

Provisional text

JUDGMENT OF THE COURT (First Chamber)

23 November 2017 (\*)

(Reference for a preliminary ruling — Competition — Freedom to provide services — Setting of minimum fee amounts by a lawyers' professional organisation — Court prohibited from ordering reimbursement of fees in an amount less than those minimum amounts — National legislation considering value added tax (VAT) to form part of the price of a service provided in the performance of professional activities)

In Joined Cases C-427/16 and C-428/16,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Sofiyski rayonen sad ((Sofia District Court, Bulgaria), made by decisions of 26 April 2016, received at the Court on 1 August 2016, in the proceedings

**CHEZ Elektro Bulgaria AD**

v

**Yordan Kotsev** (C-427/16),

and

**FrontEx International EAD**

v

**Emil Yanakiev** (C-428/16),

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, C.G. Fernlund, J.-C. Bonichot, S. Rodin (Rapporteur) and E. Regan, Judges,

Advocate General: N. Wahl,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 1 June 2010,

after considering the observations submitted on behalf of:

- CHEZ Elektro Bulgaria AD, by K. Kral and K. Stoyanova, acting as Agents,
- FrontEx International EAD, by A. Grilhes, acting as Agent,
- the Cypriot Government, by D. Kalli, acting as Agent,

– the European Commission, by L. Malferrari, I. Zaloguin and P. Mihaylova, acting as Agents, having decided, after hearing the Advocate General, to proceed to judgment without an Opinion, gives the following

## **Judgment**

1 These requests for a preliminary ruling concern the interpretation of Article 56(1) and Article 101(1) TFEU and of Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (OJ 1977 L 78, p. 17), and of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

2 Those questions were submitted in proceedings between CHEZ Elektro Bulgaria AD and Mr Yordan Kotsev (C-427/16), and FrontEx International EAD and Mr Emil Yanakiev (C-428/16) concerning applications for payment orders concerning, in particular, the reimbursement of lawyers' fees and the remuneration of a legal adviser.

## **Legal context**

### *EU law*

3 Point (a) of the first subparagraph of Article 78 of Directive 2006/112 provides as follows:

'The taxable amount shall include the following factors:

(a) taxes, duties, levies and charges, excluding the [value added tax (VAT)] itself;

...'

4 According to the first subparagraph of Article 1(1) of Directive 77/249:

'This Directive shall apply, within the limits and under the conditions laid down herein, to the activities of lawyers pursued by way of provision of services.'

### *Bulgarian law*

5 Article 78 of the *Grazhdanski protsesualen kodeks* (Civil Procedure Code) ('the GPK') provides as follows:

'1. The charges paid by the applicant, costs and lawyers' fees, if the applicant had a lawyer, shall be borne by the defendant in proportion to the part of the claim which was upheld.

...

5. If the lawyer's fee paid by a party is excessively high having regard to the legal and factual difficulty of the case, the court may, upon application by the opposite side, order reimbursement of a lower amount in respect of costs, provided that that amount does not fall below the minimum amount determined in accordance with Article 36 [of the *Zakon za advokaturata* (Law on the Legal Profession)].

...

8. Legal persons and sole traders shall also obtain reimbursement of lawyers' remuneration ordered by the court if they were represented by a legal adviser.'

6 Article 36(1) and (2) of the Law on the Legal Profession states:

'1. A lawyer or lawyer from the European Union shall be entitled to remuneration for his work.

2. The amount of the fee shall be determined by agreement between the lawyer or the lawyer of a Member State of the European Union and the client. That amount must be fair and justified and may not be lower than the amount provided in the regulation issued by the Vissh advokatski savet [(Supreme Council of the Legal Profession, Bulgaria)] for the type of service concerned.'

7 Article 118(3) of that law provides as follows:

Members of councils of the legal profession with at least 15 years' professional experience as a lawyer shall be eligible to be elected members of the Supreme Council of the Legal Profession.'

8 Article 121(1) of that law provides as follows:

'The Supreme Council of the Legal Profession shall issue regulations, as provided for by law and the lawyers' code of conduct.'

9 Article 132 is worded as follows:

'The following shall constitute disciplinary offences: a culpable breach of the obligations arising from this law and from the code governing the moral and ethical conduct of lawyers, from the regulations and decisions of the Supreme Council of the Legal Profession and from the decisions of the councils of the legal profession and the general assemblies, and also:

...

5. negotiation by clients of remuneration in an amount lower than that provided in the regulation issued by the Supreme Council of the Legal Profession for the type of service concerned, except in the event that such a possibility is provided for in this law and in the regulation.'

10 Article 1 of the Naredba no 1 za minimalnite razmeri na advokatskite vaznagrazhdenia (Regulation No 1 of 9 July 2004 on the minimum amount of lawyers' fees) ('Regulation No 1') provides as follows:

'The amount of remuneration for legal assistance supplied by the lawyer shall be agreed freely on the basis of a written contract with the client, but may not be lower than the minimum amount laid down in this regulation for the corresponding type of assistance.'

11 It follows from Article 7(5) of Regulation No 1, read in conjunction with paragraph (2)(1) thereof, that that minimum amount for fees comes, as regards cases such as those in the main proceedings, to BGN 300 (approximately EUR 154).

12 Article 2a of the supplementary provisions to that regulation state:

‘For lawyers not registered under the [Zakon za danak varhu dobavenata stoynost (Law on Value Added Tax)], the amount of the lawyers’ fees shall not include value added tax, whereas, in the case of registered lawyers, the value added tax payable shall be calculated on the fees determined in accordance with this regulation and shall be deemed an inseparable component part of the lawyers’ fees payable by the client.’

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

#### *Case C-427/16*

13 CHEZ Elektro Bulgaria applied to the referring court for a payment order, seeking that Mr Kotsev be ordered to pay, inter alia, the amount of BGN 60 by way of lawyers’ fees.

14 That amount being lower than the minimum amount provided for in Regulation No 1, the referring court notes that the negotiation of an amount below the amount provided for in that regulation constitutes a disciplinary infringement under the Law on the Legal Profession. While it is true that, in the event that lawyers’ fees are excessively high having regard to the legal and factual difficulty of the case, the Bulgarian courts may order reimbursement of a lesser sum in respect of costs in so far as concerns that part of the costs, that amount may not fall below the minimum amount.

15 The referring court notes that Case C-427/16 differs from the case which gave rise to the judgments of 5 December 2006, *Cipolla and Others* (C-94/04 and C 202/04, EU:C:2006:758), and of 19 February 2002, *Arduino* (C-35/99, EU:C:2002:97). Bulgarian legislation authorises the Supreme Council of the Legal Profession, whose members are all lawyers elected by their peers, to determine the minimum fees without any possibility of review by public authorities.

16 The referring court states in that regard that the Supreme Council of the Legal Profession acts as an association of undertakings.

17 Finally, the referring court adds that, by virtue of Article 2a of the supplementary provisions to Regulation No 1, the amount of the fees for lawyers not registered for the purposes of the Law on value added tax does not include VAT. In the case of registered lawyers, the VAT payable is calculated on the basis of the fees and is deemed an integral part of the fees payable by the client, which are accordingly increased by the VAT rate of 20%. The consequence of that inclusion of VAT is that the fees must once again be subject to that tax rate, since the taxable amount has been changed. The referring court considers that Article 2a of the supplementary provisions to Regulation No 1 confuses the concepts of ‘price’ of a service and ‘tax’ for the purposes of Article 1 of Directive 2006/112. According to that court, those two concepts have different bases and are addressed to different persons.

#### *Case C-428/16*

18 By an application for a payment order, FrontEx International asked the referring court to order Mr Yanakiev to pay it, inter alia, BGN 200, by way of remuneration for a salaried legal adviser.

19 The amount claimed is less than the minimum amount of BGN 300, provided for in Regulation No 1.

20 The referring court considers that the employers of legal advisers engage in an activity that is in competition with that of lawyers. Accordingly, a question arises concerning whether that provision of the GPK guaranteeing legal advisers the right to the remuneration of a lawyer is

compatible with Directive 77/249 and with Article 101(1) TFEU.

21 In these circumstances, the Sofiyski rayonen sad (Sofia District Court, Bulgaria) has decided to stay proceedings and to refer the following questions, which are identical in the two cases, to the Court for a preliminary ruling:

- ‘1. Does Article 101(1) TFEU (prohibition of the prevention, restriction or distortion of competition) preclude Article 36(2) of the Law on the Legal Profession under which an association of undertakings which practise professional activities (the Supreme Council of the Legal Profession) has discretion, by virtue of a power conferred on it by the State, to lay down in advance the minimum level of the prices for the services supplied by those undertakings (legal fees)?
2. If the first question is answered in the affirmative, does the last part of Article 78(5) of the [GPK] (in which that provision does not allow a reduction of the lawyer’s fee to below a fixed minimum amount) conflict with Article 101(1) TFEU?
3. If the first question is answered in the affirmative, does Article 132(5) of the Law on the Legal Profession (with regard to the application of Article 136(1) of that law) conflict with Article 101(1) TFEU?
4. Does the first paragraph of Article 56 TFEU (prohibition of restrictions on freedom to provide services) preclude Article 36(2) of the Law on the Legal Profession?
5. Does Article 78(8) of the [GPK] conflict with Article 101(1) TFEU?
6. Does Article 78(8) of the [GPK] conflict with Directive 77/249/EEC (as regards the right of persons represented by legal advisers to claim legal fees)?
7. Does Article 2a of the supplementary provisions to Regulation No 1 conflict with Directive 2006/112/EC, which allows [VAT] to be regarded as a component part of the price of the service supplied in the exercise of a profession (in relation to the inclusion of [VAT] as part of the lawyer’s fee payable)?’

22 By decision of 14 September 2016, the President of the Court decided to join Cases C-427/16 and C-428/16 for the purposes of the written procedure, the oral procedure and the judgment.

### **Consideration of the questions referred**

#### *Admissibility*

23 The European Commission questions the admissibility of the first to sixth questions referred for a preliminary ruling.

24 The Commission observes that the referring court has no jurisdiction to order payment of an amount greater than the amount actually paid. In addition, it maintains that the fact that the negotiation of remuneration less than the minimum amount provided for in Regulation No 1 constitutes a disciplinary infringement is not, according to the Court’s case-law, a valid basis on which to request interpretation by way of a preliminary ruling.

25 In that regard, a distinction should be drawn between, first, the admissibility of the first to third, fifth and sixth questions and, secondly, the admissibility of the fourth question.

26 In the first place, as regards the first to third, fifth and sixth questions, it must be borne in mind that, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court.

Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle bound to give a ruling (judgment of 26 July 2017, *Persidera*, C-112/16, EU:C:2017:597, paragraph 23 and the case-law cited).

27 It follows that questions on the interpretation of EU 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 this Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU 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 (judgment of 26 July 2017, *Persidera*, C-112/16, EU:C:2017:597, paragraph 24 and the case-law cited).

28 In the present case, it is clear from the requests for a preliminary ruling that lawyers' fees and remuneration for a legal adviser form part of the costs of the disputes on which the referring court is to rule.

29 Accordingly, it is not obvious that the interpretation of EU law sought bears no relation to the actual facts and subject matter of the disputes in the main proceedings or to their purpose, and that the problem is hypothetical.

30 Furthermore, it is not for the Court to rule on the interpretation of provisions of national law, as such an interpretation falls within the exclusive jurisdiction of the national courts (judgment of 14 June 2017, *Online Games and Others*, C-685/15, EU:C:2017:452, point 45 and the case-law cited).

31 Thus, the question whether the referring court may order payment in respect of an amount of remuneration greater than the amount actually paid is a question of national law on which the Court has no jurisdiction to give a ruling, the assessment of which falls exclusively to the national courts before which the main proceedings were brought.

32 It follows that the first to third, fifth and sixth questions are admissible.

33 In the second place, as regards the fourth question, the referring court asks whether Article 56(1) TFEU precludes national legislation, such as that at issue in the main proceedings, which does not allow a lawyer and his client to agree remuneration in an amount below the minimum amount laid down in a regulation adopted by a lawyers' professional organisation, such as the Supreme Council of the Legal Profession.

34 In that regard, in so far as the question raised concerns the compatibility of the legislation at issue in the main proceedings with the provisions of the FEU Treaty on freedom to provide services, it should be observed that they are not applicable in a situation all the elements of which are confined within a single Member State (see, to that effect, judgment of 8 December 2016, *Eurosanamientos and Others*, C-532/15 and C-538/15, EU:C:2016:932, paragraph 45 and the case-law cited).

35 The Court has held that the specific factors that allow a link to be established between the articles of the FEU Treaty on freedom to provide services and the subject or circumstances of a dispute, confined in all respects within a single Member State, must be apparent from the order for reference (judgment of 8 December 2016, *Eurosaneamientos and Others*, C-532/15 and C-538/15, EU:C:2016:932, paragraph 46 and the case-law cited).

36 Consequently, in a situation such as that at issue in the main proceedings which is confined in all respects within a single Member State, it is for the referring court to indicate to the Court, in accordance with the requirements of Article 94 of the Rules of Procedure of the Court, in what way the dispute pending before it, despite its purely domestic character, has a connecting factor with the provisions of EU law on the fundamental freedoms that makes the preliminary ruling on interpretation necessary for it to give judgment in that dispute (judgment of 8 December 2016, *Eurosaneamientos and Others*, C-532/15 and C-538/15, EU:C:2016:932, paragraph 47 and the case-law cited).

37 In the present case, it does not follow from the requests for a preliminary ruling that there exist aspects of the case in the main proceedings, in relation to the parties to those disputes or to their activities, which are not confined within Bulgaria. Moreover, the referring court does not indicate in what way those disputes, despite their purely domestic character, have a connecting factor with the provisions of EU law on the fundamental freedoms that makes the preliminary ruling on interpretation necessary for it to give judgment in those disputes.

38 In those circumstances, it is clear that the requests for a preliminary ruling do not indicate specific factors permitting the conclusion that Article 56 TFEU may apply to the facts of the disputes in the main proceedings.

39 Having regard to the foregoing considerations, it must be held that the fourth question is inadmissible.

#### *The first to third questions*

40 By the first to third questions, the referring court asks, in essence, whether Article 101(1) TFEU, read in conjunction with Article 4(3) TEU, must be interpreted as precluding national legislation, such as that at issue in the main proceedings which, first, does not allow a lawyer and his client to agree remuneration in an amount below the minimum amount laid down in a regulation issued by a professional body of lawyers, such as the Supreme Council of the Legal Profession, without that lawyer being subject to a disciplinary procedure, and, secondly, does not authorise the courts to order reimbursement of fees in an amount below that minimum amount.

41 As is apparent from the Court's settled case-law, although Article 101 TFEU is concerned solely with the conduct of undertakings and not with laws or regulations emanating from Member States, that article, read in conjunction with Article 4(3) TEU, which lays down a duty of cooperation between the European Union and the Member States, nonetheless requires the latter 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 (judgment of 21 September 2016, *Etablissements Fr. Colruyt*, C-221/15, EU:C:2016:704, paragraph 43 and the case-law cited).

42 Article 101 TFEU, read in conjunction with Article 4(3) TEU, is infringed where a Member State requires or encourages the adoption of agreements, decisions or concerted practices contrary to Article 101 TFEU 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 (judgment of 21 September 2016, *Etablissements Fr. Colruyt*, C?221/15, EU:C:2016:704, paragraph 44 and the case-law cited).

43 That is not the case in a situation where the tariffs are fixed with due regard for the public-interest criteria defined by law and the public authorities do not delegate their rights and powers to private economic operators even if representatives of the economic operators are not in the minority on the committee proposing those tariffs (see, to that effect, judgment of 4 September 2014, *API and Others*, C?184/13 to C?187/13, C?194/13, C?195/13 and C?208/13, EU:C:2014:2147, paragraph 31).

44 As regards, in the first place, the question whether the legislation at issue in the main proceedings requires or favours the adoption of an agreement, decision or concerted practice between private economic operators, it must be noted that the Supreme Council of the Legal Profession is composed exclusively of lawyers elected by their peers.

45 A tariff established by a professional organisation may nonetheless have the character of legislation, *inter alia*, where the members of that organisation are experts who are independent of the economic operators concerned and they are required, under the law, to set tariffs taking into account not only the interests of the undertakings or associations of undertakings in the sector which has appointed them but also the public interest and the interests of undertakings in other sectors or users of the services in question (see, to that effect, judgment of 4 September 2014, *API and Others*, C?184/13 to C?187/13, C?194/13, C?195/13 and C?208/13, EU:C:2014:2147, paragraph 34 and the case-law cited).

46 In order to ensure that the members of a professional organisation in fact operate in compliance with the general public interest that the law seeks to achieve, the criteria for that interest must be defined in law sufficiently precisely, there must be actual review and the State must have the power to adopt decisions in the last resort (see, to that effect, judgment of 4 September 2014, *API and Others*, C?184/13 to C?187/13, C?194/13, C?195/13 and C?208/13, EU:C:2014:2147, paragraph 41).

47 In the present case, the legislation at issue in the main proceedings contains no specific criterion ensuring that the minimum amounts of lawyers' remuneration, as determined by the Supreme Council of the Legal Profession, are fair and justified in accordance with the general interest. In particular, that legislation does not contain any condition corresponding to the requirements formulated by the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria) in its judgment of 27 July 2016 relating, *inter alia*, to access of citizens and individuals to qualified legal assistance and to the need to prevent the risk of deterioration in the quality of the services provided.

48 As regards, in the second place, the question whether the Bulgarian public authorities delegated their competences, concerning the setting of minimum amounts for the remuneration of lawyers, to private operators, it is apparent from the file before the Court that the only review carried out by a public authority in respect of the regulations of the Supreme Council of the Legal Profession determining those minimum amounts is that of the Varhoven administrativen sad (Supreme Administrative Court), which is limited to whether those regulations are compatible with the Bulgarian Constitution and Bulgarian law.

49 It follows that, having regard to the lack of provisions capable of ensuring that the Supreme Council of the Legal Profession conducts itself as an arm of the State working in the public interest subject to actual review and the power to adopt decisions in the last resort by the State, a professional organisation such as the Supreme Council of the Legal Profession must be considered to be an association of undertakings within the meaning of Article 101 TFEU when it



adopts regulations determining the minimum amounts of lawyers' remuneration.

50 Moreover, in order for EU competition rules to apply to the legislation at issue in the main proceedings, it is necessary for that legislation to be capable of restricting competition within the internal market (see, by analogy, judgment of 4 September 2014, *API and Others*, C?184/13 to C?187/13, C?194/13, C?195/13 and C?208/13, EU:C:2014:2147, paragraph 42).

51 It must be stated, in that regard, that the fixing of minimum amounts for lawyers' remuneration, which are made mandatory by national legislation such as that at issue in the main proceedings, by preventing other providers of legal services from setting remuneration amounts lower than those minimum amounts, amounts to the horizontal fixing of mandatory minimum tariffs (see, by analogy, judgment of 4 September 2014, *API and Others*, C?184/13 to C?187/13, C?194/13, C?195/13 and C?208/13, EU:C:2014:2147, paragraph 43).

52 In the light of the above considerations, it must be noted that national legislation, such as that at issue in the main proceedings, which, first, does not allow a lawyer and his client to agree remuneration in an amount below the minimum amount laid down in a regulation issued by a professional organisation of lawyers, such as the Supreme Council of the Legal Profession, without that lawyer being subject to a disciplinary procedure, and, secondly, which does not authorise the courts to order reimbursement of fees in an amount less than that minimum amount, is capable of restricting competition in the internal market within the meaning of Article 101(1) TFEU.

53 However, it should be noted that the legislation at issue in the main proceedings making mandatory a decision of an association of undertakings which has the object or effect of restricting competition or restricting the freedom of action of the parties or of one of them does not necessarily fall within the prohibition laid down in Article 101(1) TFEU, read in conjunction with Article 4(3) TEU (judgment of 4 September 2014, *API and Others*, C?184/13 to C?187/13, C?194/13, C?195/13 and C?208/13, EU:C:2014:2147, paragraph 46).

54 For the purposes of application of that provision to the present cases, account must first of all be taken of the overall context in which a decision of the association of undertakings was taken or produces its effects and, more specifically, of its objectives. It has then to be considered whether the consequential effects restrictive of competition are inherent in the pursuit of those objectives (judgments of 19 February 2002, *Wouters and Others*, C?309/99, EU:C:2002:98 paragraph 97; of 18 July 2013, *Consiglio Nazionale dei Geologi*, C?136/12, EU:C:2013:489, paragraph 53, and of 4 September 2014, *API and Others*, C?184/13 to C?187/13, C?194/13, C?195/13 and C?208/13, EU:C:2014:2147, paragraph 47).

55 In that context, it is important to verify whether the restrictions thus imposed by the rules at issue in the main proceedings are limited to what is necessary to ensure the implementation of legitimate objectives (see, to that effect, judgment of 18 July 2006, *Meca-Medina and Majcen v Commission*, C?519/04 P, EU:C:2006:492, paragraph 47; of 18 July 2013, *Consiglio Nazionale dei Geologi*, C?136/12, EU:C:2013:489, paragraph 54, and of 4 September 2014, *API and Others*, C?184/13 to C?187/13, C?194/13, C?195/13 and C?208/13, EU:C:2014:2147, paragraph 48).

56 However, having regard to the file before it, the Court is not entitled to assess whether legislation, such as that at issue in the main proceedings, which does not allow a lawyer and client to agree remuneration in an amount less than the minimum amount laid down in a regulation issued by a lawyers' professional organisation, such as the Supreme Council of the Legal Profession, can be deemed necessary for the implementation of a legitimate objective.

57 It is for the referring court to assess, in the light of the overall context in which the regulation

issued by the Supreme Council of the Legal Profession was taken or applies, whether, in the light of all the relevant material before it, the rules imposing the restrictions at issue in the main proceedings may be regarded as necessary for the implementation of that objective.

58 In the light of the foregoing, the answer to the first to third questions is that Article 101(1) TFEU, read in conjunction with Article 4(3) TEU, must be interpreted as meaning that national legislation, such as that at issue in the main proceedings, which, first, does not allow a lawyer and his client to agree remuneration in an amount less than the minimum amount laid down in a regulation issued by a professional organisation of lawyers, such as the Supreme Council of the Legal Profession, without that lawyer being subject to a disciplinary procedure, and, secondly, does not authorise the courts to order reimbursement of fees in an amount below that minimum amount, is capable of restricting competition in the internal market within the meaning of Article 101(1) TFEU. It is for the referring court to confirm whether such legislation, in the light of the specific detailed rules for the application thereof, actually meets with legitimate objectives and whether the restrictions thus imposed are limited to what is necessary to ensure that those legitimate objectives are given effect.

#### *The fifth and sixth questions*

59 By its fifth and sixth questions, the referring court asks, in essence, whether Article 101(1) TFEU, read in conjunction with Article 4(3) TEU and Directive 77/249, must be interpreted as precluding national legislation, such as that in the main proceedings, by virtue of which individuals and sole traders obtain reimbursement of lawyers' remuneration, ordered by a national court, if they have been defended by a legal adviser.

60 In that regard, it should be noted that that legislation cannot be regarded as requiring or encouraging the adoption of agreements, decisions or concerted practices contrary to Article 101 TFEU or as reinforcing the effects of such agreements, decisions or concerted practices.

61 Accordingly, Article 101(1) TFEU does not preclude national legislation, such as that in the main proceedings, by virtue of which individuals and sole traders obtain reimbursement of lawyers' remuneration, ordered by a national court, if they have been defended by a legal adviser.

62 Furthermore, since Directive 77/249 does not contain any provision governing the reimbursement, ordered by a court, of the remuneration of providers of legal services, it must be held that that national legislation does not fall within the scope of Directive 77/249.

63 In the light of the above considerations, the answer to the fifth and sixth questions is that Article 101(1) TFEU, read in conjunction with Article 4(3) TEU and Directive 77/249, must be interpreted as not precluding national legislation, such as that in the main proceedings, by virtue of which individuals and sole traders obtain reimbursement of lawyers' remuneration, ordered by a national court, if they have been defended by a legal adviser.

#### *The seventh question*

64 By its seventh question, the referring court asks whether Directive 2006/112, must be interpreted as precluding national legislation such as that at issue in the main proceedings, by virtue of which VAT forms an inseparable component part of registered lawyers' fees, with the result that those fees are subject to double taxation in respect of VAT.

65 In accordance with point (a) of the first subparagraph of Article 78 of Directive 2006/112, the taxable amount includes, inter alia, taxes, duties, levies and charges, excluding the VAT itself.

66 In that regard, it must be borne in mind that, by virtue of the Court's case-law, the principle of fiscal neutrality inherent in the common system of VAT precludes the taxation of a taxable person's business activities leading to double taxation (see, to that effect, judgments of 23 April 2009, *Puffer*, C?460/07, EU:C:2009:254, paragraph 46, and of 22 March 2012, *Klub*, C?153/11, EU:C:2012:163, paragraph 42).

67 In the present case, since the referring court noted in the request for a preliminary ruling in Case C?427/16 that the national legislation at issue in the main proceedings results in double taxation of lawyers' fees in respect of VAT, legislation of that kind is compatible neither with point (a) of the first subparagraph of Article 78 of Directive 2006/112 nor with the principle of fiscal neutrality inherent in the common system of VAT.

68 In these circumstances, the answer to the seventh question is that point (a) of the first subparagraph of Article 78 of Directive 2006/112 must be interpreted as precluding national legislation such as that at issue in the main proceedings, by virtue of which VAT forms an inseparable component part of a registered lawyers' fees, if that legislation leads to double taxation of those fees in respect of VAT.

### **Costs**

69 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (First Chamber) hereby rules:

1. **Article 101(1) TFEU, read in conjunction with Article 4(3) TEU must be interpreted as meaning that national legislation, such as that at issue in the main proceedings, which, first, does not allow a lawyer and his client to agree remuneration in an amount below the minimum amount laid down in a regulation issued by a lawyers' professional organisation, such as the Vissh advokatski savet (Supreme Council of the Legal Profession, Bulgaria), without that lawyer being subject to a disciplinary procedure, and, secondly, which does not authorise the courts to order reimbursement of fees in an amount less than that minimum amount, is capable of restricting competition in the internal market within the meaning of Article 101(1) TFEU. It is for the referring court to confirm whether such legislation, in the light of the specific detailed rules for the application thereof, actually meets legitimate objectives and whether the restrictions thus imposed are limited to what is necessary to ensure that those legitimate objectives are given effect.**

2. **Article 101(1) TFEU, read in conjunction with Article 4(3) TEU and Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services, must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, by virtue of which individuals and sole traders obtain reimbursement of lawyers' remuneration, ordered by a national court, if they have been defended by a legal adviser.**

3. **Point (a) of the first subparagraph of Article 78 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding national legislation such as that at issue in the main proceedings, by virtue of which VAT forms an inseparable component part of a registered lawyers' fees, if that legislation leads to double taxation of those fees in respect of VAT.**

[Signatures]

\* Language of the case: Bulgarian.