



CLGE General Assembly Cork

Focus on Art. 45 and the professions' European future

European keywords:

Treaty on European Union

Art. 39 Freedom of movement for workers

Art. 43 Freedom of establishment

Art. 49 Freedom to provide services

Directive on the recognition of professional qualifications
Directive proposal on services in the internal market

Cork, 07.04.2006



CLGE General Assembly Cork

Focus on Art. 45 and the professions' European future

Exceptions from the EU basic freedoms

Art. 43 concedes restrictions by national law concerning consumer protection, public interest or the necessary administration of justice.

Art. 45 says: The provisions of this chapter shall not apply, so far as any given Member State is concerned, to activities which in that State are connected, even occasionally, with the exercise of official authority.



CLGE General Assembly Cork

Focus on Art. 45 and the professions' European future

Restrictions concerning the freedoms of Art. 43 must be appropriate; otherwise the EU could open a 'treaty violation process'.

Art. 45 – The Member State has to prove that an activity, claimed to be outside the application of the EU-treaty, is an 'exercise of official authority'; otherwise the EU could start an 'infringement proceeding'.



CLGE General Assembly Cork

Focus on Art. 45 and the professions' European future

Conflict situation with the European Commission:

Are the activities of the German ,Öffentlich bestellter Vermessungsingenieur' an ,exercise of official authority'?

Expertise by Prof. Henssler and Dr. Kilian:

Conclusions, outgoing from the European Court's jurisdiction: The activities of the German ,Publicly Appointed Surveyor' are under the exception of Art. 45 / under national legal competence



CLGE General Assembly Cork

Focus on Art. 45 and the professions' European future

Importance of the Henssler expertise:

Member States with a comparable constitutional property definition – the Code Civil descendants – could claim for the legal situation of their ‚Appointed Surveyors‘, that property related survey activities are the ‚exercise of official authority‘ in the sense of Art. 45 and by this are due to national legislation.



CLGE General Assembly Cork

Focus on Art. 45 and the professions' European future

The interruption of the infringement proceeding ,against' Germany leaves us in a conflict situation:

National legal competence is not divisible into a national component and an open European part.

–The acceptance of the Art. 45 restriction to national legislation causes two speeds of European development for the surveying profession:

–The ,consultant', the liberal professional, is undoubtedly under European law and will follow the European trends.

–The ,Appointed Surveyors' must seek a way of compromising.



CLGE General Assembly Cork

Focus on Art. 45 and the professions' European future

Until now no other Member State has proved his national legislations' conformity with Art. 45.

The European Commission has not really given up its will to bring the ,appointed surveyors' under the European frame.

Under the impression of our Brussels' seminar I doubt that any other country's position is strong enough to resist the European approach.



CLGE General Assembly Cork

Focus on Art. 45 and the professions' European future

Today I am convinced, that Art. 45 is a temporary solution!

The recognition, that the 'Publicly Appointed' professional exercises official authority strengthens our position for the moment (if accepted by Europe).

On the long run we must develop a European position of the *appointed* and/or *consulting* professional inside the European framework.



CLGE General Assembly Cork

Focus on Art. 45 and the professions' European future

We should proceed in two steps:

- Members who are convinced that they are under Art. 45 should prove their position outgoing from the Hensler criteria.
- The CLGE/GE-workinggroup should be given the task to develop a model of a „European Survey Profession“ under the exceptions of Art. 43.



CLGE General Assembly Cork

Focus on Art. 45 and the professions' European future

We should proceed in two steps:

- Members who are convinced that they are under Art. 45 should prove their position outgoing from the Hennisler criteria.
- The CLGE/GE-workinggroup should be given the task to develop a model of a „European Survey Profession“ under the exceptions of Art. 43.



CLGE General Assembly Cork

Focus on Art. 45 and the professions' European future

Dear colleagues, ladies and gentlemen,
thank you for your attention!