



Department of Trade and Industry

Mr Mark Kober-Smith

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5 July 2006

Dear Mr Kober-Smith

Thank you for your emails of 31 May and 6 June, following up previous correspondence about the rights of UK notaries to practice in France, and asking a number of questions under the Freedom of Information Act. Responses to your questions, and other points raised in your emails, are set out below.

What percentage of last year's applications under SOLVIT for your help in removing barriers to work in Europe were successful in removing the barriers?

During the period January to December 2005, the UK SOLVIT Centre submitted ten cases against other Member States on barriers to work in Europe. Nine of those were on the recognition of professional qualifications, and one was on employment rights. Five of the cases were successful and were resolved to the satisfaction of the applicant. The remaining five were either withdrawn by the UK because of insufficient information or were rejected by other Member States citing justifications under EU legislation.

In the case of refusals by other states to allow UK nationals or firms to supply services in Europe, in how many cases was the argument of "official authority" used or the defence in Article 39(4) or Article 45 of the EU Treaty claimed last year?

In none of the cases submitted last year did the Member State concerned cite "official authority" or the provisions of Articles 39(4) or 45 of the EU Treaty in rejecting a case.

How often last year, in the citing of defences in 2 above, were fully argued reasons given, i.e. relating the specific activities prohibited to the case law of the ECJ?

Not applicable - see above.

What other means, other than SOLVIT, does the UK government have for persuading the Commission or recalcitrant EU nations, to allow free movement?

In addition to pursuing individual cases through SOLVIT, the UK Government seeks to address barriers to freedom of movement in the EU in negotiations and policy discussions with other Member States and the Commission. Most recently, as you know, the UK was a strong supporter of the Services Directive, including pressing for the inclusion of notaries, although this was not ultimately successful. As we have previously explained to you, where SOLVIT is not successful, the next stage in the process is for the individual concerned to make a formal complaint to the Commission, or to pursue the case through the courts. Member States may bring actions against other Member States in the ECJ under Article 227. However, as I noted in my last letter, actions between Member States are very rare, and the UK would only bring proceedings against another Member State in exceptional circumstances.

How many times has the Government sued, or helped others to sue, in the ECJ to enforce rights to work or supply services in the EU?

The UK has never brought Article 227 proceedings to judgement in the ECJ against another Member State, and to our knowledge, since 1990 we have not initiated any Article 227 proceedings before the Commission.

In your email to me of 6 June, you also ask whether the UK would fund you to bring a case against France and Spain in their national courts. The UK Government does not fund individuals to bring cases in this way. However, as previously indicated, if you make a formal complaint to the Commission, the UK Government will make clear to the Commission that it supports your case.

You raise the issue of whether all notarial activities should be classified as an exercise of "official authority". The UK Government agrees with you that some, if not all, notarial activities should not be classed as official authority. We made this clear in our response to the French SOLVIT Centre when they rejected your case, citing the French Cour de Cassation judgment of 1935 stating that notaries should not be considered to exercise public authority.

You mention that you approached the Commission eight years ago and it was not willing to take action in respect of your case. It is not clear from your email whether you lodged a formal complaint on that occasion. In any case, that was eight years ago, and if you wish to pursue your case now, it would be worth making a formal complaint to the Commission at this stage.

You ask whether the UK Government considers that a Directive can override a Treaty exemption. You are right that it is not possible to derogate from primary legislation in secondary legislation, and that therefore it would not be possible to rely on a provision in a Directive to override a Treaty provision. However, if it is the case that the definition of "official authority" in the Treaty does not cover all notarial activities, then a Directive that took that approach would not be in conflict with the Treaty. The advantage of getting the point written into a Directive would be that it would confirm agreement with our interpretation of the Treaty, and put the onus on any Member State that disagreed to challenge the interpretation as incorrect or be in breach of the Directive.

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You make the point that national courts are not obliged to bring cases to the ECJ. It is true a national court does not have to refer a case to the ECJ if it considers that the answer is clear and consequently it does not need a view from the ECJ. However, if you brought a case and it was not referred to the ECJ, you would in any case get a determination of the case in the country in question, although it would not be binding in other Member States. National courts are under a duty to consider very carefully whether they should refer questions to the ECJ. If they do not refer and give a ruling that subsequently appears to be a manifest breach of Community law, the relevant Member State may be liable in damages.

You ask whether the UK will demand reasons from the French Government for their refusal to let foreign notaries practice in France. The French SOLVIT Centre provided a reason in its rejection of the case (official authority) - albeit one with which neither you nor the UK agrees. Again, if you wish to probe this further, you would need to make a formal complaint to the Commission or bring a case in the French courts.

You raise the costs you will incur if you sue France. There is no charge for you to lodge a complaint with the Commission.

Finally, you ask if the UK Government will give you office space in a UK consulate in France or Spain. The UK Government does not make consular office space available for such purposes.

Regards,

Angela Pearce