code do not have the right to vote.
- 39 The referring court doubts whether those provisions which, in its view, adversely affect the free movement of capital can be justified on the basis of Article 65(2) TFEU, which authorises Member States' legislation which seeks to maintain public policy and public security. The restrictions laid down in Paragraphs 59a, 59e and 59h of the former Federal Lawyers' Code might not be necessary in order to ensure the independence of lawyers, since Paragraph 59f(4) of that code prohibits members exerting any influence over the lawyer's provision of legal advice, including any influence over whether or not to accept a client, and the independence of senior management can be guaranteed by the articles of association, as was the case for HR's articles of association. In addition, bar associations could not only make a law firm's admission subject to there being appropriate provisions in its articles of association, but also could revoke that admission if those articles of association were subsequently modified to reduce or remove the protection of the independence of lawyers, in accordance with Paragraph 59h of the former Federal Lawyers' Code.
- 40 Even if the prohibition of holdings by third parties who merely wish to make a profit were an appropriate method for preventing purely financial investors influencing the operational activities of a law firm, the referring court doubts whether that prohibition is necessary, since, in its view, the national legislation and the law firm's governing documents make it possible to avoid influence by the members on the firm's legal advice activities. It would then be for the purely financial investor to decide whether it wishes to acquire a holding in such a company, even though in that case any influence on the management of that company would be refused.
- 41 The referring court is also uncertain whether the requirements stemming from Paragraphs 59a, 59e and 59h of the former Federal Lawyers' Code constitute a consistent and systematic restriction of the free movement of capital for the purpose of preserving the independence of legal advice and the sound administration of justice. It points out, in that regard, that, although the restriction of the class of members is such as to prevent third parties who do not meet those requirements from being able to exert an influence on the law firm as members, those members who satisfy the requirements laid down in Paragraph 59e of the former Federal Lawyers' Code may nonetheless influence the senior management of the law firm in the same way. Neither that paragraph nor Paragraph 59a of that code contains quantitative requirements regarding members' obligation to cooperate. It is therefore possible that, through his or her holding, a member, whether or not a lawyer, will pursue financial interests above all else and participate only marginally in the firm attaining its objectives.
- 42 The referring court indicates, furthermore, that the new Federal Lawyers' Code, which entered into force on 1 August 2022, relaxed the conditions for being a member in a law firm. Legal advice could be provided by professional practice companies as provided for in Paragraph 59c of

that new code, in which, apart from professionals who were already so entitled under Paragraph 59a of the former Federal Lawyers' Code, other persons exercising the professions listed in Paragraph 1(2) of the Law on professional partnership practice companies, namely engineers, architects, commercial chemists, boat pilots, journalists, artists or even writers, have since been permitted to participate. The class of persons able to be a member in a professional practice company has therefore become very wide-ranging.

- 43 Finally, the referring court is of the view that, while trust in legal professional privilege must be protected by imposing the professional privilege obligation on all members of the management bodies of a law firm and not solely on the lawyers practising within that firm, there is nevertheless reason to doubt whether the prohibition of holdings by third parties is founded on the fact that it prevents those third parties obtaining privileged information or documents. In that regard, Article 13 of HR's articles of association lays down very strict rules, in the sense that members' right to information is also limited and legal professional privilege is imposed on those members. Since what is involved is one of the fundamental professional obligations of lawyers, which is, moreover, subject to criminal penalties, the bar association could already, on the basis of Paragraphs 59c and 59e of the former Federal Lawyers' Code, have reviewed the articles of association of a law firm in order to test whether the requirements regarding legal professional privilege have been complied with sufficiently therein. Moreover, Paragraphs 59d and 59e of the new Federal Lawyers' Code now require the bar association to undertake such a review.
- 44 In the second place, the referring court notes that, in so far as HR provides services within the meaning of Article 4(1) of Directive 2006/123, it could rely on the fact that the restrictions laid down in Paragraphs 59a, 59e and 59h of the former Federal Lawyers' Code are not justified in the light of Article 15(2)(c) and Article 15(3)(c) of that directive. It is true that that directive makes it possible to lay down restrictions which ensure the independence of legal advice and the sound administration of justice, provided, however, that they are proportionate. There are serious doubts as to whether the restrictions laid down in Paragraphs 59a and 59e of the former Federal Lawyers' Code for the acquisition of shares in a law firm are proportionate. The independence of a lawyer's activity, the sound administration of justice, the lawyer's duty of confidentiality and therefore confidence in the administration of justice are sufficiently guaranteed by the limitations on members' rights laid down in Paragraph 59f of the former Federal Lawyers' Code and by HR's articles of association. The fact that members who primarily provide capital have a holding, does not make it possible to identify risks greater than those entailed by the fact that persons who may be members of professional practice companies under the new Federal Lawyers' Code have a holding.
- 45 In the third place, if SIVE had to be regarded as seeking to exercise a dominant influence over HR's activity, it would be necessary to come to the conclusion that, in addition to Directive 2006/123 having been infringed, SIVE's right to freedom of establishment within the meaning of Article 49 TFEU had been infringed.
- 46 In those circumstances, the Bayerischer Anwaltsgerichtshof (Higher Bavarian Lawyers' Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- '(1) Does it constitute an unlawful restriction of the right to free movement of capital under Article 63(1) TFEU if, under the laws of a Member State, the admission to practise law held by a law company must be withdrawn where:

- (a) a share in the law company is transferred to a person who does not satisfy the special professional requirements governing the acquisition of a share under the law of the Member State? Under those provisions, a share in a law company may be acquired only by a lawyer or other member of a bar association, a patent attorney, tax consultant, tax representative, auditor or certified accountant, a member of the legal profession from another State who is permitted to provide legal advice in Germany, or a patent attorney, tax consultant, tax representative, auditor or certified accountant of another State who is authorised to carry on that activity in Germany or a doctor or pharmacist;
 - (b) a partner satisfies the special requirements set out in [Question 1(a)], but is not professionally active in the law company?
 - (c) because of the transfer of one or more shares or voting rights, the majority thereof are no longer held by lawyers?
- (2) Does it constitute an unlawful restriction of the right to free movement of capital under Article 63(1) TFEU where a partner who is not entitled to practise a profession in accordance with [Question 1(a)] does not have a voting right, even though the company's articles of association contain clauses, in order to protect the independence of legal professionals and of the company's legal activities, under which it is ensured that the company is represented as managing directors or authorised officers only by lawyers, partners and the partners meeting are prohibited from influencing the management board through instructions or indirectly through the threat of disadvantages, partners' resolutions in contravention of those rules are rendered ineffective and the obligation of legal confidentiality is extended to partners and persons acting on their behalf?
- (3) Do the restrictions referred to in [Questions 1 and 2] satisfy the conditions laid down in Article 15(3)(a) to (c) of [Directive 2006/123] for permitted interferences with the freedom to provide services?
- (4) In the event that, in the view of the Court of Justice, the applicant's right to the free movement of capital ... is not affected and there is no infringement of [Directive 2006/123], is the right of [SIVE] to freedom of establishment under Article 49 TFEU infringed by the restrictions referred to in [Questions 1 and 2]?

Consideration of the questions referred

The first, third and fourth questions

- 47 In the wording of the first, third and fourth questions, which it is appropriate to examine together, the referring court refers to national legislation which provides for a law firm's registration with the bar association to be revoked where a shareholding in that firm is transferred to a person who is not permitted under that legislation to become a member in that type of firm, where a member does not exercise a professional activity in the law firm or where the members who are lawyers no longer hold the majority of the shareholdings or voting rights. It is apparent from the request for a preliminary ruling that that legislation seeks, in essence, to prevent purely financial investors which do not intend to exercise a professional activity in that firm from influencing the operational activities of that firm.

- 48 In order to provide a useful answer to the referring court, it must be found that, by those questions, that court is asking, in essence, whether Article 49 and Article 63(1) TFEU as well as Article 15(2)(c) and Article 15(3) of Directive 2006/123 must be interpreted as precluding national legislation which, if the law firm concerned is not to have its registration with the bar association revoked, prohibits shares in that company being transferred to a purely financial investor which does not intend to exercise, in that company, a professional activity covered by that legislation.
- 49 While, in its third question, the referring court also refers to the freedom to provide services, it is not apparent from the documents before the Court that SIVE intends to rely on that freedom in order to provide legal services in Germany. That freedom is therefore irrelevant in the case in the main proceedings.
- 50 In so far as the referring court refers to both freedom of establishment and the free movement of capital, it is necessary to determine, as a preliminary point, which fundamental freedom applies to the dispute in the main proceedings, which involves taking into account the purpose of the national legislation at issue in the main proceedings and, as the case may be, the facts of the present case (see, to that effect, judgments of 13 November 2012, *Test Claimants in the FII Group Litigation*, C-35/11, EU:C:2012:707, paragraphs 90, 93 and 94, and of 24 February 2022, *Viva Telecom Bulgaria*, C-257/20, EU:C:2022:125, paragraphs 78, 82 and 83).
- 51 In that regard, national legislation intended to apply only to those shareholdings which enable the holder to exert a definite influence on a company's decisions and to determine its activities falls within the scope of freedom of establishment. On the other hand, national provisions which apply to shareholdings acquired solely with the intention of making a financial investment without any intention to influence the management and control of the undertaking must be examined exclusively in light of the free movement of capital (judgment of 24 February 2022, *Viva Telecom Bulgaria*, C-257/20, EU:C:2022:125, paragraphs 79 and 80 and the case-law cited).
- 52 It follows that national legislation which is not intended to apply only to those shareholdings which enable the holder to have a definite influence on a company's decisions and to determine its activities but which applies irrespective of the extent of the holding which the shareholder has in a company may fall within the ambit of both freedom of establishment and free movement of capital (see, to that effect, judgments of 24 May 2007, *Holböck*, C-157/05, EU:C:2007:297, paragraphs 23 and 24, and of 21 October 2010, *Idryma Typou*, C-81/09, EU:C:2010:622, paragraph 49).
- 53 That being the case, in principle, the Court will examine the measure in dispute in relation to only one of those two freedoms if it appears, in the circumstances of the dispute in the main proceedings, that one of them is entirely secondary in relation to the other and may be considered together with it (judgments of 3 October 2006, *Fidium Finanz*, C-452/04, EU:C:2006:631, paragraph 34, and of 17 September 2009, *Glaxo Wellcome*, C-182/08, EU:C:2009:559, paragraph 37).
- 54 In the present case, the national legislation at issue in the main proceedings is intended, inter alia, to prevent any holding, regardless of its scale, in a law firm being obtained by persons who are neither lawyers nor members of a profession referred to in the first sentence of Paragraph 59a(1) and Paragraph 59a(2) of the former Federal Lawyers' Code.

- 55 Indeed, SIVE acquired 51% of HR's share capital. National provisions which apply to holdings by a company of a Member State in the capital of a company established in another Member State, giving it definite influence on the company's decisions and allowing it to determine its activities, come within the substantive scope of the freedom of establishment (see, to that effect, judgment of 17 September 2009, *Glaxo Wellcome*, C-182/08, EU:C:2009:559, paragraph 47), which is the case for a holding of the majority of its capital (see, to that effect, order of 10 May 2007, *Lasertec*, C-492/04, EU:C:2007:273, paragraph 23, and judgment of 21 December 2016, *AGET Iraklis*, C-201/15, EU:C:2016:972, paragraphs 46 and 47).
- 56 However, HR's articles of association were amended in order to deprive SIVE of any ability to influence to which it could have laid claim based on the shareholding criterion. As is apparent from the documents before the Court, such an amendment is capable of meaning that SIVE's acquisition of shares in HR took place with the sole objective of providing HR with capital intended to enable it to finance the development of an innovative legal model based on the new technologies.
- 57 It follows that the case in the main proceedings concerns freedom of establishment just as much as the free movement of capital, and that neither of those freedoms can be regarded as secondary in relation to the other.
- 58 As regards, in the first place, freedom of establishment, it follows from recital 6 of Directive 2006/123 that barriers to freedom of establishment may not be removed solely by relying on direct application of Article 49 TFEU, owing, inter alia, to the extreme complexity of addressing barriers to that freedom on a case-by-case basis. It follows that, where a restriction of the freedom of establishment falls within the scope of that directive, there is no need to examine it in the light also of Article 49 TFEU (judgment of 26 June 2019, *Commission v Greece*, C-729/17, EU:C:2019:534, paragraphs 53 and 54).
- 59 First, as stated in recital 33 of Directive 2006/123, legal advice services, which include legal services provided by lawyers, fall within the material scope of that directive (see, to that effect, judgment of 13 January 2022, *Minister Sprawiedliwości*, C-55/20, EU:C:2022:6, paragraph 88).
- 60 Second, the national legislation at issue in the main proceedings, in particular the limitation of the class of persons able to become members of a law firm and the requirement to cooperate actively within the firm, laid down in the first and second sentences of Paragraph 59e(1) of the former Federal Lawyers' Code corresponds to 'requirements', within the meaning of point 7 of Article 4 of that directive, which relate, in essence, to the shareholding of a company and therefore fall within Article 15(2)(c) of that directive.
- 61 In that regard, Article 15(1) of Directive 2006/123 states that Member States must examine whether, under their legal system, any requirements such as those listed in Article 15(2) are imposed and ensure that any such requirements are compatible with the conditions laid down in Article 15(3). In addition, Article 15(5)(a) and (6) of that directive permits Member States to maintain or, if necessary, introduce requirements of the type referred to in Article 15(2), on condition that those requirements satisfy the conditions laid down in Article 15(3) (see, to that effect, judgments of 16 June 2015, *Rina Services and Others*, C-593/13, EU:C:2015:399, paragraph 33, and of 29 July 2019, *Commission v Austria (Civil engineers, patent agents and veterinary surgeons)*, C-209/18, EU:C:2019:632, paragraph 80).

- 62 The cumulative conditions listed in Article 15(3) of Directive 2006/123 relate, first, to the non-discriminatory nature of the requirements in question, which may not be directly or indirectly discriminatory according to nationality or, with regard to companies, according to the location of the registered office; second, to their necessity, in other words they must be justified by an overriding reason relating to the public interest; and, third, to their proportionality, meaning that they must be suitable for securing the attainment of the objective pursued and must not go beyond what is necessary to attain that objective, and it must not be possible to replace those requirements with other, less restrictive measures which attain the same result (judgment of 29 July 2019, *Commission v Austria (Civil engineers, patent agents and veterinary surgeons)*, C-209/18, EU:C:2019:632, paragraph 81).
- 63 In the present case, as regards, first of all, the first condition, relating to whether the requirements at issue in the main proceedings are non-discriminatory, none of them is discriminatory, with the result that they satisfy that condition.
- 64 Next, as regards the second condition, relating to whether those requirements are necessary, it is apparent from the request for a preliminary ruling that their purpose is to ensure the independence and integrity of the profession of practising as a lawyer and to ensure compliance with the principle of transparency and the obligation of legal professional privilege.
- 65 Those objectives are incontestably linked to the protection of recipients of services, in the present case legal services, and the sound administration of justice, which constitute overriding reasons relating to the public interest within the meaning of Article 4(8) of Directive 2006/123, read in conjunction in particular with recital 40 of that directive. In addition, since Article 4(8) of Directive 2006/123 does no more than codify the case-law of the Court of Justice, it must be noted that, when interpreting primary law, the Court has found the protection of litigants to be an overriding reason relating to the public interest (see, to that effect, judgments of 12 December 1996, *Reisebüro Broede*, C-3/95, EU:C:1996:487, paragraph 38; of 17 March 2011, *Peñarroja Fa*, C-372/09 and C-373/09, EU:C:2011:156, paragraph 55; and of 18 May 2017, *Lahorgue*, C-99/16, EU:C:2017:391, paragraphs 34 and 35) and likewise for the proper practice of the legal profession (see, to that effect, judgment of 19 February 2002, *Wouters and Others*, C-309/99, EU:C:2002:98, paragraph 107).
- 66 In that regard, it should be recalled that the lawyer's task of representation, which is carried out in the interests of the sound administration of justice, consists above all in protecting and defending the principal's interests to the greatest possible extent, acting in full independence and in line with the law and professional rules and codes of conduct (see, to that effect, judgments of 4 February 2020, *Uniwersytet Wrocławski and Poland v REA*, C-515/17 P and C-561/17 P, EU:C:2020:73, paragraph 62, and of 24 March 2022, *PJ and PC v EUIPO*, C-529/18 P and C-531/18 P, EU:C:2022:218, paragraph 64). Lawyers are assigned the fundamental role in a democratic society of defending litigants, which entails, on the one hand, that any person is to be able, without constraint, to consult a lawyer whose profession encompasses, by its very nature, the giving of independent legal advice to all those in need of it and, on the other, the correlative duty of the lawyer to act in good faith towards his or her client (see, to that effect, judgment of 8 December 2022, *Orde van Vlaamse Balies and Others*, C-694/20, EU:C:2022:963, paragraph 28 and the case-law cited).

- 67 Finally, as regards the third condition, which concerns whether the requirements at issue in the main proceedings are proportionate, that condition presupposes that those requirements are appropriate for ensuring that the objective pursued is attained, that they do not go beyond what is necessary to attain it, and it is not possible to replace them with other, less restrictive measures which attain the same result.
- 68 In the present case, in so far as they are intended to help ensure that the independence of lawyers is respected and that conflicts of interest are prohibited, in particular by excluding purely financial investors from having the capacity to influence the decisions and activities of a law firm, those requirements appear to be appropriate for ensuring that the objective of protecting the sound administration of justice and the integrity of the profession of practising as a lawyer are attained.
- 69 The desire of a purely financial investor to make a return on his or her investment could have an impact on the organisation and activity of a law firm. Accordingly, if such an investor were to consider that the return on his or her investment was insufficient, that investor might be tempted to demand that the firm reduce costs or seek a certain type of client, if he was not to withdraw his investment. Such a threat is sufficient to establish that a purely financial investor has the ability to exert influence, even if only indirectly.
- 70 First, whereas the objective pursued by a purely financial investor is limited to seeking to make a profit, lawyers do not exercise their activities purely for an economic purpose but are required to comply with professional conduct rules.
- 71 In that regard, it must be stated that the absence of conflicts of interest is essential to the practice of the profession of lawyer and requires, in particular, that lawyers should be in a situation of independence, including financial, vis-à-vis the public authorities and other operators, by whom they must never be influenced (judgment of 2 December 2010, *Jakubowska*, C-225/09, EU:C:2010:729, paragraph 61). In the absence of such financial independence, economic considerations focused on a purely financial investor's short-term profit could prevail over considerations guided exclusively by the defence of the interests of the law firm's clients. In addition, the existence of any links between a purely financial investor and a client is also such as to influence the relationship between the lawyer and that client in such a way that a conflict with rules of professional conduct cannot be ruled out.
- 72 Second, in the absence of harmonisation at EU level of the rules of professional conduct applicable to the profession of practising as a lawyer, each Member State remains, in principle, free to regulate the exercise of that profession in its territory. For that reason, the rules applicable to that profession may differ greatly from one Member State to another (see, to that effect, judgments of 19 February 2002, *Wouters and Others*, C-309/99, EU:C:2002:98, paragraph 99; of 2 December 2010, *Jakubowska*, C-225/09, EU:C:2010:729, paragraph 57; and of 7 May 2019, *Monachos Eirinaios*, C-431/17, EU:C:2019:368, paragraph 31).
- 73 In those circumstances, having regard to the discretion thereby conferred on it, a Member State is entitled to conclude that a lawyer would not be able to exercise his or her profession independently and in compliance with his or her professional and ethical obligations if that lawyer were part of a firm whose members are persons who, first, are neither practising lawyers nor members of any other profession subject to the moderating effect of rules of professional conduct and, second, act exclusively as purely financial investors with no intention of exercising,

within that company, an activity falling within the scope of such a profession. That is all the more so where, as in the case in the main proceedings, such an investor intends to acquire the majority of the shares in the law firm in question.

- 74 Having regard to that margin of discretion, a Member State is entitled to take the view that there is a risk that the measures laid down by national legislation or in the articles of association of the law firm in order to preserve the independence and professional integrity of lawyers working within that firm may, in practice, be insufficient to ensure that the objectives referred to in paragraphs 64 to 66 of the present judgment are met in an effective manner in a situation where a purely financial investor has a holding in the capital of that company, having regard to the influence, even if only indirect, which that investor could exert over the management and activities of that firm by means of investment or disinvestment choices which are essentially, or even exclusively, guided by making profits.
- 75 As regards, in the second place, the free movement of capital, which is guaranteed in Article 63 TFEU, that article covers in particular direct investments in the form of participation in an undertaking through the holding of shares which confers the possibility of participating effectively in its management and control, and also the acquisition of securities solely with the intention of making a financial investment without wishing to influence the management and control of the undertaking (see, to that effect, judgments of 17 September 2009, *Glaxo Wellcome*, C-182/08, EU:C:2009:559, paragraph 40, and of 21 December 2016, *AGET Iraklis*, C-201/15, EU:C:2016:972, paragraph 58 and the case-law cited).
- 76 The measures prohibited by Article 63(1) TFEU, as restrictions on the movement of capital, include inter alia those which are likely to discourage non-residents from making investments in a Member State (see, to that effect, judgment of 6 March 2018, *SEGRO and Horváth*, C-52/16 and C-113/16, EU:C:2018:157, paragraph 65). Thus, national measures must be regarded as ‘restrictions’ within the meaning of Article 63(1) TFEU if they are liable to prevent or limit the acquisition of shares in resident companies or to deter investors from other Member States from investing in their capital (see, to that effect, judgment of 21 October 2010, *Idryma Typou*, C-81/09, EU:C:2010:622, paragraph 55).
- 77 In the present case, the effect of the national legislation at issue in the main proceedings is to prevent persons other than lawyers and members of the professions referred to in Paragraph 59a of the former Federal Lawyers’ Code from acquiring shares in a law firm, with the result that it deprives investors from other Member States who are neither lawyers nor members of such a profession from acquiring holdings in firms of that kind (see, to that effect, judgment of 19 May 2009, *Commission v Italy*, C-531/06, EU:C:2009:315, paragraph 47). Accordingly, that national legislation deprives law firms of access to capital which could assist in their creation or development. It therefore constitutes a restriction on the free movement of capital.
- 78 Restrictions on the free movement of capital which apply without discrimination on grounds of nationality may, however, be justified by overriding reasons in the general interest, provided that the restrictions are appropriate for securing attainment of the objective pursued and do not go beyond what is necessary for attaining that objective (see, to that effect, judgment of 19 May 2009, *Commission v Italy*, C-531/06, EU:C:2009:315, paragraph 49).
- 79 In that regard, the assessment made in paragraphs 64 to 74 of the present judgment in the light of Article 15(3) of Directive 2006/123 does not lead to a different conclusion in the light of Article 63 TFEU.

- 80 In those circumstances, the answer to the first, third and fourth questions is that Article 15(2)(c) and Article 15(3) of Directive 2006/123 and Article 63 TFEU must be interpreted as not precluding national legislation which, under penalty of the law firm concerned having its registration with the bar association revoked, prohibits shares in that firm from being transferred to a purely financial investor who does not intend to exercise, in that firm, a professional activity covered by that legislation.

The second question

- 81 By its second question, the referring court is asking, in essence, whether Article 63 TFEU must be interpreted as precluding national legislation which provides that a member who is not authorised to exercise one of the professions enabling him or her to become a member in a law firm does not have the right to vote, where the firm's articles of association contain a number of provisions capable of protecting the independence of the firm's lawyers and of the firm's legal activities.
- 82 In reply to a question from the Court, the German Government explained at the hearing that the measure depriving voting rights imposed on members who are not authorised to exercise one of the professions set out in the first sentence of Paragraph 59e(1) of the former Federal Lawyers' Code, which is specifically referred to by the referring court in its second question, is intended to apply in transitional situations brought about, inter alia, by the death of an authorised member or the adoption of a measure depriving an authorised member of the right to exercise his or her profession.
- 83 Since the dispute in the main proceedings does not involve any situation of that kind, an answer to that question is not necessary for the effective resolution of that dispute and falls outside the scope of the Court's jurisdiction under Article 267 TFEU (see, to that effect, judgments of 16 December 1981, *Foglia*, 244/80, EU:C:1981:302, paragraph 18, and of 26 March 2020, *Miasto Łowicz and Prokurator Generalny*, C-558/18 and C-563/18, EU:C:2020:234, paragraph 44).
- 84 The second question is therefore inadmissible.

Costs

- 85 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 (Grand Chamber) hereby rules:

Article 15(2)(c) and Article 15(3) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, and Article 63 TFEU

must be interpreted as not precluding national legislation which, under penalty of the law firm concerned having its registration with the bar association revoked, prohibits shares in that firm from being transferred to a purely financial investor who does not intend to exercise, in that firm, a professional activity covered by that legislation.

[Signatures]