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Gloss on the Judgment of Court of Justice of the European Union of 19 February 2002, Case C-309/99, *J.C.J. Wouters, J.W. Savelbergh and Price Waterhouse Belastingadviseurs BV v. Algemene Raad van de Nederlandse Orde van Advocaten*, Intervener Raad van de Balies van de Europese Gemeenschap

Abstract. In its judgment of February 19, 2002, in Case C-309/99 (*Wouters*), the Court of Justice of the European Union (CJEU) sanctioned the permissibility of the ban on the establishment of companies by lawyers together with chartered accountants. At the same time, the provisions of the 1993 Dutch Samenwerkingsverordening, which prohibits any kind of integrated cooperation between attorneys and chartered accountants, were found not to be in conflict with Article 101 TFEU (then Article 81 TEC). This is because a prohibition of this nature has been recognized by the CJEU as necessary for the proper practice of the legal profession as it is organized in a member state – in this case, the Netherlands. In Poland, chartered accountants are a profession of public trust, and thus there are no grounds for maintaining a prohibition on the establishment of partnerships of attorneys and chartered accountants.

Keywords: legal advisors – advocate – legal companies – chartered accountant – professional ethics

Theses

1. Prohibition of multi-disciplinary partnerships between members of the Bar and accountants in the Netherlands.

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2. The unjustifiability of the prohibition of the foundation of partnerships of attorneys and auditors in Poland.

Introduction

The judgment addressed an extremely important issue for legal corporations, namely the applicability of competition rules under EU law to the legal profession. At issue in the *Wouters* case was a rule established by the Dutch Bar Council prohibiting attorneys from forming partnerships with non-lawyers (with chartered accountants, partners of the Dutch branch of the then-existing Arthur Andersen). The Court of Justice of the European Union (CJEU) found that the ban imposed restricts competition, but is objectively justified by the need to ensure that a lawyer acts fully independently, loyally, with professional secrecy, and respect for the rules on avoiding conflicts of interest.[1]

1. Core issues addressed in the case

The C-309/99 ruling addresses the question of whether the existence of a rule of reason can be accepted under EU competition law, in particular whether – in determining whether an agreement or decision falls within the scope of Article 101 of the Treaty on The Functioning of the European Union (TFEU) (formerly Article 81 (1) of the Treaty Establishing the European Community [TEC]) – both economic and non-economic considerations may be relevant, and if so, which considerations play a role (whether, for example, professional ethics may play a role).[2]

Underlying the ruling under comment is a regulation adopted by the Samenwerkingsverordening of 1993 (resolutions of the Dutch Bar Association), which stipulates that lawyers interested in cooperating

[1] A. Bolecki, *Porozumienia zakazane ze względu na cel lub skutek – aktualne tendencje orzecznicze w Unii Europejskiej*, "Internetowy Kwartalnik Antymonopolowy i Regulacyjny" 2012, no. 3, p. 11; L. Mella Méndez, M. Kurzynoga, *The Presumption of the Employment Relationship of Platform Workers as an Opportunity to Eliminate Obstacles Arising from Competition* Law *in the Conclusion of a Collective Agreement: The Example of Spain*, "Białostockie Studia Prawnicze" 2023, vol. 28, no. 4, pp. 202–203.

[2] A.J. Vossestein, *Case C-35/99, Arduino, Judgment of February 19, 2000, Full Court; Case C-309/99, Wouters et al. v. Algemene Raad van de Nederlandse Orde van Advocaten, Judgment of February 19, 2002*, "Common Market Law Review" 2002, vol. 39, no. 4, pp. 841–863.

with members of another professional category must obtain permission from the Supreme Bar Council. Article 4(c) of the 1993 Samenwerkingsverordening stipulates that a lawyer may undertake and conduct cooperation only with members of other professional groups recognized by the supreme council in accordance with Article 6 of the regulation.[3] It is also worth noting the importance of the guidelines issued by the Dutch Bar on cooperation between attorneys and members of other professions (authorized). The aforementioned guidelines oblige attorneys to respect ethical and deontological rules, stipulating that when entering into cooperation with a representative of another liberal profession, the attorney may not restrict or impede compliance with the ethical or deontological standards to which he is subject.

The 1993 Samenwerkingsverordening in question prohibits attorneys practising in the Netherlands from entering into multidisciplinary partnerships with persons in the professional category of accountants. As a result, the governing bodies of the Dutch Bar Council concluded that it would be contrary to the Samenwerkingsverordening of 1993 for an attorney to collaborate with non-attorneys and practise under the name "Arthur Andersen & Co., advocaten en belastingadviseurs." The decision of the governing bodies of the Dutch Bar Council was challenged due to the claim that it was contrary to the competition provisions of the TFEU, as well as the freedom of establishment and the free provision of services.

2. Applicability of EU competition law to legal professions

The preliminary ruling, C-309/99 (*Wouters*), raised the question of the application of EU competition law to professions. The first key question

[3] According to Article 6 of the 1993 Regulation: (1) The authorization referred to in Article 4(c) may be granted on condition that: (a) the members of that other professional category practise a profession, and (b) the exercise of that profession is conditional upon possession of a university degree or an equivalent qualification; and (c) the members of that professional category are subject to disciplinary rules comparable to those imposed on members of the Bar; and (d) entering into partnership with members of that other professional partnership is not contrary to Articles 2 or 3. (2) Accreditation may also be granted to a specific branch of a professional category. In that case, the conditions set out in (a) to (d) above shall be applicable, without prejudice to the General Council's power to lay down further conditions. (3) The General Council shall consult the College of Delegates before adopting any decision as mentioned in the preceding subparagraphs of this Article.

was whether the concept of an association of undertakings applies to a professional association of lawyers. The concept of an association of undertakings is not defined in the Treaty. As a general rule, an association is composed of enterprises of the same type and is responsible for representing and defending their common interests *vis-à-vis* other business entities, government bodies and the general public.[4] Referring to the question posed, the Court ruled that a decision issued on the basis of the Samenwerkingsverordening 1993 should be considered a decision of an association of undertakings within the meaning of Article 101 (1) TFEU (former Article 81 (1) TEC). Thus, the concept of an association companies applies to a professional association of lawyers, such as the Nederlandse Orde van Advocaten.

Another issue raised in the preliminary questions concerned the restriction of competition or the distortion of competition within the internal market by the Samenwerkingsverordening 1993 regulations. The Court found that the regulation, despite entailing restrictive effects on competition, was necessary for the proper practice of the legal profession as it operates in the Member State concerned. In recital 107, the Court acknowledged that "the 1993 regulation may … reasonably be regarded as necessary in order to ensure the proper practice of the legal profession as it is organized in the Member State concerned."

The prohibition on multidisciplinary cooperation between members of the bar and accountants, as established by the resolution adopted by the Bar in the Netherlands, is therefore likely to restrict competition within the internal market. Similarly, in his opinion, Advocate General Léger stated that the effect of the contested regulation is to restrict competition in the common market. In Léger's view, the restriction imposed by the regulation affects an important element of competition because it directly affects the services that lawyers can offer on the market, and the regulation therefore has the effect of restricting competition to a perceptible degree. It is worth noting the CJEU's observation in Recital 99 of the judgment under review, which emphasizes that (in the absence of Community standards in the field in question) each Member State remains free, in principle, to organize the practice of the legal profession in its territory. Consequently, the rules on the practice

[4] Opinion of Advocate General Leger delivered on 10 VII 2001 in Case C-309/99, *Wouters, J.W. Savelbergh, Price Waterhouse Belastingadviseurs v. Algemene Raad van de Nederlandse Orde van Advocaten*. Opinion available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61999CC0309.

of the profession of lawyer may vary considerably from one Member State to another, which in practice means that different provisions may also be encountered in each Member State to guarantee the practice of the profession in a correct manner and in the public interest.[5] Moreover, in Recital 108 of the judgment in Case C-309/99, it was made clear that even if possibly different rules are applied in another member state, the Dutch Bar, taking into account the existing regulations to which attorneys and chartered accountants are subject, respectively, is fully entitled to adopt the rules arising from the Samenwerkingsverordening 1993 and this does not imply a contradiction with EU law.

In the judgment under discussion in Case C-309/99, the CJEU stressed that, according to the concept prevailing in the Netherlands, the basic rules accompanying the practice of the profession of a lawyer include the duty to defend the client under conditions of complete independence and in the client's sole interest, the avoidance of conflicts of interest and the duty to strictly observe professional secrecy. These rules dictate that a lawyer must remain in a situation of independence from public authorities, other businesses and third parties, whose influence he should not be subject to.[6]

It is worth noting that the statements adopted in the voted ruling are seen as a manifestation of the Court's application of the rule of reason under the current Article 101 (1) TFEU.[7] The assessment of whether an agreement restricts competition within the meaning of Article 101 (1) TFEU requires an examination of what the state of competition, actual or potential, on the relevant market would have been had the agreement not been concluded, taking into account internal competition, i.e. between the parties to the agreement, and external competition, i.e. between the parties to the agreement and a third party and between third parties.[8] It must be established whether the agreement has a significant effect on competition, i.e., whether it falls within the scope of the de

[5] M. Biliński, M. Jaś-Nowopolska, H. Wolska, *Dopuszczalność posiadania udziałów majątkowych przez osoby niewykonujące zawodów prawniczych w działalności podmiotów świadczących pomoc prawną (adwokatów) w prawie polskim i niemieckim*, "Przegląd Ustawodawstwa Gospodarczego" 2024, vol. 77, no. 6, pp. 43–49.

[6] Recitals 100 and 102 of Judgment C-309/99.

[7] M. Grzelak, *Glosa do wyroku w sprawie Wouters*, in: *Orzecznictwo sądów wspólnotowych w sprawach konkurencji w latach 1964–2004*, eds. A. Jurkowska, T. Skoczny, Warszawa 2007, pp. 727–738.

[8] See Guidelines on the Application of Article 101 (3) TFEU (former Article 81 (3) TEC), OJ 2004, C-101/97, paras. 17–27.

minimis rule.[9] In light of Article 101 (3) of the TFEU, it must be stated that certain restrictive agreements may produce objective economic benefits that outweigh the negative effects of the restriction of competition, and exempted these agreements from the scope of the prohibition.

Another issue the Court had to decide was whether attorneys are undertakings. As is clear from the ruling voted on, the Court found that the Member State Bar is not an undertaking within the meaning of Article 102 of the TFEU (former Article 82 of the TEC) because it is not engaged in an economic activity. Nor can it be classified as a group of undertakings for the purposes of that provision, since the registered members of the Member State Bar are not sufficiently linked to each other to adopt the same behaviour on the market that would have the effect of eliminating competition between them. According to the position of the Court of Justice of the European Union, the very concept of "enterprise" belongs to the autonomous concepts of EU law, independent of the laws of the Member States.[10] It should be recognized that the purpose of this treatment of the undertaking is to ensure that EU competition rules can be uniformly applied in all member states, regardless of the definition of the concept under national legislation.[11] Taking into account previous CJEU case law, it can be assumed that an undertaking within the meaning of EU competition law is "any entity engaged in an economic activity, irrespective of its legal status and the way in which it is financed."[12]

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[9] D. Kostecka-Jurczyk, *Porozumienia kooperacyjne w polskim i europejskim prawie konkurencji*, Wrocław 2014, p. 95.

[10] Judgment of Court of Justice of the European Communities (CJEC) of 23 IV 1991, Case C-41/90, *Klaus Höfner and Fritz Elser v. Macrotron GmbH*, ECR 1991, p. I-1979, para. 21; Judgment of CJEC of 11 XII 1997, Case C-55/96, *Job Centre coop. arl.*, ECR 1997, p. I-7119, para. 21; for more detail on this subject, J.L. Buendia Sierra, *Exclusive rights and state monopolies under EC law: Article 86 (formerly Article 90) of the EC Treaty*, trans. A. Read, Oxford – New York 1999, p. 30; C. Koenig, *Determining*, p. 240.

[11] *System Prawa Administracyjnego*, vol. 8B, *Publiczne prawo gospodarcze*, eds. R. Hauser, Z. Niewiadomski, A. Wróbel, Warszawa 2018, p. 831 and literature cited therein.

[12] Judgment of CJEC of 23 IV1991, Case C-41/90, *Klaus Höfner and Fritz Elser v. Macrotron GmbH*, ECR 1991, p. I-1979, para. 21; Judgment of European Court of Justice (ECJ) of 17 II 1993, joined Cases C-159/91 and C-160/91, *Christian Poucet v. Assurances générales de France and Caisse mutuelle régionale du Languedoc-Roussillon*, ECR 1993, p. I-637, para. 17; Judgment of CJEU of 16 III 2004, joined Cases C-264/01, C-306/01, C-354/01, C-355/01, *AOK Bundesverband, Bundesverband der Betriebskrankenkassen (BKK), Bundesverband der Innungskrankenkassen, Bundesverband der landwirtschaftlichen Krankenkassen, Verband der Angestelltenkrankenkassen eV, Verband der Arbeiter-Ersatzkassen, Bundesknappschaft and See-Krankenkasse v. Ichthyol-Gesellschaft Cordes, Hermani & Co., Mundipharma GmbH, Gödecke GmbH*

Since there are insufficient structural links between the lawyers, they cannot be considered to be in a jointly dominant position within the meaning of Article 102 of the Treaty,[13] and therefore an institution such as the Dutch Bar constitutes neither an undertaking nor a group of undertakings.

The next issue that was considered within the framework of the ruling in question concerned the compatibility of the prohibition of integrated cooperation between attorneys and certified public accountants provided for in the Samenwerkingsverordening 1993 with the provisions of Articles 49 and 56 TFEU (former Articles 43 and 49 TEC). The Court was tasked with resolving the question of the application of the treaty provisions on the right of establishment and freedom to provide services to a regulation of the Samenwerkingsverordening 1993 type. It should be noted that the obligation to comply with the provisions of Articles 49 and 56 TFEU also applies to regulations of a non-public nature, which are intended to regulate independent work and the provision of services in a collective manner. It follows from the CJEU's established case law that a restriction on the freedom of establishment may be permissible only if it is justified by overriding reasons of general interest. It should, moreover, be appropriate to guarantee the achievement of the objective in question and not go beyond what is necessary to achieve it.[14] The essence of the freedom to provide services is expressed in Articles 56 and 57 TFEU. These provisions remove restrictions and constitute a prohibition of discrimination in the free provision of services. Pursuant to Article 56 TFEU, "restrictions on the free provision of services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the recipient of the service."[15]

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and Intersan, Institut für pharmazeutische und klinische Forschung GmbH, ECR 2004, p. I-2493, para. 46.

[13] See, similarly, the judgment of 31 III 1998 in joined Cases C-68/94 and C-30/95, *France and Others v. Commission*, ECR 1998, p. I-1375, para. 227, and of 16 III 2000 in joined Cases C-395/96 P and C-396/96 P, *Compagnie maritime belge transports SA and Others v. Commission*, ECR 2000, p. I-1365, paras. 36 and 42.

[14] Judgment of the CJ of: 13 XII 2005, Case C-446/03, *Marks & Spencer v. David Halsey (Her Majesty's Inspector of Taxes)*, ECR 2005, p. I-10837, para. 35; of 25 X 2017, Case C-106/16, *Polbud – Wykonawstwo*, EU:C:2017:804, para. 52; of 25 IV 2024, Case C-276/22, *Edil Work 2 and S.T.S.r.l v STE S.a.r.l.*, ECLI:EU:C:2024:348.

[15] See M. Etel, *Normatywna koncepcja usług ukształtowana w dorobku Unii Europejskiej*, "Forum Prawnicze" 2020, no. 1(57), pp. 22–35.

As the Court ruled, the provisions of Articles 49 and 56 of the TFEU do not preclude a legal regulation such as the Samenwerkingsverordening 1993, which prohibits any kind of integrated cooperation between attorneys and certified public accountants, as this regulation may be considered necessary for the proper practice of the legal profession under the rules according to which it operates in a Member State.

3. Restrictions on competition in the legal market is a global issue

The issues raised by the TUSE ruling in the *Wouteres* case are essentially universal and transcend EU borders. In the United States, the largest legal market in the world, as well as in most European countries, there is a ban on the joint practice of lawyers and accountants in order to protect the basic legal obligations of independence and the impermissibility of representing conflicting interests. After a heated debate, the American Bar Association opposed an attempt to lift this ban.[16]

Although the governments of the Netherlands, Denmark, Germany, France, Austria, Portugal, Sweden and the government of the Principality of Liechtenstein took part in the proceedings in question, the conclusions of this judgment also directly affect the rules of the legal profession in Poland. The structure of the Dutch and Polish legal professions is largely the same. Both legal professions are organized in a two-tier system of chambers, in which all attorneys are grouped by law. Chambers (Orde) are public-law corporations to which the state legislature has delegated the power to govern themselves. The organs are composed exclusively of representatives of the profession elected by representatives of the legal profession, while the State exercises legal supervision over their activities.

In the Wouters ruling, the CJEU first confirmed that lawyers are entrepreneurs. This is not surprising and is a logical consequence of the Court's 1974 ruling on the matter. At that time, the CJEU denied that lawyers are an emanation of the state, to which the prohibition of discrimination and the freedom to provide services and freedom of establishment do not apply because of their participation in the performance of public functions, even if they are cornerstones of the rule

[16] H. Weil, *Der Rechtsanwalt – ein Unternehmer besonderer Art*, "BRAK-Mitteilungen-Fachzeitschrift der Bundesrechtsanwaltskammer" 2002, no. 2, p. 50.

of law[17] (cf. also Case C-33/74, *van Binsberghen*, 1975). In this context, it is not surprising that the Court of Justice considered lawyers to be entrepreneurs within the meaning of 101 TFEU. However, the Court recognized that their activities are hybrid in nature with all the consequences that this dual role entails. On the one hand, they act as an organ of the judiciary, and on the other, as entrepreneurs, hence they can enjoy the freedoms of the treaty, but only to the extent that this does not contradict the dignity and ethics of their profession.

As the Court has argued, under the concept prevailing in the Netherlands, where, under Article 28 of the Advocatenwet, the Dutch Bar is responsible for establishing rules to ensure the proper practice of the legal profession, the basic rules are: the obligation to defend the client under conditions of complete independence and in the client's sole interest, the avoidance of conflicts of interest, and the obligation to strictly observe professional secrecy. The above ethical obligations have a considerable impact on the structure of the market for legal services, including, in particular, the possibility of joint practice of the lawyer's profession with representatives of other liberal professions operating in this market. They require the lawyer to remain in a situation of independence from public authorities, other businesses and third parties, whose influence he should not be subject to. He must ensure that the actions he takes in a case are determined solely by the interests of the client. The profession of certified public accountant, on the other hand, is not subject (particularly in the Netherlands) to similar deontological requirements.

In this regard, as the Advocate General rightly pointed out in paragraphs 185 and 186 of the opinion, there is the possibility of some sort of contradiction between the "advice" activity, performed by a lawyer, and the "audit" activity, performed by a certified public accountant. As can be seen from the letter filed by the defendant in the main case, the task of an expert accountant in the Netherlands is to approve financial statements. For this purpose, he analyses and checks the accounts of his clients in an objective manner in order to be able to provide interested third parties with his personal opinion on the reliability of the accounting data. It follows from the above that in the Netherlands, unlike Germany or Poland, for example, an expert accountant is not

[17] Judgment of CJEU of 21 VI 1974, Case 2/74, *Jean Reyners vs. État belge*, ECR 1974, p. 00631.

subject to the obligation of professional secrecy, analogous to that to which a lawyer is subject.

The concepts developed in the Wouters ruling as well as the regulatory direction adopted in the Netherlands are to a great extent in line with Polish regulations on the practice of the advocacy profession. Pursuant to § 9 of the Collection of Principles of Advocacy Ethics and Dignity of the Profession (Code of Advocacy Ethics) dated October 10, 1998, as amended,[18] it is forbidden to combine with the profession of an advocate any occupation the performance of which would offend the dignity of the advocacy profession or limit its independence and undermine confidence in the Bar. Combining activities may not lead to a decrease in the quality of legal assistance provided by an advocate or to a loss of confidence that is the basis of the relationship binding an advocate with a client. Practising as an attorney means assuming a special responsibility to the public for the protection of their rights.

With registration as an attorney, members of the Bar accept certain restrictions in the professional sphere that do not bind those in other professions.[19] The literal wording of § 9 of the Code of Ethics does not provide a clear picture of extra-legal professions, activities or functions that could violate the ethics of the profession. Some interpretive support is offered by the earlier wording of this provision, as seen in the 2018 Code.[20] Pursuant to it, occupations that interfere with the practice of the profession of advocacy were considered, in particular, of a position of manager in another person's enterprise, holding the

[18] Pursuant to Resolution No. 93/2023 of the NRA of 26 V 2023, the consolidated text of the Collection of Principles of Bar Ethics and Dignity of the Profession (Code of Bar Ethics) adopted by the Supreme Bar Council on 10 X 1998 (Resolution No. 2/XVIII/98) with amendments introduced by Resolution of the Supreme Bar Council No. 32/2005 of 19 XI 2005 is announced, Resolutions of the Supreme Bar Council No. 33/2011 – 54/2011 of 19 XI 2011, Resolution No. 64/2016 of the Supreme Bar Council of 25 VI 2016, Resolution No. 66/2019 of the Supreme Bar Council of 21 VIII 2019, Resolution No. 66/2022 of the Supreme Bar Council of 10 VIII 2022, and Resolution No. 93/2023 of the Supreme Bar Council of 26 V 2023.

[19] J. Naumann, *Zbiór Zasad Etyki Adwokackiej i Godności Zawodu. Komentarz*, Warszawa 2023, p. 154.

[20] Pursuant to Resolution No. 52/2011 of the NRA of 19 XI 2011, the unified text of the Collection of Principles of Bar Ethics and Dignity of the Profession (Code of Bar Ethics) adopted by the Supreme Bar Council on 10 X 1998 (Resolution No. 2/XVIII/98) with amendments introduced by Resolution of the Supreme Bar Council No. 32/2005 of 19 XI 2005 is announced, Resolutions of the Supreme Bar Council No. 33/2011 – 54/2011 of 19 XI 2011, and Resolution 64/2016 of the Supreme Bar Council of 25 VI 2016.

position of a member of the board of directors, proxy in commercial law companies (this does not apply to companies engaged in the provision of legal assistance), undertaking professional mediation in commercial transactions, running a law office in the same premises with a person engaged in another activity, if such a situation were contrary to the rules of advocacy ethics.

4. Wouters case vs. Polish regulations

Analogous to the duty of Dutch attorneys, Polish attorneys are obliged to strictly observe the duty of professional secrecy. Pursuant to § 19 of the Code of Ethics, an advocate is obliged to keep secret and protect from disclosure or unwanted use everything he learns about in connection with the performance of his professional duties (para. 1). The materials in the attorney's file are covered by attorney-client privilege (para. 2). Secrecy is further covered by all messages, notes and documents concerning the case obtained from the client and other persons, regardless of where they are located (para. 3). The obligation to observe professional secrecy is unlimited in time (para. 7).

In relation to the Dutch provisions on the rules of practising law, the Polish legislator went even further and explicitly provided for the impossibility of practising law in Poland in a partnership with expert accountants (chartered accountants). Pursuant to Article 4a of the Law on Advocacy,[21] an advocate may practise in an advocate's office, in an advocate's team and in a civil, general or partnership in which the partners or partners, respectively, are advocates, legal advisers, patent attorneys, tax advisers or foreign lawyers. The same rule applies to the performance of activities in a limited partnership or limited joint-stock partnership in which the general partners are attorneys, legal advisors, patent attorneys, tax advisors or foreign lawyers. The exclusive object of all the above-mentioned companies is to provide legal assistance.

However, what significantly differentiates the regulatory conditions of Dutch law analysed in the Wouters ruling from the regulatory conditions of Polish law are the provisions of the Act on Statutory Auditors,

[21] Act of 26 V 1982 – Law on Advocacy (Journal of Laws of 1982, No. 16, item 124 as amended).

Audit Firms and Public Supervision.[22] Under its provisions, auditors in Poland enjoy the privilege of a profession of public trust, giving the guarantee to practise their profession with a sense of responsibility, with all integrity and impartiality, in accordance with the law and applicable standards. Statutory auditors are obliged to act in accordance with their oath,[23] constantly improve their professional qualifications, including by undergoing mandatory in-service training each calendar year, comply with national standards of practice, independence requirements and principles of professional ethics, regularly pay their membership fee, and comply with the resolutions of the bodies of the Polish Chamber of Statutory Auditors insofar as they relate to statutory auditors.

Statutory auditors also form a professional self-government, which is the Polish Chamber of Statutory Auditors. The chamber's tasks include controlling the fulfilment of mandatory professional development obligations by auditors and conducting disciplinary proceedings for violations of mandatory professional development obligations, as well as conducting disciplinary proceedings against auditors for misconduct other than that arising in the performance of attestation services and related services in accordance with national professional standards (Article 23 in conjunction with Article 25 of the Law on Certified Public Accountants).

Finally, the auditor and the audit firm are obliged to keep confidential all information and documents to which they had access in the course of providing attestation and related services. The obligation of professional secrecy is not limited in time (Article 78 (2) of the Law on Certified Public Accountants).

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[22] Law of 11 V 2017 on auditors, audit firms and public supervision (Journal of Laws of 2024, item 1035), hereinafter: "the Law on Auditors."

[23] Article 7 of the Law on Statutory Auditors: "1.The oath of office taken by a certified public accountant reads as follows: «I swear that as a certified public accountant I will practise my profession with a sense of responsibility, with all integrity and impartiality, in accordance with the provisions of the law and the applicable standards for the practice of the profession. In my conduct I will be guided by the principles of professional ethics and independence. I will keep the facts and circumstances learned in the course of my work as a certified public accountant secret from third parties.» The oath may be taken with the addition of the words «So help me God.» 2. The oath shall be taken by the President of the National Council of Certified Auditors or another authorized member of the National Council of Certified Auditors."

Conclusions: should Polish law regarding legal professions be amended

Looking at the shape of Polish regulations on auditors through the prism of the CJEU's Wouters ruling, there is no rational argument why the prohibition on practising law in Poland should be maintained in regard to partnership with auditors. Any objections to the principles of the auditing profession raised in the Wouters ruling are not covered by Polish legislation. In the Polish reality, auditors practise a profession of public trust, are subject to public supervision, and operate within the framework of a professional self-government, which establishes common standards of ethics in the practice of the profession and rules of disciplinary responsibility. Finally, auditors are obliged to maintain professional secrecy, which, like that of the legal profession, is unlimited in time.

Therefore, taking into account the needs of modern business in terms of obtaining highly specialized comprehensive services from both the legal and financial spheres, it seems reasonable to claim that in Poland it would be appropriate to start a discussion on expanding the possibilities of inter-corporate cooperation between attorneys and auditors.

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