ROBERT SCHUMAN

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IMPROVING
THE AWARENESS OF COMMUNITY LAW
FOR THE LEGAL PROFESSIONS

GUIDE TO THE CASE-LAW

OF THE EUROPEAN COURT OF JUSTICE IN ARTICLES 52 ET SEQ. OF THE EC TREATY

FREEDOM OF ESTABLISHMENT

EUROPEAN COMMISSION
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GUIDE TO THE CASE LAW

of the European Court of Justice on Articles 52 *et seq.* EC Treaty

FREEDOM OF ESTABLISHEMENT

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PREFACE

The present guide forms part of a series of guides concerning the case law of the European Court of Justice. To date this series includes publications in English, French and German concerning Article 52 EC Treaty (freedom of establishment) and Article 59 EC Treaty (freedom to provide services).

The guidebooks are produced and updated by the European Commission, Directorate-General XV (Internal market and financial services), Unit E1 (freedom of establishment and freedom to provide services).

As the present guide is intended to facilitate the understanding and analysis of issues concerning Article 52 EC Treaty, it complements the Robert Schuman Project which aims to increase overall awareness of Community law among judges and lawyers throughout the Member States.

The project's spheres of action include training programmes to increase the awareness and consequent application of EC law for judges and lawyers, and the production of information tools aiming to improve understanding and access to Community law.

Whereas the present guide is produced entirely by the services of the Commission, the Robert Schuman Project functions as a partnership between the Commission and eligible organisations, by which financial support is provided to organisations willing to set up training initiatives for judges and lawyers or to produce information sources on EC law.

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INTRODUCTION

The completion of the Internal Market requires the free movement of services. This freedom is set out in Article 59 of the EC Treaty; it has been the source of much innovative case law of the Court of Justice of the European Community.

This guide aims to present the cases in a practical way by gathering together the essential passages of the cases, thus making it possible to find all the relevant parts of the judgement without having to consult the complete text of the case. The structure of the guide, following the recent case law, provides an approach to Article 59 intended to help not only academics, but also practitioners directly involved in detecting infringements and showing the possible need for harmonisation.

To highlight the essential passages, without ignoring their context, the reasoning of the Court is given without alteration, but the key words are shown in ***bold and italics***. It must be pointed out that this method of presentation does not commit the Court, only the editors.

Within each chapter, cases are cited in reverse chronological order starting with the most recent. The dynamic development of the interpretation by the Court of the concept of "restriction" on free movement of services can thus be followed.

UPDATES OF THE GUIDE

The third edition of this guide follows those of 30 June 1994 and 31 December 1995 and is the first edition to be published in English. It collects together the most interesting extracts of the case law of the ECJ including that produced between 1 January 1996 and 31 December of the same year.

List of Cases

1. DEFININITION OF "ESTABLISHMENT"

1.1. Economic activity

In response to those arguments, it is to be remembered that, having regard to the objectives of the Community, ***sport is subject to Community law only in so far as it constitutes an economic activity within the meaning of Article 2 of the Treaty*** (see Case 36/74 *Walrave v Union Cycliste Internationale* [1974] ECR 1405, paragraph 4). This applies to the activities of professional or semi-professional footballers, where they are in gainful employment or provide a remunerated service (see Case 13/76 *Donà v Mantero* [1976] ECR 1333, paragraph 12).

Case C-415/93 Bosman [1995] ECR 4353 §73

It must be observed *in limine* that, in view of the objectives of the European Economic Community, ***participation in a community based on religion or another form of philosophy falls within the field of application of Community law only in so far as it can be regarded as an economic activity within the meaning of Article 2 of the Treaty.***

Case C-196/87 Steymann [1988] ECR 6159 §9

In a case such as the one before the national court it is impossible to rule out *a priori* the possibility that work carried out by members of the community in question constitutes an economic activity within the meaning of Article 2 of the Treaty. ***In so far as the work, which aims to ensure a measure of self-sufficiency for the Bhagwan Community, constitutes an essential part of participation in that community***, the services which the latter provides to its members may be regarded as being an indirect *quid pro quo* for their work.

Case C-196/87 Steymann [1988] ECR 6159 §12

However, it must be observed, as the Court held in its judgement of 23 March 1982 in Case 53/81 *Levin v Staatssecretaris van Justitie* ((1982)) ECR 1035, ***that the work must be genuine and effective and not such as to be regarded as purely marginal and ancillary***. In this case the national court has held that the work was genuine and effective.

Case C-196/87 Steymann [1988] ECR 6159 §13

Accordingly, the answer given to the first question must be that Article 2 of the EEC Treaty must be interpreted as meaning that ***activities performed by members of a community based on religion or another form of philosophy as part of the commercial activities of that community constitute economic activities in so far as the services which the***

community provides to its members may be regarded as the indirect quid pro quo for genuine and effective work.

Case C-196/87 Steymann [1988] ECR 6159 §14

1.2. Self-employed activities (including the formation and operation of undertakings and the creation of agencies, branches or subsidiaries)

The right of establishment, provided for in Articles 52 to 58 of the Treaty, is granted both to legal persons within the meaning of Article 58 and to natural persons who are nationals of a Member State of the Community. Subject to the exceptions and conditions laid down, it ***allows all types of self-employed activity to be taken up and pursued on the territory of any other Member State, undertakings to be formed and operated, and agencies, branches or subsidiaries to be set up.***

Case C-55/94 Gebhard [1995] ECR 4165 §23

In the general programme for the abolition of restrictions on freedom of establishment, adopted on 18 December 1961 pursuant to Article 54 of the Treaty, the Council proposed to eliminate not only overt discrimination, but also any form of disguised discrimination, by designating in Title III(b) as restrictions which are to be eliminated, 'any requirements imposed, pursuant to any provision laid down by law, regulation or administrative action or in consequence of any administrative practice, in respect of ***the taking up or pursuit of an activity as a self-employed person*** where, although applicable irrespective of nationality, their effect is exclusively or principally to hinder ***the taking up or pursuit of such activity by foreign nationals'*** (OJ, English Special Edition, Second Series, ix, p.8).

Case C-71/76 Thieffry [1977] ECR 765 §13

After having stated that 'restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be abolished by progressive stages in the course of the transitional period', ***Article 52 expresses the guiding principle in the matter by providing that freedom of establishment shall include the right to take up and pursue activities as self-employed persons*** 'under the conditions laid down for its own nationals by the law of the country where such establishment is effected'.

Case C-2/74 Reyners [1974] ECR 631 §18

1.3. Cross-border character

1.3.1. General principles

Although the provisions in the Treaty relating to freedom of movement for persons do not apply to situations which are purely internal to a Member State, the Court has already held that Article 52 of the Treaty ***may not be interpreted in such a way as to exclude from the benefit of Community law the nationals of a given Member State when, owing to the fact that they have lawfully resided on the territory of another Member State and have there acquired a vocational qualification which is recognised under Community law, they are, with regard to their State of origin, in a situation which may be assimilated to that of any other persons enjoying the rights and liberties guaranteed by the Treaty*** (see judgements in Case 115/*78 Knoors v Staatssecretaris voor Economische Zaken* [1979] ECR 399, paragraph 24, and in Case 61/89 *Bouchoucha* [1990] ECR I-3551, paragraph 13).

Case C-19/92 Kraus [1993] ECR 1663 §15

The same reasoning must be followed as regards Article 48 of the Treaty. In its judgement in *Knoors*, cited above (paragraph 20), the Court held that ***freedom of movement for workers and the right of establishment guaranteed by Article 48 and 52 of the Treaty were fundamental rights in the Community system, and would not be fully realised if the Member States were able to refuse to grant the benefit of the provisions of Community law to those of their nationals who had taken advantage of its provisions to acquire vocational qualifications in a Member State other than that of which they were nationals.***

Case C-19/92 Kraus [1993] ECR 1663 §16

As the Court stated in its judgment in Case 204/87 Bekaert [1988] ECR 2029, ***the absence of any element going beyond a purely national setting in a given case means***, in matters of freedom of establishment, ***that the provisions of Community law are not applicable*** to such a situation.

Joined Cases C-54/88 Eleonora [1990] ECR 3537 §11

In fact, these liberties, which are fundamental in the Community system, ***could not be fully realised if the Member States were in a position to refuse to grant the benefit of the provisions of Community law to those of their nationals who have taken advantage of the facilities existing in the matter of freedom of movement and establishment and who have acquired, by virtue of such facilities, the trade qualifications referred to by the directive in a Member State other than that whose nationality they possess.***

Case C-115/78 Knoors [1979] ECR 399 §20

Although it is true that the provisions of the Treaty relating to establishment and ***the provision of services*** cannot be applied to situations which are purely internal to a Member State, the position nevertheless remains that the reference in Article 52 to "nationals of a Member State" who wish to establish themselves "in the territory of another Member state" ***cannot be interpreted in such a way as to exclude from the benefit of Community law a given Member State's own nationals when the latter, owing to the fact that they have lawfully resided on the territory of another Member*** State and have there acquired a trade qualification which is recognized by the provisions of Community law, are, with regard to their state of origin, in a ***situation which may be assimilated to that of any other persons enjoying the rights and liberties guaranteed by the Treaty.***

Case C-115/78 Knoors [1979] ECR 399 §24

In these circumstances, the answer to the question referred to the Court should be that when ***a national of one Member State desirous of exercising a professional activity such as the profession of advocate in another Member State*** has obtained a diploma in his country of origin which has been recognised as an equivalent qualification by the competent authority under the legislation of the country of establishment and which has thus enabled him to sit and pass the special qualifying examination for the profession in question, the act of demanding the national diploma prescribed by the legislation of the country of establishment constitutes, even in the absence of the directives provided for in Article 57, a restriction incompatible with the freedom of establishment guaranteed by Article 52 of the Treaty.

Case C-71/76 Thieffry [1977] ECR 765 §27

1.3.2. Broad interpretation of the concept of "cross-border character"

The Court has also stated, in Case 81/87 *The Queen v H.M. Treasury and Commissioners of Inland Revenue ex parte Daily Mail and General Trust plc* [1988] ECR 5483, paragraph 16, that even though the Treaty provisions relating to freedom of establishment are directed mainly to ensuring that foreign nationals and companies are treated in the host Member State in the same way as nationals of that State, ***they also prohibit the Member State of origin from hindering the establishment in another Member State of one of its nationals or of a company incorporated under its legislation*** which comes within the definition contained in Article 58. The rights guaranteed by Article 52 *et seq.* of the Treaty would be rendered meaningless if the Member State of origin could prohibit undertakings from leaving in order to establish themselves in another Member State. The same considerations apply, in relation to Article 48 of the Treaty, with regard to rules which impede the freedom of movement of nationals of one Member State wishing to engage in gainful employment in another Member State.

Case C-415/93 Bosman [1995] ECR 4353 §97

Even though, according to their wording, the provisions of the Treaty guaranteeing freedom of establishment are directed in particular to ensuring that foreign nationals and companies are treated in the host Member State in the same way as nationals of that State, they also prohibit the Member State of origin from hindering the establishment in another Member State of one of its nationals or of a company incorporated under its legislation which comes within the definition contained in Article 58. ***For the rights guaranteed by Article 52 et seq. would be rendered meaningless if the Member State of origin could prohibit undertakings from leaving in order to establish themselves in another Member State*** (see the judgment in Case 81/87 The Queen v Treasury and Commissioners of Inland Revenue, ex parte Daily Mail and General Trust [1988] ECR 5483, paragraph 16).

Case C-379/92 Peralta [1994] ECR 3453 §31

Although it is true that ***the provisions of the Treaty relating to establishment and the provision of services cannot*** be applied to situations which are purely internal to a Member State, the position nevertheless remains that the reference in Article 52 to "nationals of a Member State" who wish to establish themselves "in the territory of another Member state" cannot ***be interpreted in such a way as to exclude from the benefit of Community law a given Member State's own nationals when the latter, owing to the fact that they have lawfully resided on the territory of another Member State and have there acquired a trade qualification which is recognised by the provisions of Community*** law, are, with regard to their state of origin, in a situation which may be assimilated to that of any other persons enjoying the rights and liberties guaranteed by the Treaty.

Case C-115/78 Knoors [1979] ECR 399 §24

1.4 "Permanent" economic activity (of a stable and continuous nature)

The concept of establishment within the meaning of the Treaty is therefore a very broad one, allowing a Community national ***to participate, on a stable and continuous basis, in the economic life of a Member State other than his State of origin and to profit therefrom***, so contributing to economic and social interpenetration within the Community in the sphere of activities as self-employed persons (see, to this effect, Case 2/74 *Reyners v Belgium* [1974] ECR 631, paragraph 21).

Case C-55/94 Gebhard [1995] ECR 4165 §25

As the Advocate General has pointed out, ***the temporary nature of the activities in question has to be determined in the light, not only of the duration of the provision of the service, but also of its regularity, periodicity or continuity.*** The fact that the provision of services is temporary does not mean that the provider of services within the meaning of the Treaty may not equip himself with some form of infrastructure in the host Member State (including an office, chambers or consulting rooms) in so far as such infrastructure is necessary for the purposes of performing the services in question.

Case C-55/94 Gebhard [1995] ECR 4165 §27

However, that situation is to be distinguished from that of Mr Gebhard who, as a national of a Member State, pursues ***a professional activity on a stable and continuous basis in another Member State where he holds himself out from an established professional base*** to, amongst others, nationals of that State. Such a national comes under the provisions of the chapter relating to the right of establishment and not those of the chapter relating to services.

Case C-55/94 Gebhard [1995] ECR 4165 §28

It must be observed in that regard that **the concept of establishment** within the meaning of Article 52 *et seq.* of the Treaty ***involves the actual pursuit of an economic activity through a fixed establishment in another Member State for an indefinite period.***

Case C-221/89 Factortame [1991] ECR I-3905 §20

Consequently, ***the registration of a vessel does not necessarily involve establishment*** within the meaning of the Treaty, **in particular where the vessel is not used to pursue an economic activity** or where the application for registration is made by or on behalf of a person who is not established, and has no intention of becoming established, in the State concerned.

Case C-340/89 Vlassopoulou [1991] ECR 2357 §21

However, where the vessel constitutes an instrument for pursuing an economic activity which involves a fixed establishment in the Member State concerned, ***the registration of that vessel cannot be dissociated from the exercise of the freedom of establishment.***

Case C-340/89 Vlassopoulou [1991] ECR 2357 §22

It follows that ***the conditions laid down for the registration of vessels must not form an obstacle to freedom of establishment*** within the meaning of Article 52 *et seq.* of the Treaty.

Case C-340/89 Vlassopoulou [1991] ECR 2357 §23

In that connection, the Netherlands Government and the Commission rightly observed that Articles 59 and 60 of the Treaty do not apply in such a case. ***It is clear from the actual wording of Article 60 that an activity carried out on a permanent basis or, in any event, without a foreseeable limit to its duration does not fall within the Community provisions concerning the provision of services.*** On the other hand, such activities may fall within the scope of Articles 48 to 51 or Articles 52 to 58 of the Treaty, depending on the case.

Case C-196/87 Steymann [1988] ECR 6159 §16

1.5. Factors distinguishing between the right of establishment and the free provision of services

1.5.1. Distinctions between different freedoms

Furthermore, according to the order for reference, Mr Kemmler is not an employed person but a self-employed person with professional establishments in both Frankfurt and Brussels. His situation is not therefore covered by Articles 48 and 51 of the Treaty, which concern the free movement of workers, or by Article 59, which concerns the freedom to provide services. ***Since Mr Kemmler has a stable and permanent establishment in both the Member States concerned, only Article 52, concerning the right of establishment, is relevant to the decision in the case.***

Case C-53/95 Inasti/Kemmler §8

The situation of a ***Community national who moves to another Member State*** of the Community ***in order there to pursue an economic activity is governed by*** the chapter of the Treaty on the free movement of workers, or ***the chapter on the right of establishment or the chapter on services, these being mutually exclusive.***

Case C-55/94 Gebhard [1995] ECR 4165 §20

The provisions of the chapter on services are subordinate to those of the chapter on the right of establishment in so far, first, as the wording of the first paragraph of Article 59 assumes that the provider and the recipient of the service concerned are "established" in two different Member States and, second, ***as the first paragraph of Article 60 specifies that the provisions relating to services apply only if those relating to the right of establishment do not apply***. It is therefore necessary to consider the scope of the concept of "establishment".

Case C-55/94 Gebhard [1995] ECR 4165 §22

As the Advocate General has pointed out, the temporary nature of the activities in question has to be determined in the light, not only of the duration of the provision of the service, but also of its regularity, periodicity or continuity. ***The fact that the provision of services is temporary does not mean that the provider of services within the meaning of the Treaty may not equip himself with some form of infrastructure in the host Member State*** (including an office, chambers or consulting rooms) in so far as such infrastructure is necessary for the purposes of performing the services in question.

Case C-55/94 Gebhard [1995] ECR 4165 §27

However, that situation is to be distinguished from that of Mr Gebhard who, as a national of a Member State, pursues a ***professional activity on a stable and continuous basis in another Member State where he holds himself out from an established professional base*** to, amongst others, nationals of that State. ***Such a national comes under the provisions of the chapter relating to the right of establishment*** and not those of the chapter relating to services.

Case C-55/94 Gebhard [1995] ECR 4165 §28

It follows that a Member State may regard as a ***domestic broadcaster a radio and television organisation which establishes itself in another Member State in order to provide services there which are intended for the first State's territory***, since the aim of that measure is to prevent organisations which establish themselves in another Member State from being able, by exercising the freedoms guaranteed by the Treaty, ***wrongfully to avoid obligations under national law***, in this case those designed to ensure the pluralist and non-commercial content of programmes.

Case C-23/93 TV10 §21

In those circumstances it cannot be regarded as incompatible with the provisions of Articles 59 and 60 of the Treaty to treat such organisations as domestic organisations.

Case C-23/93 TV10 §22

In that connection, the Netherlands Government and the Commission rightly observed that Articles 59 and 60 of the Treaty do not apply in such a case. ***It is clear from the actual wording of Article 60 that an activity carried out on a permanent basis or, in any event, without a foreseeable limit to its duration does not fall within the Community provisions concerning the provision of services***. On the other hand, such activities may fall within the scope of Articles 48 to 51 or Articles 52 to 58 of the Treaty, depending on the case.

Case C-196/87 Steymann [1988] ECR 6159 §16

In that respect, it must be acknowledged that ***an insurance undertaking of another Member State which maintains a permanent presence*** in the Member State in question ***comes within the scope of the provisions of the Treaty on the right of establishment, even if that presence does not take the form of a branch or agency, but consists merely of an office managed by the undertaking's own staff or by a person who is independent but authorised to act on a permanent basis for the undertaking, as would be the case with an agency***. In the light of the aforementioned definition contained in the first paragraph of Article 60, such an insurance undertaking cannot therefore avail itself of Articles 59 and 60 with regard to its activities in the Member State in question.

Case C-205/84 Commission/Germany [1986] ECR 3793 §21

Similarly, as the Court held in its judgement of 3 December 1974 (Case 33/*74 Van Binsbergen v Bedrijfsvereniging Metaalnijverheid* (1974) ECR 1299) **a Member State**

cannot be denied the right to take measures to prevent the exercise by a person providing services whose activity is entirely or principally directed towards its territory of the freedom guaranteed by Article 59 for the purpose of avoiding the professional rules of conduct which would be applicable to him if he were established within that State. Such a situation may be subject to judicial control under the provisions of the chapter relating to the right of establishment and not of that on the provision of services.

Case C-205/84 Commission/Germany [1986] ECR 3793 §22

1.5.2. Prohibition on circumvention of laws regarding establishment

Community law does not preclude a Member State from adopting, in the absence of harmonisation, ***measures designed to prevent the opportunities created under the Treaty from being abused in a manner contrary to the legitimate interests of the State*** (see the judgement in *Knoors*, cited above, paragraph 25).

Case C-19/92 Kraus [1993] ECR 1663 §34

Similarly, as the Court held in its judgement of 3 December 1974 (Case 33/*74 Van Binsbergen v Bedrijfsvereniging Metaalnijverheid* (1974) ECR 1299) ***a Member State cannot be denied the right to take measures to prevent the exercise by a person providing services whose activity is entirely or principally directed towards its territory of the freedom guaranteed by Article 59 for the purpose of avoiding the professional rules of conduct which would be applicable to him if he were established within that State***. Such a situation may be subject to judicial control under the provisions of the chapter relating to the right of establishment and not of that on the provision of services.

Case C-205/84 Commission/Germany [1986] ECR 3793 §22

However, ***it is not possible to disregard the legitimate interest which a Member State may have in preventing certain of its nationals***, by means of facilities created under the Treaty, ***from attempting wrongly to evade the application of their national legislation*** as regards training for a trade.

Case C-115/78 Knoors [1979] ECR 399 §25

2. TYPES OF ESTABLISHMENT

It must be stated firstly that Article 52 of the EEC Treaty embodies one of the fundamental principles of the Community and has been directly applicable in the Member States since the end of the transitional period. by virtue of that provision, freedom of establishment for nationals of one Member State on the territory of another includes ***the right to take up and pursue activities as self-employed persons and to set up and manage undertakings under the conditions laid down for its own nationals by the law of the country where such establishment is effected***. The abolition of restrictions on freedom of establishment *also applies to restrictions on the setting up of agencies, branches or subsidiaries* by nationals of any Member State established in the territory of any Member State.

Case C-270/83 Commission/France [1986] ECR 273 §13

2.1. Primary establishment

2.1.1. Transfer of central management and control of a company to another Member State

With regard to the first part of the question, the applicant claims essentially that Article 58 of the Treaty expressly confers on the companies to which it applies the same right of primary establishment in another Member State as is conferred on natural persons by Article 52. ***The transfer of the central management and control of a company to another Member State amounts to the establishment of the company in that Member State because the company is locating its centre of decision-making there, which constitutes genuine and effective economic activity.***

Case C-81/87 Daily Mail [1988] ECR 5483 §12

2.1.2. Possibility of an employee in one Member State working in a self employed capacity in another Member State

Furthermore, the Court held in the abovementioned *Stanton* and *Wolf* judgements, paragraph 12 in each case, that the considerations set out above in connection with the answer to the first question concerning the right of establishment are ***also valid in the case of an employee who***

is established in one Member State and wishes, in addition, to work in a self-employed capacity in another Member State.

Case C-106/91 Ramrath [1992] ECR I-3351 §26

2.2. Secondary establishment (right to maintain more than one place of work within the Community)

Finally, in so far as the French legislation requires legal persons owning vessels to have their ***seats in French territory*** and thus ***precludes the registration or management of a ship in the case of a secondary establishment*** such as an agency, branch or subsidiary, it is ***contrary*** to Articles 52 and 58 of the Treaty.

Case C-334/94 Commission/France §19

As the Court has held (see in particular Case 107/83 *Ordre des Avocats du Barreau de Paris v Klopp* [1984] ECR 2971, paragraph 19), ***freedom of establishment is not confined to the right to create a single establishment within the Community but includes freedom to set up and maintain, subject to observance of the professional rules of conduct, more than one place of work within the territory of the Member States.***

Case C-53/95 Inasti/Kemmler §10

It follows that a ***person may be established***, within the meaning of the Treaty, ***in more than one Member State*** - in particular, ***in the case of companies, through the setting-up of agencies, branches or subsidiaries*** (Article 52) and, as the Court has held, ***in the case of members of the professions, by establishing a second professional base*** (see Case 107/83 *Ordre des Avocats au Barreau de Paris v Klopp* [1984] ECR 2971, paragraph 19).

Case C-55/94 Gebhard [1995] ECR 4165 §24

In that respect, according to the settled case-law of the Court (see, for example, the judgements in Case 107/83 *Ordre des Avocats au Barreau de Paris v Klopp* [1984] ECR 2971, paragraph 19; Case 143/87 *Stanton and L' Étoile 1905 v Inasti* [1988] ECR 3877, paragraph 11; and Joined Cases 154 and 155/87 *RSVZ v Wolf and Others* [1988] ECR 3897, paragraph 11), the right of establishment also entails the right to set up and maintain, subject to observance of the rules of professional practice, ***more than one place of work*** within the Community.

Case C-106/91 Ramrath [1992] ECR I-3351 §20

It follows ***that the right of establishment precludes a Member State from requiring a person practising a profession to have no more than one place of business*** within the Community.

Case C-106/91 Ramrath [1992] ECR I-3351 §21

Consequently, the answer to the first question must be that the Treaty provisions on the right of establishment ***preclude a Member State from prohibiting a person from becoming established in its territory and practising as an auditor there on the grounds that that person is established and authorised to practise in another Member State***.

Case C-106/91 Ramrath [1992] ECR I-3351 §22

In the case of a company, the right of establishment is generally exercised by the setting-up of agencies, branches or subsidiaries, as is expressly provided for in the second sentence of the first paragraph of Article 52. Indeed, that is the form of establishment in which the applicant engaged in this case by opening an investment management office in the Netherlands. ***A company may also exercise its right of establishment by taking part in the incorporation of a company in another Member State***, and in that regard Article 221 of the Treaty ensures that it will receive the same treatment as nationals of that Member State as regards participation in the capital of the new company.

Case C-81/87 Daily Mail [1988] ECR 5483 §17

That freedom of establishment is not confined to the right to create a single establishment within the Community is confirmed by the very words of Article 52 of the Treaty, according to which the progressive abolition of the restrictions on freedom of establishment applies to restrictions on the setting up of agencies , branches or subsidiaries by nationals of any Member State established in the territory of another Member State. that rule must be regarded as a specific statement of a general principle, applicable equally to the liberal professions, according to which the ***right of establishment includes freedom to set up and maintain, subject to observance of the professional rules of conduct, more than one place of work within the Community.***

Case C-107/83 Klopp [1984] ECR 2971 §19

In that respect it must be pointed out that modern methods of transport and telecommunications facilitate proper contact with clients and the judicial authorities. similarly, ***the existence of a second set of chambers in another Member State does not prevent the application of the rules of ethics in the host Member State***.

Case C-107/83 Klopp [1984] ECR 2971 §21

2.3. Interpretation of Article 52

The right of establishment, provided for in Articles 52 to 58 of the Treaty, ***is granted both to legal persons within the meaning of Article 58 and to natural persons who are nationals of a Member State of the Community***. Subject to the exceptions and conditions laid down, it allows ***all types of self-employed activity to be taken up and pursued on the territory of any other Member State, undertakings to be formed and operated, and agencies, branches or subsidiaries to be set up***.

Case C-55/94 Gebhard [1995] ECR 4165 §23

The concept of establishment within the meaning of the Treaty ***is therefore a very broad one***, allowing a Community national ***to participate, on a stable and continuous basis, in the economic life of a Member State other than his State of origin*** and to profit therefrom, so contributing to economic and social interpenetration within the Community in the sphere of activities as self-employed persons (see, to this effect, Case 2/74 *Reyners v Belgium* [1974] ECR 631, paragraph 21).

Case C-55/94 Gebhard [1995] ECR 4165 §25

In that respect, it must be acknowledged that an insurance undertaking of another Member State which maintains ***a permanent presence*** in the Member State in question comes within the scope of the provisions of the Treaty on the right of establishment, ***even if that presence does not take the form of a branch or agency, but consists merely of an office managed by the undertaking's own staff or by a person who is independent but authorised to act on a permanent basis for the undertaking, as would be the case with an agency***. In the light of the aforementioned definition contained in the first paragraph of Article 60, such an insurance undertaking cannot therefore avail itself of Articles 59 and 60 with regard to its activities in the Member State in question.

Case C-205/84 Commission/Germany [1986] ECR 3793 §21

Furthermore, ***the fact that insurance companies whose registered office is situated in another Member State are at liberty to establish themselves by setting up a subsidiary in order to have the benefit of the tax credit cannot justify different treatment***. The second sentence of the first paragraph of Article 52 expressly leaves traders free to choose the appropriate legal form in which to pursue their activities in another Member State and that freedom of choice must not be limited by discriminatory tax provisions.

Case C-270/83 Commission/France [1986] ECR 273 §22

3. FIELDS OF APPLICATION

3.1. Natural persons

The right of establishment, provided for in Articles 52 to 58 of the Treaty, ***is granted*** both to legal persons within the meaning of Article 58 and *to natural persons who are nationals of a Member State of the Community.* Subject to the exceptions and conditions laid down, **it allows all types of self-employed activity to be taken up and pursued on the territory of any other Member State,** undertakings to be formed and operated, and agencies, branches or subsidiaries to be set up.

Case C-55/94 Gebhard [1995] ECR 4165 §23

In the second place the applicant, the United Kingdom, the Danish government and the Commission consider that ***the legislation of the Member State of establishment, although applicable to access to the profession and practice of law in that country, may not prohibit a lawyer who is a national of another Member State from retaining his chambers there.***

Case C-107/83 Klopp [1984] ECR 2971 §15

The Paris bar council and the French government object in that respect that Article 52 of the Treaty requires the full application of the law of the Member State of establishment. the rule that an avocat may have his chambers in one place only is based on the need for avocats to genuinely practice before a Court in order to ensure their availability to both the Court and their clients. It should be respected as being a rule pertaining to the administration of justice and to professional ethics, objectively necessary and consistent with the public interest.

Case C-107/83 Klopp [1984] ECR 2971 §16

As a reference to a set of legislative provisions effectively applied by the country of establishment to its own nationals, *this rule is, by its essence, capable of being directly invoked by nationals of all the other Member States.*

Case C-2/74 Reyners [1974] ECR 631 §25

3.2. Legal persons and companies

3.2.1. Legal persons and companies benefitting from the right of establishment

The right of establishment, provided for in Articles 52 to 58 of the Treaty, ***is granted*** both *to legal persons within the meaning of Article 58* and to natural persons who are nationals of a Member State of the Community. Subject to the exceptions and conditions laid down, it allows all types of self-employed activity to be taken up and pursued on the territory of any other Member State, ***undertakings to be formed and operated, and agencies, branches or subsidiaries to be set up.***

Case C-55/94 Gebhard [1995] ECR 4165 §23

In the case of a company, the right of establishment is generally exercised by the setting-up of agencies, branches or subsidiaries, as is expressly provided for in the second sentence of the first paragraph of Article 52. Indeed, that is the form of establishment in which the applicant engaged in this case by opening an investment management office in the Netherlands. ***A company may also exercise its right of establishment by taking part in the incorporation of a company in another Member State***, and in that regard Article 221 of the Treaty ensures that ***it will receive the same treatment*** as nationals of that Member State as regards participation in the capital of the new company.

Case C-81/87 Daily Mail [1988] ECR 5483 §17

In that regard it should be borne in mind that, unlike natural persons, ***companies are creatures of the law and, in the present state of Community law, creatures of national law. They exist only by virtue of the varying national legislation which determines their incorporation and functioning.***

Case C-81/87 Daily Mail [1988] ECR 5483 §19

3.2.1.1. Nationality of a company

In that regard it should be borne in mind that, unlike natural persons, companies are creatures of the law and, in the present state of Community law, ***creatures of national law. They exist only by virtue of the varying national legislation which determines their incorporation and functioning.***

Case C-81/87 Daily Mail [1988] ECR 5483 §19

The Treaty has taken account of that variety in national legislation. ***In defining, in Article 58, the companies which enjoy the right of establishment, the Treaty places on the same footing, as connecting factors, the registered office, central administration and principal place of business of a company***. Moreover, ***Article 220 of the Treaty provides for the conclusion***, so far as is necessary, ***of agreements between the Member States with a view to securing inter alia the retention of legal personality in the event of transfer of the registered office of companies from one country to another***. No convention in this area has yet come into force.

Case C-81/87 Daily Mail [1988] ECR 5483 §21

3.2.1.2. Transfer of a company

It must therefore be held that ***the Treaty regards the differences in national legislation*** concerning the required connecting factor and the question whether - and if so how - the registered office or real head office of a company incorporated under national law may be transferred from one Member State to another as problems **which are not resolved by the rules concerning the right of establishment but must be dealt with by future legislation or conventions.**

Case C-81/87 Daily Mail [1988] ECR 5483 §23

3.2.2. Different ways of exercising the right of establishment by a company

In the case of a company, the right of establishment is generally exercised by the setting-up of agencies, branches or subsidiaries, as is expressly provided for in the second sentence of the first paragraph of Article 52. Indeed, that is the form of establishment in which the applicant engaged in this case by opening an investment management office in the Netherlands. ***A company may also exercise its right of establishment by taking part in the incorporation of a company in another Member State,*** and in that regard Article 221 of the Treaty ensures that it will receive the same treatment as nationals of that Member State as regards participation in the capital of the new company.

Case C-81/87 Daily Mail [1988] ECR 5483 §17

The answer to the first part of the first question must therefore be that ***in the present state of Community law Articles 52 and 58 of the Treaty, properly construed, confer no right on a company incorporated under the legislation of a Member State and having its registered office there to transfer its central management and control to another Member State***.

Case C-81/87 Daily Mail [1988] ECR 5483 §25

In that respect, it must be acknowledged that an insurance undertaking of another Member State which maintains a ***permanent presence*** in the Member State in question ***comes within the scope of the provisions of the Treaty on the right of establishment, even if that presence does not take the form of a branch or agency, but consists merely of an office managed by the undertaking's own staff or by a person who is independent but authorised to act on a permanent basis for the undertaking, as would be the case with an agency***. In the light of the aforementioned definition contained in the first paragraph of Article 60, such an insurance undertaking cannot therefore avail itself of Articles 59 and 60 with regard to its activities in the Member State in question.

Case C-205/84 Commission/Germany [1986] ECR 3793 §21

3.3. Limits of application of the right of establishment

3.3.1. Variety in national legislation

The Treaty has taken account of that variety in national legislation. In defining, in Article 58, the companies which enjoy the right of establishment, ***the Treaty places on the same footing, as connecting factors, the registered office, central administration and principal place of business of a company***. Moreover, Article 220 of the Treaty provides for the conclusion, so far as is necessary, of agreements between the Member States with a view to securing inter alia the retention of legal personality in the event of transfer of the registered office of companies from one country to another. No convention in this area has yet come into force.

Case C-81/87 Daily Mail [1988] ECR 5483 §21

It must therefore be held that ***the Treaty regards the differences in national legislation*** concerning the required connecting factor and the question whether - and if so how - the registered office or real head office of a company incorporated under national law may be transferred from one Member State to another as problems ***which are not resolved by the rules concerning the right of establishment but must be dealt with by future legislation or conventions.***

Case C-81/87 Daily Mail [1988] ECR 5483 §23

3.3.2. Transfer of central office by a national company

Under those circumstances, ***Articles 52 and 58 of the Treaty cannot be interpreted as conferring on companies incorporated under the law of a Member State a right to transfer***

their central management and control and their central administration to another Member State while retaining their status as companies incorporated under the legislation of the first Member State.

Case C-81/87 Daily Mail [1988] ECR 5483 §24

The answer to the first part of the first question must therefore be that in the present state of Community law ***Articles 52 and 58 of the Treaty, properly construed, confer no right on a company incorporated under the legislation of a Member State and having its registered office there to transfer its central management and control to another Member State.***

Case C-81/87 Daily Mail [1988] ECR 5483 §25

4. SUBSTANCE OF THE RIGHT OF ESTABLISHMENT

4.1. Entry and residence

Under Community law, ***every national of a Member State is assured of freedom both to enter another Member State*** in order to pursue an employed or self-employed activity *and to reside there* after having pursued such an activity. Access to leisure activities available in that Member State is a corollary to that freedom of movement.

Case C-334/94 Commission/France [1990] ECR I 2975 §21

His position might therefore come within the chapter of the Treaty on workers, more particularly Article 48, or ***within the chapters on the right of establishment and on services, in particular Articles 52***, 56 and 59.

Case C-106/91 Ramrath [1992] ECR I-3351 §16

Furthermore, ***a comparison of those different provisions shows that they are based on the same principles as regards both the entry into and residence in the territory of the Member States*** of persons covered by Community law and also the prohibition of all discrimination against them on grounds of nationality.

Case C-106/91 Ramrath [1992] ECR I-3351 §17

Accordingly the registration of a national of another Member State of the Community with a ***social security scheme established by the legislation of the host State cannot be imposed as a condition precedent to the exercise of the right of residence***.

Case C-363/89 Roux [1991] ECR §10

The questions put should therefore be answered in the sense that ***the right of nationals of one Member State to enter the territory of another Member State and to reside there is conferred directly, on any person falling within the scope of Community law***, by the Treaty, especially Articles 48, 52 and 59 or, as the case may be, by its implementing provisions independently of any residence permit issued by the host State.

Case C-48/75 Royer [1976] ECR 497 §50

4.2. The taking up and pursual of self-employed activities

The right of establishment, provided for in Articles 52 to 58 of the Treaty, is granted both to legal persons within the meaning of Article 58 and to natural persons who are nationals of a Member State of the Community. Subject to the exceptions and conditions laid down, it allows ***all types of self-employed activity to be taken up and pursued on the territory of any other Member State***, undertakings to be formed and operated, and agencies, branches or subsidiaries to be set up.

Case C-55/94 Gebhard [1995] ECR 4165 §23

The provisions relating to the right of establishment ***cover the taking-up and pursuit of activities*** (see, in particular, the judgement in *Reyners*, paragraphs 46 and 47). ***Membership of a professional body*** may be a condition of taking up and pursuit of particular activities. It ***cannot itself be constitutive of establishment***.

Case C-55/94 Gebhard [1995] ECR 4165 §31

It follows that ***the question whether it is possible for a national of a Member State to exercise his right of establishment and the conditions for exercise of that right must be determined in the light of the activities which he intends to pursue*** on the territory of the host Member State.

Case C-55/94 Gebhard [1995] ECR 4165 §32

Under the terms of the second paragraph of Article 52, freedom of establishment is to be exercised ***under the conditions laid down for its own nationals by the law of the country where establishment is effected***.

Case C-55/94 Gebhard [1995] ECR 4165 §33

In the event that the specific activities in question are not subject to any rules in the host State, so that a national of that Member State does not have to have any specific qualification in order to pursue them, ***a national of any other Member State is entitled to establish himself on the territory of the first State and pursue those activities there.***

Case C-55/94 Gebhard [1995] ECR 4165 §34

However, ***the taking-up and pursuit of certain self-employed activities may be conditional on complying with certain provisions laid down by law, regulation or administrative action justified by the general good***, such as rules relating to organisation, qualifications, professional ethics, supervision and liability (see Case C-71/76 *Thieffry v Conseil de l' Ordre des Avocats à la Cour de Paris* [1977] ECR 765, paragraph 12). Such provisions may stipulate in particular that pursuit of a particular activity is restricted to **holders of a diploma, certificate or other evidence of formal qualifications, to persons belonging to a professional body or to persons subject to particular rules or supervision, as the case may be. They may also lay down the conditions for the use of professional titles, such as *avvocato*.**

Case C-55/94 Gebhard [1995] ECR 4165 §35

Where the taking-up or pursuit of a specific activity is subject to such conditions in the host Member State, a national of another Member State intending to pursue that activity must in principle comply with them. It is for this reason that Article 57 provides that the Council is to issue directives, such as Directive 89/48, for the mutual recognition of diplomas, certificates and other evidence of formal qualifications or, as the case may be, for the coordination of national provisions concerning the taking-up and pursuit of activities as self-employed persons.

Case C-55/94 Gebhard [1995] ECR 4165 §36

Next, the authorisation procedure must be easy of access to interested parties, and should not, in particular, be dependent on the payment of excessive administration fees.

Case C-19/92 Kraus [1993] ECR 1663 §39

That article further states what is to be understood by ***"pursuing" an activity, in particular by fixing minimum periods during which it must have been practised.***

Case C-115/78 Knoors [1979] ECR 399 §12

After having stated that 'restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be abolished by progressive stages in the course of the transitional period', ***Article 52 expresses the guiding principle in the matter by providing that freedom of establishment shall include the right to take up and***

pursue activities as self-employed persons 'under the conditions laid down for its own nationals by the law of the country where such establishment is effected'.

Case C-2/74 Reyners [1974] ECR 631 §18

4.3. The formation and operation of companies ("lato sensu")

The right of establishment, provided for in Articles 52 to 58 of the Treaty, is granted both to legal persons within the meaning of Article 58 and to natural persons who are nationals of a Member State of the Community. Subject to the exceptions and conditions laid down, it allows all types of self-employed activity to be taken up and pursued on the territory of any other Member State, ***undertakings to be formed and operated, and agencies, branches or subsidiaries to be set up.***

Case C-55/94 Gebhard [1995] ECR 4165 §23

In the case of a company, the right of establishment is generally exercised by the setting-up of agencies, branches or subsidiaries, as is expressly provided for in the second sentence of the first paragraph of Article 52. Indeed, that is the form of establishment in which the applicant engaged in this case by opening an investment management office in the Netherlands. ***A company may also exercise its right of establishment by taking part in the incorporation of a company in another Member State***, and in that regard Article 221 of the Treaty ensures that it will receive ***the same treatment as nationals of that Member State as regards participation in the capital of the new company***.

Case C-81/87 Daily Mail [1988] ECR 5483 §17

In that respect, it must be acknowledged that an insurance undertaking of another Member State which maintains ***a permanent presence*** in the Member State in question comes within the scope of the provisions of the Treaty on the right of establishment, ***even if that presence does not take the form of a branch or agency, but consists merely of an office managed by the undertaking's own staff or by a person who is independent but authorized to act on a permanent basis for the undertaking, as would be the case with an agency***. In the light of the aforementioned definition contained in the first paragraph of Article 60, such an insurance undertaking cannot therefore avail itself of Articles 59 and 60 with regard to its activities in the Member State in question.

Case C-205/84 Commission/Germany [1986] ECR 3793 §21

4.4. Corollaries of the freedom of establishment

Next, the case of vessels which are ***not used in the context of an economic activity*** must be considered.

Case C-334/94 Commission/France [1996] ECR I 2975 §20

Under Community law, every national of a Member State is assured of freedom both to enter another Member State in order to pursue an employed or self-employed activity and to reside there after having pursued such an activity. **Access to leisure activities available in that Member State is a corollary to that freedom of movement.**

Case C-334/94 Commission/France [1996] ECR I 2975 §21

The registration by such a national of a leisure craft in the host Member State falls within the scope of the Community provisions relating to freedom of movement.

Case C-334/94 Commission/France [1996] ECR I 2975 §22

That reasoning cannot be accepted. When Community law guarantees a natural person the freedom to go to another Member State ***the protection of that person from harm in the Member State in question, on the same basis as that of nationals and persons residing there, is a corollary of that freedom of movement.*** It follows that the prohibition of discrimination is applicable to recipients of services within the meaning of the Treaty as regards protection against the risk of assault and ***the right to obtain financial compensation provided for by national law when that risk materialises.*** The fact that the compensation at issue is financed by the Public Treasury cannot alter the rules regarding the protection of the rights guaranteed by the Treaty.

Case C-186/87 Cowan §17

As is apparent from the general programmes which were adopted by the Council on 18 December 1961 (Journal Officiel 1962, pp. 32and 36) and which, as the Court has pointed out on numerous occasions, provide useful guidance with a view to the implementation of the provisions of the Treaty relating to the right of establishment and the freedom to provide services, the aforesaid prohibition is concerned not solely with the specific rules on the pursuit of occupational activities ***but also with the rules relating to the various general facilities which are of assistance in the pursuit of those activities.*** *Among the examples mentioned in the two programmes are the right to purchase, exploit and transfer real and personal property and the right to obtain loans and in particular to have access to the various forms of credit.*

Case C-63/86 Commission/Italy [1988] ECR 29 §14 as well as
Case C-305/87 Commission/Greece [1989] ECR 1461 §21

4.5. Right to reside after ceasing an activity

Under Community law, every national of a Member State is assured of freedom both to enter another Member State in order to pursue an employed or self-employed activity ***and to reside there after having pursued such an activity***. Access to leisure activities available in that Member State is a corollary to that freedom of movement.

Case C-334/94 Commission/France §21

5. THE LEGAL SCOPE OF THE RIGHT OF ESTABLISHMENT

5.1. "Fundamental" principle of Community law

On that point, it must however be stressed that Community law sets limits to the exercise of those powers by the Member States in so far as provisions of national law adopted in that connection must not constitute an obstacle to the ***effective exercise of the fundamental freedoms guaranteed by Articles 48 and 52 of the Treaty*** (see, to that effect, the judgement in Case 222/86 *UNECTEF v Heylens and Others* [1987] ECR 4097, paragraph 11).

Case C-19/92 Kraus [1993] ECR 1663 §28

The Court has confirmed that Articles 48 and 52 of the Treaty implement the fundamental principle contained in Article 3c of the Treaty in which it is stated that, for the purposes set out in Article 2, the activities of the Community are to include the abolition, as between Member States, of obstacles to freedom of movement for persons (see, in particular, judgements in Case 118/75 *Watson and Belmann* [1976] ECR 1185, paragraph 16; in *Heylens*, cited above, paragraph 8 and in Case C-370/90 *The Queen, ex parte Secretary of State for the Home Department v Immigration Appeal Tribunal and Surinder Singh* [1992] ECR I-4265).

Case C-19/92 Kraus [1993] ECR 1663 §29

In stating that freedom of movement for workers and freedom of establishment are to be secured by the end of the transitional period, Articles 48 and 52 lay down a precise

obligation of result. The performance of that obligation was to be facilitated by but not to be made dependent upon the implementation of Community measures. ***The fact that such measures have not yet been adopted does not authorise a Member State to deny to a person subject to Community law the practical benefit of the freedoms guaranteed by the Treaty.***

Case C-19/92 Kraus [1993] ECR 1663 §30

Furthermore, ***Member States are required***, in conformity with Article 5 of the Treaty, ***to take all appropriate measures***, whether general or particular, ***to ensure fulfilment of the obligations arising out of the Treaty*** and ***to abstain from any measures which could jeopardise the attainment of the objectives of the Treaty.***

Case C-19/92 Kraus [1993] ECR 1663 §31

Consequently, ***Articles 48 and 52 preclude any national measure*** governing the conditions under which an academic title obtained in another Member State may be used, ***where that measure,*** even though it is applicable without discrimination on grounds of nationality, State ***is liable to hamper or to render less attractive the exercise by Community nationals, including those of the Member which enacted the measure, of fundamental freedoms guaranteed by the Treaty. The situation would be different only if such a measure pursued a legitimate objective compatible with the Treaty and was justified by pressing reasons of public interest*** (see to that effect, judgement in Case 71/76 *Thieffry v Conseil de l' Ordre des Avocats à la Cour de Paris* [1977] ECR 765, paragraphs 12 and 15). It would however also be necessary in such a case for application of the national rules in question to be ***appropriate for ensuring attainment of the objective they pursue and not to go beyond what is necessary*** for that purpose (see judgement in Case C-106/91 *Ramrath v Ministre de la Justice* [1992] ECR I-3351, paragraphs 29 and 30).

Case C-19/92 Kraus [1993] ECR 1663 §32

However, in view of the special nature of certain professional activities, the imposition of specific requirements pursuant to the rules governing such activities cannot be considered incompatible with the Treaty. Nevertheless, ***as one of the fundamental principles of the Treaty, freedom of movement for persons may be restricted only by rules which are justified in the general interest and are applied to all persons and undertakings pursuing those activities in the territory of the State in question***, in so far as that interest is not already safeguarded by the rules to which a Community national is subject in the Member State where he is established (see the judgement in Case C-180/89 *Commission v Italy* [1991] ECR I-709, paragraph 17).

Case C-106/91 Ramrath [1992] ECR I-3351 §29

It must be stated firstly that ***Article 52 of the EEC Treaty embodies one of the fundamental principles of the Community*** and has been directly applicable in the Member States since the end of the transitional period. by virtue of that provision, freedom of establishment for nationals of one Member State on the territory of another includes the right to take up and pursue activities as self-employed persons and to set up and manage undertakings under the

conditions laid down for its own nationals by the law of the country where such establishment is effected. The abolition of restrictions on freedom of establishment also applies to restrictions on the setting up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

Case C-270/83 Commission/France [1986] ECR 273 §13

The rule on equal treatment with nationals is one of the fundamental legal provisions of the Community.

Case C-2/74 Reyners [1974] ECR 631 §24

Having regard to *the fundamental character of freedom of establishment* and the rule on equal treatment with nationals in the system of the Treaty, the exceptions allowed by the first paragraph of Article 55 cannot be given a scope which would exceed the objective for which this exemption clause was inserted.

Case C-2/74 Reyners [1974] ECR 631 §43

5.2. Direct applicability of Article 52

That article requires the abolition of restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State. ***It is settled case-law that that is a directly applicable rule of Community law***. Member States were therefore under the obligation to observe that rule even though, in the absence of Community legislation on social security for self-employed persons, they retained competence to legislate in this field (*Stanton*, paragraph 10).

Case C-53/95 Inasti/Kemmler §9

In stating that freedom of movement for workers and freedom of establishment are to be secured by the end of the transitional period, Articles 48 and 52 lay down a precise obligation of result. **The performance of that obligation was to be facilitated by but not to be made dependent upon the implementation of Community measures**. The fact that such measures have not yet been adopted does not authorise a Member State to deny to a person subject to Community law the practical benefit of the freedoms guaranteed by the Treaty.

Case C-19/92 Kraus [1993] ECR 1663 §30

Finally, the French government is wrong to contend that the difference of treatment in question is due to the double-taxation agreements. those agreements do not deal with the cases here at issue as defined above. moreover, ***the rights conferred by Article 52 of the Treaty are unconditional and a Member State cannot make respect for them subject to the contents of***

an agreement concluded with another Member State. In particular, that Article does not permit those rights to be made subject to a condition of reciprocity imposed for the purpose of obtaining corresponding advantages in other Member States.

Case C-270/83 Commission/France [1986] ECR 273 §26

It must be stated firstly that ***Article 52 of the EEC Treaty*** embodies one of the fundamental principles of the Community and ***has been directly applicable in the Member States since the end of the transitional period. by virtue of that provision***, freedom of establishment for nationals of one Member State on the territory of another includes the right to take up and pursue activities as self-employed persons and to set up and manage undertakings under the conditions laid down for its own nationals by the law of the country where such establishment is effected. The abolition of restrictions on freedom of establishment also applies to restrictions on the setting up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

Case C-270/83 Commission/France [1986] ECR 273 §13

In this respect, ***Article 52 is a clear and complete provision, capable of producing a direct effect.***

Case C-2/74 Reyners [1974] ECR 631 §10

At the end of the transitional period, the Member States no longer have the possibility of maintaining restrictions on the freedom of establishment, since ***Article 52 has, as from this period, the character of a provision which is complete in itself and legally perfect.***

Case C-2/74 Reyners [1974] ECR 631 §12

In these circumstances the 'general programme' and the directives provided for by Article 54 were of significance only during the transitional period, since the freedom of establishment was fully attained at the end of it.

Case C-2/74 Reyners [1974] ECR 631 §13

In laying down that freedom of establishment shall be attained at the end of the transitional period, ***Article 52 thus imposes an obligation to attain a precise result, the fulfilment of which had to be made easier by, but not made dependent on, the implementation of a programme of progressive measures***.

Case C-2/74 Reyners [1974] ECR 631 §26

After the expiry of the transitional period ***the directives provided for by the chapter on the right of establishment have become superfluous with regard to implementing the rule on nationality, since this is henceforth sanctioned by the Treaty itself with direct effect.***

Case C-2/74 Reyners [1974] ECR 631 §30

It is right therefore to reply to the question raised that, since the end of the transitional period, **Article 52 of the Treaty is a directly applicable provision despite the absence in a particular sphere, of the directives prescribed by Articles 54(2) and 57(1) of the Treaty.**

Case C-2/74 Reyners [1974] ECR 631 §32

(...) ***It is therefore legally complete in itself and is consequently capable of producing direct effects on the relations between Member States and individuals. (...)***

Case C-6/64 Costa/ENEL [1964] ECR 585 p.596

5.3. Obligation of Member States to modify laws incompatible with the right of establishment

With regard to the first branch of the application, therefore, ***it must be held that by retaining in force laws, regulations and administrative provisions restricting the right to register a vessel*** in the national register and to fly the national flag to vessels more than half the shares in which are owned by natural persons of French nationality or which are owned by legal persons having a seat in France or legal persons a certain proportion of whose directors, administrators or managers must be French nationals or, in the case of a private limited company, limited partnership, or general commercial or non-commercial partnership, more than half of whose capital must be held by French citizens or all of whose capital must be held by French persons who fulfil certain conditions, ***the French Republic has failed to fulfil its obligations under Articles 6, 48, 52, 58 and 221 of the Treaty***, Article 7 of Regulation No 1251/70 and Article 7 of Council Directive 75/34.

Case C-334/94 Commission/France §24

It has consistently been held that ***the incompatibility of national legislation with provisions of the Treaty, even provisions which are directly applicable, can be finally remedied only by means of national provisions of a binding nature which have the same legal force as those which must be amended***. Mere administrative practices, which by their nature are alterable at will by the authorities and are not given the appropriate publicity, ***cannot be regarded as constituting the proper fulfilment of obligations under the Treaty*** (Case 168/85 *Commission v Italy* [1986] ECR 2945, paragraph 13).

Case C-334/94 Commission/France §30

It must be observed in that regard that ***directly applicable provisions of the Treaty are binding on all the authorities of the Member States and they must therefore comply with them without its being necessary to adopt national implementing provisions***. However, as the Court held in its judgement of 20 March 1986 in Case 72/85 (*Commission v Netherlands* (1986) ECR 1219), ***the right of individuals to rely on directly applicable provisions of the Treaty before national courts is only a minimum guarantee and is not sufficient in itself to ensure the full and complete implementation of the Treaty***. It is clear from previous judgements of the Court, in particular its judgement of 25 October 1979, cited above, that if a provision of national law that is incompatible with a provision of the Treaty, even one directly applicable in the legal order of the Member States, is retained unchanged, this creates an ambiguous state of affairs by keeping the persons concerned in a state of uncertainty as to the possibility of relying on Community law and that maintaining such a provision in force therefore amounts to a failure by the state in question to comply with its obligations under the Treaty.

Case C-168/85 Commission/Italy [1986] ECR 2945 §11

Consequently, the Italian republic cannot escape from its obligation to amend its national law in accordance with the requirements of the Treaty by relying on the direct applicability of the provisions of the Treaty, on ***the introduction of certain administrative practices or on the fact that Community citizens have, in its view, an increased awareness of their rights.*** Indeed, ***in this case, Community citizens remain in a state of uncertainty*** not only because national provisions contrary to the Treaty have been maintained in force but also because new provisions, also contrary to the Treaty, were introduced in the field of tourism in 1983.

Case C-168/85 Commission/Italy [1986] ECR 2945 §14

5.4. Right to redress in the case of damage attributable to a Member State

5.4.1. Principle of the right to reparation (corollary of direct effect)

The Court has consistently held that the right of individuals to rely on the directly effective provisions of the Treaty before national courts is only a minimum guarantee and is not sufficient in itself to ensure the full and complete implementation of the Treaty (see, in particular, Case 168/85 *Commission v Italy* [1986] ECR 2945, paragraph 11, Case C-120/88 *Commission v Italy* [1991] ECR I-621, paragraph 10, and C-119/89 *Commission v Spain* [1991] ECR I-641, paragraph 9). The purpose of that right is to ensure that provisions of Community law prevail over national provisions. It cannot, in every case, secure for individuals the benefit of the rights conferred on them by Community law and, in particular, avoid their sustaining damage as a result of a breach of Community law attributable to a Member State. ***As appears from paragraph 33 of the judgement in Francovich and Others, the full effectiveness of Community law would be impaired if individuals were unable to obtain redress when their rights were infringed by a breach of Community law***.

Cases C-46/93 and 48/93 Factortame III §20

In view of the foregoing considerations, ***the Court held in Francovich and Others, at paragraph 35, that the principle of State liability for loss and damage*** caused to individuals as a result of breaches of Community law for which it can be held responsible ***is inherent in the system of the Treaty.***

Cases C-46/93 and 48/93 Factortame III §31

5.4.2. The three necessary conditions for the right to redress (according to Community law)

In addition, in view of the fundamental requirement of the Community legal order that Community law be uniformly applied (see, in particular, Joined Cases C-143/88 and C-92/89 *Zuckerfabrik Suederdithmarschen and Zuckerfabrik Soest* [1991] ECR I-415, paragraph 26), ***the obligation to make good damage caused to individuals by breaches of Community law cannot depend on domestic rules as to the division of powers between constitutional authorities.***

Cases C-46/93 and 48/93 Factortame III [] §33

In such circumstances, ***Community law confers a right to reparation where three conditions are met: the rule of law infringed must be intended to confer rights on individuals; the breach must be sufficiently serious; and there must be a direct causal link between the breach of the obligation resting on the State and the damage sustained by the injured parties.***

Cases C-46/93 and 48/93 Factortame III [] §51

Firstly, those conditions satisfy the requirements of ***the full effectiveness of the rules of Community law*** and of ***the effective protection of the rights which those rules confer.***

Cases C-46/93 and 48/93 Factortame III [] §52

Secondly, ***those conditions correspond in substance to those defined by the Court in relation to Article 215*** in its case-law on liability of the Community for damage caused to individuals by unlawful legislative measures adopted by its institutions.

Cases C-46/93 and 48/93 Factortame III [] §53

The aforementioned three conditions are necessary and sufficient to found a right in individuals to obtain redress, although ***this does not mean that the State cannot incur liability under less strict conditions on the basis of national law.***

Cases C-46/93 and 48/93 Factortame III [] §66

The obligation to make reparation for loss or damage caused to individuals ***cannot***, however, ***depend upon a condition based on any concept of fault going beyond that of a sufficiently serious breach of Community law***. Imposition of such a supplementary condition would be tantamount to calling in question the right to reparation founded on the Community legal order.

Cases C-46/93 and 48/93 Factortame III [] §79

5.4.2.1. First condition: attribution of rights to individuals by the rule infringed

The first condition is manifestly satisfied in the case of Article 30 of the Treaty, the relevant provision in Case C-46/93, and ***in the case of Article 52, the relevant provision in Case C-48/93***. Whilst Article 30 imposes a prohibition on Member States, it nevertheless gives rise to rights for individuals which the national courts must protect (Case 74/76 *Iannelli & Volpi v Meroni* [1977] ECR 557, paragraph 13). Likewise, ***the essence of Article 52 is to confer rights on individuals*** (Case 2/74 *Reyners* [1974] ECR 631, paragraph 25).

Cases C-46/93 and 48/93 Factortame III [] §54

5.4.2.2. Second condition: breach sufficiently serious

As to the second condition, as regards both Community liability under Article 215 and Member State liability for breaches of Community law, ***the decisive test for finding that a breach of Community law is sufficiently serious is whether the Member State or the Community institution concerned manifestly and gravely disregarded the limits on its discretion.***

Cases C-46/93 and 48/93 Factortame III [] §55

The *factors* which the competent court may take into consideration include the ***clarity and precision of the rule breached***, the ***measure of discretion*** left by that rule to the national or Community authorities, whether the infringement and the damage caused was ***intentional or involuntary***, whether any error of law was ***excusable or inexcusable***, the fact that the ***position taken by a Community institution may have contributed towards the omission, and the adoption or retention of national measures or practices contrary to Community law***.

Cases C-46/93 and 48/93 Factortame III [] §56

On any view, ***a breach of Community law will clearly be sufficiently serious if it has persisted despite a judgement finding the infringement in question to be established, or a***

preliminary ruling or settled case-law of the Court on the matter from which it is clear that the conduct in question constituted an infringement.

Cases C-46/93 and 48/93 Factortame III [] §57

The decision of the United Kingdom legislature to introduce in the Merchant Shipping Act 1988 provisions relating to the conditions for the registration of fishing vessels ***has to be assessed differently*** in the case of the provisions making registration subject to a nationality condition, which constitute direct discrimination manifestly contrary to Community law, and in the case of the provisions laying down residence and domicile conditions for vessel owners and operators.

Cases C-46/93 and 48/93 Factortame III [] §61

The latter conditions are *prima facie* incompatible with Article 52 of the Treaty in particular, but the United Kingdom sought to justify them in terms of the objectives of the common fisheries policy. In the judgement in Factortame II, cited above, the Court rejected that justification.

Cases C-46/93 and 48/93 Factortame III [] §62

In order to determine whether the breach of Article 52 thus committed by the United Kingdom was sufficiently serious, the national court might take into account, *inter alia*, the legal disputes relating to particular features of the common fisheries policy, the attitude of the Commission, which made its position known to the United Kingdom in good time, and the assessments as to the state of certainty of Community law made by the national courts in the interim proceedings brought by individuals affected by the Merchant Shipping Act.

Cases C-46/93 and 48/93 Factortame III [] §63

5.4.2.3. Third condition: direct causal link between the breach of the obligation borne by the State and the damage sustained by the injured parties

As for the third condition, it is for the national courts to determine whether there is ***a direct causal link between the breach of the obligation borne by the State and the damage sustained by the injured parties.***

Cases C-46/93 and 48/93 Factortame III [] §65

5.4.3. Implementation of redress (according to national law)

As appears from paragraphs 41, 42 and 43 of *Francovich and Others*, cited above, subject to the right to reparation which flows directly from Community law where the conditions referred to in the preceding paragraph are satisfied, the State must make reparation for the consequences of the loss and damage caused in accordance with the domestic rules on liability, provided that ***the conditions for reparation of loss and damage laid down by national law must not be less favourable than those relating to similar domestic claims and must not be such as in practice to make it impossible or excessively difficult to obtain reparation*** (see also Case 199/82 *Amministrazione delle Finanze dello Stato v San Giorgio* [1983] ECR 3595).

Cases C-46/93 and 48/93 Factortame III [] §67

In the absence of relevant Community provisions, ***it is for the domestic legal system of each Member State to set the criteria for determining the extent of reparation***. However, those ***criteria must not be less favourable*** than those applying to similar claims based ***on domestic law*** and must not be such as in practice to make it impossible or excessively difficult to obtain reparation.

Cases C-46/93 and 48/93 Factortame III [] §83

Accordingly, the reply to the national court's question must be that the ***obligation for Member States*** to make good loss or damage caused to individuals by breaches of Community law attributable to the State ***cannot be limited to damage sustained after the delivery of a judgement of the Court finding the infringement in question***.

Cases C-46/93 and 48/93 Factortame III [] §96

6. DEFINITION OF RESTRICTIONS

6.1. General principles

As far as Article 52 is concerned, suffice it to state that, as has been found above, the legislation in question is applicable to all traders exercising their activity on national territory; that its purpose is not to regulate the conditions concerning the establishment of the undertakings concerned; and that any restrictive effects which it might have on freedom of establishment are ***too uncertain and indirect*** for the obligation laid down to be regarded as being capable of ***hindering that freedom***.

Case C-418/93 Semeraro §32

On that point, it must however be stressed that Community law sets limits to the exercise of those powers by the Member States in so far as ***provisions of national law adopted in that connection must not constitute an obstacle to the effective exercise of the fundamental freedoms guaranteed by Articles 48 and 52 of the Treaty*** (see, to that effect, the judgement in Case 222/86 *UNECTEF v Heylens and Others* [1987] ECR 4097, paragraph 11).

Case C-19/92 Kraus [1993] ECR 1663 §28

Consequently, ***Articles 48 and 52 preclude any national measure*** governing the conditions under which an academic title obtained in another Member State may be used, where that measure, ***even though it is applicable without discrimination on grounds of nationality, is liable to hamper or to render less attractive the exercise by Community nationals***, including those of the Member State which enacted the measure, of fundamental freedoms guaranteed by the Treaty. ***The situation would be different only if such a measure pursued a legitimate objective compatible with the Treaty*** and was justified by pressing reasons of public interest (see to that effect, judgement in Case 71/76 *Thieffry v Conseil de l' Ordre des Avocats à la Cour de Paris* [1977] ECR 765, paragraphs 12 and 15). It would however also be necessary in such a case for application of the national rules in question to be ***appropriate*** for ensuring attainment of the objective they pursue and ***not to go beyond what is necessary for that purpose*** (see judgement in Case C-106/91 *Ramrath v Ministre de la Justice* [1992] ECR I-3351, paragraphs 29 and 30).

Case C-19/92 Kraus [1993] ECR 1663 §32

It must therefore be determined whether national rules relating to the transcription in Roman characters of the name of a Greek national in the registers of civil status of the Member State in which he is established are capable of placing him at ***a disadvantage in law or in fact, in comparison with the way in which a national of that Member State would be treated in the same circumstances.***

Case C-168/91 Konstantinidis [1993] ECR 1191 §13

Rules of that kind are to be regarded as incompatible with Article 52 of the Treaty only in so far as their application causes a Greek national ***such a degree of inconvenience as in fact to interfere with his freedom to exercise the right of establishment*** enshrined in that article.

Case C-168/91 Konstantinidis [1993] ECR 1191 §15

It should therefore be stated in reply to the national court that Article 52 of the Treaty must be interpreted as meaning that it is contrary to that provision for a Greek national to be obliged, under the applicable national legislation, to use, in the pursuit of his occupation, a spelling of his name whereby its pronunciation is modified and ***the resulting distortion exposes him to the risk that potential clients may confuse him with other persons.***

Case C-168/91 Konstantinidis [1993] ECR 1191 §17

6.2. The scope of the principle of national treatment

Article 52 is thus intended to ensure that all nationals of Member States who establish themselves in another Member State, even if that establishment is only secondary, for the purpose of pursuing activities there as a self-employed persons receive the same treatment as nationals of that State and it prohibits, as a restriction on freedom of establishment, ***any discrimination on grounds of nationality resulting from the legislation of the Member State.***

Case C-270/83 Commission/France [1986] ECR 273 §14

It must first be noted that the fact that the laws of the Member States on corporation tax have not been harmonised cannot justify the difference of treatment in this case. Although it is true that in the absence of such harmonisation, a company's tax position depends on the national law applied to it, *Article 52 of the EEC Treaty prohibits the Member States from laying down in their laws conditions for the pursuit of activities by persons exercising their right of establishment which differ from those laid down for its own nationals.*

Case C-270/83 Commission/France [1986] ECR 273 §24

It should be emphasised that under the second paragraph of Article 52 freedom of establishment includes access to and the pursuit of the activities of self-employed persons "***under the conditions laid down for its own nationals by the law of the country where such establishment is effected.***" It follows from that provision and its context that in the absence of specific Community rules in the matter each Member State is free to regulate the exercise of the legal profession in its territory.

Case C-107/83 Klopp [1984] ECR 2971 §17

However, it may be seen from the provisions of Articles 54 and 57 of the Treaty that *freedom of establishment is not completely ensured by the mere application of the rule of national treatment*, as such application retains all obstacles other than those resulting from the non-possession of the nationality of the host State and, in particular, those resulting from the disparity of the conditions laid down by the different national laws for the acquisition of an appropriate professional qualification.

Case C-136/78 Auer [1979] ECR 437 §21

Thus a Member State cannot, after 1 January 1973, make the exercise of the right to free establishment by a national of a new Member State ***subject to an exceptional authorisation in so far as he fulfils the conditions laid down by the legislation of the country of establishment for its own nationals.***

Case C-11/77 Patrick [1977] ECR 1199 §15

The answer to the question referred to the Court must therefore be that, with effect from 1 January 1973, a national of a new Member State who holds a qualification recognised by the competent authorities of the Member State of establishment as equivalent to the certificate issued and required in that State enjoys ***the right to be admitted to the profession of architect and to practise it under the same conditions as nationals of the Member State of establishment without being required to satisfy any additional conditions***.

Case C-11/77 Patrick [1977] ECR 1199 §18

After having stated that 'restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be abolished by progressive stages in the course of the transitional period', Article 52 expresses the guiding principle in the matter by providing that freedom of establishment shall include the right to take up and pursue activities as self-employed persons '***under the conditions laid down for its own nationals by the law of the country where such establishment is effected***'.

Case C-2/74 Reyners [1974] ECR 631 §18

6.3. National measures affected

6.3.1. Measures (directly or indirectly discriminatory)

In *Factortame and Others* the Court noted that, in exercising its powers for the purpose of defining the conditions for the grant of its "nationality" to a ship, ***each Member State must***

comply with the prohibition of discrimination against nationals of Member States on grounds of their nationality (paragraph 29) and that a condition which stipulates that where a vessel is owned or chartered by natural persons they must be of a particular nationality and where it is owned by a company the shareholders and directors must be of that nationality is contrary to Article 52 of the Treaty (paragraph 30).

Case C-334/94 Commission/France §14

Further, the Court has held (see Case C-330/91 *The Queen v Inland Revenue Commissioners, ex parte Commerzbank* [1993] ECR I-4017, paragraph 14) that ***the rules regarding equality of treatment forbid not only overt discrimination by reason of nationality or, in the case of a company, its seat, but all covert forms of discrimination which, by the application of other criteria of differentiation, lead in fact to the same result.***

Case C-1/93 Halliburton [1994] ECR 1137 §15

Although the ***difference in treatment has only an indirect effect on the position of companies constituted under the law of other Member States, it constitutes discrimination on grounds of nationality*** which is prohibited by Article 52 of the Treaty.

Case C-1/93 Halliburton [1994] ECR 1137 §20

In answering that question, it must first be borne in mind that, as the Court has stated on numerous occasions, Article 52 of the Treaty constitutes one of the fundamental legal provisions of the Community. ***By prohibiting any discrimination on grounds of nationality resulting from national laws, regulations or practices, that article seeks to ensure that, as regards the right of establishment, a Member State accords to nationals of other Member States the same treatment as it accords to its own nationals*** (judgement in Case 197/84 *Steinhauser v City of Biarritz* [1985] ECR 1819, paragraph 14).

Case C-168/91 Konstantinidis [1993] ECR 1191 §12

It must therefore be determined whether national rules relating to the transcription in Roman characters of the name of a Greek national in the registers of civil status of the Member State in which he is established are capable of placing him at ***a disadvantage in law or in fact, in comparison with the way in which a national of that Member State would be treated*** in the same circumstances.

Case C-168/91 Konstantinidis [1993] ECR 1191 §13

As for the requirement for the owners, charterers, managers and operators of the vessel and, in the case of a company, the shareholders and directors to be resident and domiciled in the Member State in which the vessel is to be registered, it must be held that such a requirement, which is not justified by the rights and obligations created by the grant of a national flag to a vessel, ***results in discrimination on grounds of nationality. The great majority of nationals of the Member State in question are resident and domiciled in that State and therefore meet***

that requirement automatically, whereas nationals of other Member States would, in most cases, have to move their residence and domicile to that State in order to comply with the requirements of its legislation. It follows that such a requirement is contrary to Article 52.

Case C-221/89 Factortame [1991] ECR I-3905 §32

It must be stated in this regard that, ***even if applied without any discrimination on the basis of nationality, national requirements concerning qualifications may have the effect of hindering nationals of the other Member States in the exercise of their right of establishment*** guaranteed to them by Article 52 of the EEC Treaty. ***That could be the case if the national rules in question took no account of the knowledge and qualifications already acquired*** by the person concerned in another Member State.

Case C-340/89 Vlassopoulou [1991] ECR 2357 §15

According to the Court's case-law the principle of equal treatment, of which Articles 52 and 59 of the Treaty embody specific instances, prohibits ***not only overt discrimination by reason of nationality but also all covert forms of discrimination which, by the application of other criteria of differentiation, lead in fact to the same result*** (see, in particular, the judgement of 29 October 1980 in Case 22/80 *Boussac v Gerstenmeier* ((1980)) ECR 3427).

Case C-3/88 Commission/Italy [1989] ECR 4035 §8

The provisions of the Treaty relating to the free movement of persons are thus intended to facilitate the pursuit by Community citizens of occupational activities of all kinds throughout the Community, and ***preclude national legislation which might place Community citizens at a disadvantage when they wish to extend their activities beyond the territory of a single Member State.***

Case C-143/87 Stanton/Inasti §13

Notwithstanding the French government's argument to the contrary, the difference in treatment also cannot be justified by any advantages which branches and agencies may enjoy *vis-a-vis* companies and which, according to the French government, balance out the disadvantages resulting from the failure to grant the benefit of shareholders' tax credits. Even if such advantages actually exist, they cannot justify a breach of the obligation laid down in Article 52 to accord foreign companies the same treatment in regard to shareholders' tax credits as is accorded to French companies. ***It is also not necessary in this context to assess the extent of the disadvantages*** which branches and agencies of foreign insurance companies suffer as a result of the failure to grant them the benefit of shareholders' tax credits and to consider whether those disadvantages could have any effect on their tariffs, ***since Article 52 prohibits all discrimination, even if only of a limited nature.***

Case C-270/83 Commission/France [1986] ECR 273 §21

The answer to the question referred to the Court must therefore be that, with effect from 1 January 1973, a national of a new Member State who holds a qualification recognised by the competent authorities of the Member State of establishment as equivalent to the certificate issued and required in that State enjoys the right to be admitted to the profession of architect and to practise it ***under the same conditions as nationals of the Member State of establishment without being required to satisfy any additional conditions.***

Case C-11/77 Patrick [1977] ECR 1199 §18

The Commission, in spite of doubts which it experiences on the subject of the direct effect of the provision to be interpreted - both in view of the reference by the Treaty to the 'general programme' and to the implementing directives and by reason of the tenor of certain liberalising directives already taken, which do not attain in every respect perfect equality of treatment - considers, however, that ***Article 52 has at least a partial direct effect in so far as it specifically prohibits discrimination on grounds of nationality.***

Case C-2/74 Reyners [1974] ECR 631 §14

Article 7 of the Treaty, which forms part of the 'principle' of the Community, ***provides that*** within the scope of application of the Treaty and without prejudice to any special provisions contained therein, ***'any discrimination on grounds of nationality shall be prohibited'.***

Case C-2/74 Reyners [1974] ECR 631 §15

Article 52 provides for the implementation of this general provision in the special sphere of the right of establishment.

Case C-2/74 Reyners [1974] ECR 631 §16

As a reference to a set of legislative provisions effectively applied by the country of establishment to its own nationals, ***this rule is, by its essence, capable of being directly invoked by nationals of all the other Member States***.

Case C-2/74 Reyners [1974] ECR 631 §25

6.3.2. Non-discriminatory measures

The provisions of the Treaty relating to the free movement of persons are thus intended to facilitate the pursuit of occupational activities throughout the Community, and ***preclude national legislation which might inhibit the extension of such activities beyond the territory of a single Member State*** (*Stanton*, paragraph 13).

Case C-53/95 Inasti/Kemmler §11

Legislation of a Member State which requires contributions to be made to the scheme for self-employed persons by persons already working as self-employed persons in another Member State where they have their habitual residence and are affiliated to a social security scheme ***inhibits the pursuit of occupational activities outside the territory of that Member State***. Article 52 of the Treaty therefore precludes legislation of that kind unless is it duly justified.

Case C-53/95 Inasti/Kemmler §12

Moreover, it follows from the Court's judgement in Case 152/73 *Sotgiu v Deutsche Bundespost* [1974] ECR 153 (at paragraph 11) that the ***rules regarding equality of treatment forbid*** not only overt discrimination by reason of nationality or, in the case of a company, its seat, but ***all covers forms of discrimination*** which, by the application of other criteria of differentiation, lead in fact to the same result.

Although it applies independently of a company's seat, ***the use of the criterion of fiscal residence within national territory for the purpose of granting repayment supplement on overpaid tax is liable to work more particularly to the disadvantage of companies having, their seat in other Member States.*** Indeed, it is most often those companies which are resident for tax purposes outside the territory of the Member State in question.

Case C-330/91 Commerzbank [1993] &14 and 15

On that point, it must however be stressed that ***Community law sets limits to the exercise of those powers by the Member States*** in so far as provisions of national law adopted in that connection must not constitute an obstacle to the effective exercise of the fundamental freedoms guaranteed by Articles 48 and 52 of the Treaty (see, to that effect, the judgement in Case 222/86 *UNECTEF v Heylens and Others* [1987] ECR 4097, paragraph 11).

Case C-19/92 Kraus [1993] ECR 1663 §28

Consequently, Articles 48 and 52 preclude any national measure governing the conditions under which an academic title obtained in another Member State may be used, ***where that measure, even though it is applicable without discrimination on grounds of nationality, is liable to hamper or to render less attractive the exercise by Community nationals, including those of the Member State which enacted the measure, of fundamental freedoms guaranteed by the Treaty***. The situation would be different only if such a measure pursued a legitimate objective compatible with the Treaty and was justified by pressing reasons of public interest (see to that effect, judgement in Case 71/76 *Thieffry v Conseil de l' Ordre des Avocats à la Cour de Paris* [1977] ECR 765, paragraphs 12 and 15). It would however also be necessary in such a case for application of the national rules in question to be appropriate for ensuring attainment of the objective they pursue and not to go beyond what is necessary for that purpose (see judgement in Case C-106/91 *Ramrath v Ministre de la Justice* [1992] ECR I-3351, paragraphs 29 and 30).

Case C-19/92 Kraus [1993] ECR 1663 §32

It follows that the fact that a Member State establishes a procedure for the issue ***of administrative authorisations***, to be obtained prior to using postgraduate academic titles awarded in another State, and prescribes ***criminal penalties*** for non-compliance with that procedure is not, in itself, ***incompatible*** with the requirements of Community law.

Case C-19/92 Kraus [1993] ECR 1663 §36

It follows that the answer to the question put by the national court must be that Articles 48 and 52 of the Treaty must be interpreted as meaning that they do not preclude a Member State from prohibiting one of its own nationals, who holds a postgraduate academic title awarded in another Member State, from using that title on its territory ***without having obtained an administrative authorisation for that purpose, provided that the authorisation procedure is intended solely to verify whether the postgraduate academic title was properly awarded, that the procedure is easily accessible and does not call for the payment of excessive administrative fees, that any refusal of authorisation is capable of being subject to proceedings, that the person concerned is able to ascertain the reasons for the decision and that the penalties prescribed for non-compliance with the authorisation procedure are not disproportionate to the gravity of the offence***.

Case C-19/92 Kraus [1993] ECR 1663 §42

Rules of that kind are to be regarded as incompatible with Article 52 of the Treaty only in so far as their application causes a Greek national ***such a degree of inconvenience*** as in fact to ***interfere*** with his freedom to exercise the right of establishment enshrined in that article.

Case C-168/91 Konstantinidis [1993] ECR 1191 §15

It must be stated in this regard that, even if applied without any discrimination on the basis of nationality, ***national requirements concerning qualifications may have the effect of hindering nationals of the other Member States in the exercise of their right of establishment*** guaranteed to them by Article 52 of the EEC Treaty. That could be the case if the national rules in question took ***no account of the knowledge and qualifications already acquired by the person concerned in another Member State.***

Case C-340/89 Vlassopoulou [1991] ECR 2357 §15

That freedom of establishment is not confined to the right to create a single establishment within the Community is confirmed by the very words of Article 52 of the Treaty, according to which ***the progressive abolition of the restrictions on freedom of establishment applies to restrictions on the setting up of agencies , branches or subsidiaries by nationals of any Member State established in the territory of another Member State***. that rule must be regarded as a specific statement of a general principle, applicable equally to the liberal professions, according to which the right of establishment includes freedom to set up and maintain, subject to observance of the professional rules of conduct, more than one place of work within the Community.

Case C-107/83 Klopp [1984] ECR 2971 §19

In view of the special nature of the legal profession, however , the second ***Member State must have the right, in the interests of the due administration of justice, to require that lawyers enrolled at a bar in its territory should practise in such a way as to maintain sufficient contact with their clients and the judicial authorities and abide by the rules of the profession***. nevertheless such requirements ***must not prevent the nationals of other Member States from exercising properly the right of establishment*** guaranteed them by the Treaty.

Case C-107/83 Klopp [1984] ECR 2971 §20

The question must therefore be answered to the effect that even in the absence of any directive coordinating national provisions governing access to and the exercise of the legal profession, ***Article 52 et seq. of the EEC Treaty prevent the competent authorities of a Member State from denying, on the basis of the national legislation*** and the rules of professional conduct which are in force in that State, ***to a national of another Member State the right to enter and to exercise the legal profession solely on the ground that he maintains chambers simultaneously in another Member State.***

Case C-107/83 Klopp [1984] ECR 2971 §22

The provisions of the Treaty relating to the free movement of persons are thus intended to facilitate the pursuit by Community citizens of occupational activities of all kinds throughout the Community, and ***preclude national legislation which might place Community citizens at a disadvantage when they wish to extend their activities beyond the territory of a single Member State.***

Case C-143/87 Stanton/Inasti §13

However, it may be seen from the provisions of Articles 54 and 57 of the Treaty that freedom of establishment is not completely ensured by the mere application of the rule of national treatment, ***as such application retains all obstacles other than those resulting from the non-possession of the nationality of the host State and, in particular, those resulting from the disparity of the conditions laid down by the different national laws for the acquisition of an appropriate professional qualification***.

Case C-136/78 Auer [1979] ECR 437 §21

In these circumstances, the answer to the question referred to the Court should be that when a national of one Member State desirous of exercising a professional activity such as the profession of advocate in another Member State has obtained a ***diploma in his country of origin which has been recognised as an equivalent qualification by the competent authority under the legislation of the country of establishment*** and which has thus enabled him to sit and pass the special qualifying examination for the profession in question, ***the act of demanding the national diploma prescribed by the legislation of the country of establishment constitutes,*** even in the absence of the directives provided for in Article 57, ***a***

restriction incompatible with the freedom of establishment guaranteed by Article 52 of the Treaty.

Case C-71/76 Thieffry [1977] ECR 765 §27

Thus a Member State ***cannot,*** after 1 January 1973, make the exercise of the right to free establishment by a national of a new Member State ***subject to an exceptional authorisation in so far as he fulfils the conditions laid down by the legislation of the country of establishment for its own nationals.***

Case C-11/77 Patrick [1977] ECR 1199 §15

In this connection ***the legal requirement***, in the various Member States, ***relating to the possession of qualifications for admission to certain professions constitutes a restriction on the effective exercise of the freedom of establishment*** the abolition of which is, under Article 57(1), to be made easier by directives of the Council for the mutual recognition of diplomas, certificates and other evidence of formal qualifications.

Case C-11/77 Patrick [1977] ECR 1199 §16

6.4. Origin of restrictions

6.4.1. Restrictions emanating from the State of destination

It should therefore be stated in reply to the national court that Article 52 of the Treaty must be interpreted as meaning that ***it is contrary to that provision for a Greek national to be obliged, under the applicable national legislation, to use, in the pursuit of his occupation, a spelling of his name whereby its pronunciation is modified and the resulting distortion exposes him to the risk that potential clients may confuse him with other persons***.

Case C-168/91 Konstantinidis [1993] ECR 1191 §17

Consequently, Articles 48 and 52 ***preclude any national measure governing the conditions under which an academic title obtained in another Member State may be used***, **where that measure**, even though it is applicable without discrimination on grounds of nationality, ***is liable to hamper or to render less attractive the exercise by Community nationals***, including those of the Member State which enacted the measure, of fundamental freedoms guaranteed by the Treaty. The situation would be different only if such a measure pursued a legitimate objective compatible with the Treaty and was justified by pressing reasons of public interest (see to that effect, judgement in Case 71/76 *Thieffry v Conseil de l' Ordre des Avocats à la Cour de Paris* [1977] ECR 765, paragraphs 12 and 15). It would however also be necessary in such a case for application of the national rules in question to be appropriate for ensuring attainment of the objective they pursue and not to go beyond what is necessary for that

purpose (see judgement in Case C-106/91 *Ramrath v Ministre de la Justice* [1992] ECR I-3351, paragraphs 29 and 30).

Case C-19/92 Kraus [1993] ECR 1663 §32

It must be stated in this regard that, even if applied without any discrimination on the basis of nationality, ***national requirements concerning qualifications may have the effect of hindering nationals of the other Member States in the exercise of their right of establishment*** guaranteed to them by Article 52 of the EEC Treaty. ***That could be the case if the national rules in question took no account of the knowledge and qualifications already acquired by the person concerned in another Member State.***

Case C-340/89 Vlassopoulou [1991] ECR 2357 §15

It is established that entitlement to reimbursement of sickness costs pertains to a person and not to a company. However, the requirement that a company formed in accordance with the law of another member state must be accorded the same treatment as national companies means that the employees of that company must have the right to be affiliated to a specific social security scheme. ***Discrimination against employees in connection with social security protection indirectly restricts the freedom of companies of another member state to establish themselves through an agency, branch or subsidiary in the member state concerned.*** That proposition is supported by the fact that according to the council's general programme for the abolition of restrictions on freedom of establishment of 18 december 1961 (Official journal, English special edition, second series ix, p. 7), which provides useful guidance for the implementation of the relevant provisions of the treaty (see judgments of 28 April 1977, case 71/76 Thieffry (1977) ECR 765 and of 18 june 1985 in case 197/84 Steinhauser (1985) ECR 1819), all provisions and administrative practices which "deny or restrict the right to participate in social security schemes, in particular sickness . . . insurance schemes" are to be regarded as restrictions on the freedom of establishment.

Case C-79/85 Segers [1986] ECR 2375 §15

The question must therefore be answered to the effect that even in the absence of any directive coordinating national provisions governing access to and the exercise of the legal profession, ***Article 52 and seq.of the EEC Treaty prevent the competent authorities of a Membr State from denying, on the basis of the national legislation and the rules of professionl conduct which are in force in that State, to a national of another Member State the right to enter and to exercise the legal profession solely on the ground that he maintains chambers simultaneously in another Membr State .***

Case C-107/83 Klopp (1983) ECR 2971 §22

In these circumstances, the answer to the question referred to the Court should be that when a national of one Member State desirous of exercising a professional activity such as the profession of advocate in another Member State ***has obtained a diploma in his country of origin which has been recognised as an equivalent qualification by the competent authority under the legislation of the country of establishment*** and which has thus enabled him to sit and pass the special qualifying examination for the profession in question, ***the act of demanding the national diploma prescribed by the legislation of the country of establishment constitutes***, even in the absence of the directives provided for in Article 57, ***a***

restriction incompatible with the freedom of establishment guaranteed by Article 52 of the Treaty.

Case C-71/76 Thieffry [1977] ECR 765 §27

Thus a Member State cannot, after 1 January 1973, make the exercise of the right to free establishment by a national of a new Member State subject to an exceptional authorisation in so far as he fulfils the conditions laid down by the legislation of the country of establishment for its own nationals.

Case C-11/77 Patrick [1977] ECR 1199 §15

The answer to the question referred to the Court must therefore be that, with effect from 1 January 1973, ***a national of a new Member State who holds a qualification recognised by the competent authorities of the Member State of establishment*** as equivalent to the certificate issued and required in that State ***enjoys the right to be admitted to the profession of architect and to practise it under the same conditions as nationals of the Member State of establishment without being required to satisfy any additional conditions.***

Case C-11/77 Patrick [1977] ECR 1199 §18

6.4.2. Restrictions emanating from the State of origin

The Court has also stated, in Case 81/87 *The Queen v H.M. Treasury and Commissioners of Inland Revenue ex parte Daily Mail and General Trust plc* [1988] ECR 5483, paragraph 16, that even though the Treaty provisions relating to freedom of establishment are directed mainly to ensuring that foreign nationals and companies are treated in the host Member State in the same way as nationals of that State, ***they also prohibit the Member State of origin from hindering the establishment in another Member State of one of its nationals or of a company incorporated under its legislation which comes within the definition contained in Article 58.*** The rights guaranteed by Article 52 *et seq.* of the Treaty would be rendered ***meaningless*** if the Member State of origin could prohibit undertakings from leaving in order to establish themselves in another Member State. The same considerations apply, in relation to Article 48 of the Treaty, with regard to rules which impede the freedom of movement of nationals of one Member State wishing to engage in gainful employment in another Member State.

Case C-415/93 Bosman [1995] ECR 4353 §97

Even though those provisions are directed mainly to ensuring that foreign nationals and companies are treated in the host Member State in the same way as nationals of that State, they also prohibit the Member State of origin from hindering the establishment in another Member State of one of its nationals or of a company incorporated under its legislation which comes within the definition contained in Article 58. As the Commission rightly observed, ***the***

rights guaranteed by Articles 52 et seq. would be rendered meaningless if the Member State of origin could prohibit undertakings from leaving in order to establish themselves in another Member State. In regard to natural persons, the right to leave their territory for that purpose is expressly provided for in Directive 73/148, which is the subject of the second question referred to the Court.

Case C-81/87 Daily Mail [1988] ECR 5483 §16

In fact, these liberties, which are fundamental in the Community system, could not be fully realised ***if the Member States were in a position to refuse to grant the benefit of the provisions of Community law to those of their nationals who have taken advantage of the facilities existing in the matter of freedom of movement and establishment*** and who have acquired, by virtue of such facilities, the trade qualifications referred to by the directive in a Member State other than that whose nationality they possess.

Case C-115/78 Knoors [1979] ECR 399 §20

Although it is true that the provisions of the Treaty relating to establishment and the provision of services cannot be applied to situations which are purely internal to a Member State, the position nevertheless remains that the reference in Article 52 to "nationals of a Member State" who wish to establish themselves "in the territory of another Member state" ***cannot be interpreted in such a way as to exclude from the benefit of Community law a given Member State's own nationals when the latter, owing to the fact that they have lawfully resided on the territory of another Member State and have there acquired a trade qualification which is recognised by the provisions of Community law, are, with regard to their state of origin, in a situation which may be assimilated to that of any other persons enjoying the rights and liberties guaranteed by the Treaty.***

Case C-115/78 Knoors [1979] ECR 399 §24

6.4.3. Broad notion of "State"

As the Advocate General points out in paragraph 38 of his Opinion, **in international law a State whose liability for breach of an international commitment is in issue will be viewed as a single entity, irrespective of whether the breach which gave rise to the damage is attributable to the legislature, the judiciary or the executive. This must apply *a fortiori* in the Community legal order** since all State authorities, including the legislature, are bound in performing their tasks to comply with the rules laid down by Community law directly governing the situation of individuals.

Cases C-46/93 and 48/93 Factortame III [] §34

6.4.4. Restrictions emanating from associations or organisations not governed by public law

Once the objections concerning the application of Article 48 of the Treaty to sporting activities such as those of professional footballers are out of the way, it is to be remembered that, as the Court held in paragraph 17 of its judgement in *Walrave*, cited above, ***Article 48 not only applies to the action of public authorities but extends also to rules of any other nature aimed at regulating gainful employment in a collective manner.***

Case C-415/93 Bosman [1995] ECR 4353 §82

The Court has held that ***the abolition*** as between Member States ***of obstacles*** to freedom of movement for persons and ***to freedom to provide services would be compromised if the abolition of State barriers could be neutralised by obstacles resulting from the exercise of their legal autonomy by associations or organisations not governed by public law*** (see *Walrave*, cited above, paragraph 18).

Case C-415/93 Bosman [1995] ECR 4353 §83

Prohibition of such discrimination does not only apply to the action of public authorities but ***extends likewise to rules of any other nature aimed at regulating in a collective manner*** gainful employment and the provision of services.

Case C-36/74 Walrave [1974] ECR 1405 §17

The abolition as between Member States of obstacles to freedom of movement for persons and to freedom to provide services, which are fundamental objectives of the Community contained in Article 3(c) of the Treaty, would be compromised if the abolition of barriers of national origin could be neutralised by obstacles resulting from the exercise ***of their legal autonomy by associations or organisations which do not come under public law.***

Case C-36/74 Walrave [1974] ECR 1405 §18

7. CONDITIONS JUSTIFYING CERTAIN RESTRICTIONS

7.1. Discriminatory measures

7.1.1. Participation in the exercise of official authority

As a preliminary matter, it should be recalled that ***the first paragraph of Article 55 of the Treaty excludes from the application of the provisions on freedom of establishment activities which in a Member State are connected, even occasionally, with the exercise of official authority***. Nevertheless, as the Court ruled in *Reyners* (cited above, at paragraph 45), ***the derogation provided for in Article 55 must be restricted to activities which in themselves are directly and specifically connected with the exercise of official authority.***

Case C-42/92 Thijssen [1993] ECR 4047 §8

As the Belgian Government emphasised in its submissions, ***the activities of an internal auditor or "ordinary commissioner", as the Government describes it, are not connected with the exercise of official authority***. The duties of an ordinary commissioner consist in fact in auditing the finances and the annual accounts of the company and presenting to the general meeting a report on the audits so carried out on the basis of the documents and information which he is entitled to obtain from the responsible officers of the undertaking.

Case C-42/92 Thijssen [1993] ECR 4047 §18

Under the terms of the first paragraph of ***Article 55*** the provisions of the chapter on the right of establishment 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'***.

Case C-2/74 Reyners [1974] ECR 631 §42

Having regard to the fundamental character of freedom of establishment and the rule on equal treatment with nationals in the system of the Treaty, ***the exceptions allowed by the first paragraph of Article 55 cannot be given a scope which would exceed the objective for which this exemption clause was inserted.***

Case C-2/74 Reyners [1974] ECR 631 §43

The first paragraph of Article 55 must enable Member States to exclude non-nationals from taking up functions ***involving the exercise of official authority which are connected with one of the activities of self-employed persons provided for in Article 52.***

Case C-2/74 Reyners [1974] ECR 631 §44

This need is fully satisfied when ***the exclusion of nationals is limited to those activities which, taken on their own, constitute a direct and specific connection with the exercise of official authority.***

Case C-2/74 Reyners [1974] ECR 631 §45

An extension of the exception allowed by Article 55 to a whole profession ***would be possible only in cases where such activities were linked with that profession in such a way that freedom of establishment would result in imposing on the Member State concerned the obligation to allow the exercise, even occasionally, by non-nationals of functions appertaining to official authority.***

Case C-2/74 Reyners [1974] ECR 631 §46

This extension is on the other hand not possible when, within the framework of an independent profession, ***the activities connected with the exercise of official authority are separable from the professional activity in question taken as a whole.***

Case C-2/74 Reyners [1974] ECR 631 §47

Professional activities involving contacts, even regular and organic, with the courts, including even compulsory cooperation in their functioning, ***do not constitute, as such, connection with the exercise of official authority.***

Case C-2/74 Reyners [1974] ECR 631 §51

The most typical activities of the profession of avocat, in particular, such as consultation and legal assistance and also representation and the defence of parties in court, even when the intervention or assistance of the avocat is compulsory or is a legal monopoly, ***cannot be considered as connected with the exercise of official authority.***

Case C-2/74 Reyners [1974] ECR 631 §52

It is therefore right to reply to the question raised that the exception to freedom of establishment provided for by the first paragraph of Article 55 must be ***restricted*** to those of the activities referred to in Article 52 which in themselves ***involve a direct and specific connection with the exercise of official authority***.

Case C-2/74 Reyners [1974] ECR 631 §54

In any case it is not possible to give this description, in the context of a profession such as that of avocat, ***to activities such as consultation and legal assistance or the representation and defence of parties in court***, even if the performance of these activities is compulsory or there is a legal monopoly in respect of it.

Case C-2/74 Reyners [1974] ECR 631 §55

7.1.2. Reasons of public policy, public security and public health (Art. 56)

As stated in paragraph 12 above, the rule in question entails discrimination based on the place of establishment. ***Such discrimination can only be justified on the general interest grounds referred to in Article 56(1) of the Treaty***, to which Article 66 refers, and which do not include economic aims (see in particular Case C-288/89 *Stichting Collectieve Antennevoorziening Gouda and Others v Commissariaat voor de Media* [1991] ECR I-4007, paragraph 11).

Case C-484/93 Svensson §15

As the Court held in its judgement in Case 352/85 *Bond van Adverteerders* [1988] ECR 2085, at paragraphs 32 and 33, ***national rules which are not applicable to services without discrimination*** as regards their origin ***are compatible with Community law only if they can be brought within the scope of an express exemption, such as that contained in Article 56*** of the Treaty. It also appears from that judgement (paragraph 34) that economic aims cannot constitute grounds of public policy within the meaning of Article 56 of the Treaty.

Case C-288/89 Mediawet I §11

It should next be pointed out that the rules relating to the freedom to provide services preclude national rules which have such discriminatory effects unless those rules fall within the derogating provision contained in Article 56 of the Treaty to which Article 66 refers. ***It follows from Article 56, which must be interpreted strictly***, that discriminatory rules may be justified on grounds of public policy, public security or public health.

Case C-260/89 ERT §24

7.2. Non-discriminatory measures: reasoning of the court in admitting them

It follows, however, from the Court's case-law that ***national measures liable to hinder or make less attractive the exercise of fundamental freedoms guaranteed by the Treaty must fulfil four conditions***: they must be applied in a ***non-discriminatory manner;*** they must be

justified by imperative requirements in the general interest; they must be ***suitable for securing the attainment of the objective which they pursue***; and they must ***not go beyond what is necessary in order to attain it*** (see Case C-19/92 *Kraus v Land Baden-Wuerttemberg* [1993] ECR I-1663, paragraph 32).

Case C-55/94 Gebhard [1995] ECR 4165 §37

Consequently, Articles 48 and 52 preclude any national measure governing the conditions under which an academic title obtained in another Member State may be used, where that measure, even though it is applicable without discrimination on grounds of nationality, is liable to hamper or to render less attractive the exercise by Community nationals, including those of the Member State which enacted the measure, of fundamental freedoms guaranteed by the Treaty. ***The situation would be different only if such a measure pursued a legitimate objective compatible with the Treaty and was justified by pressing reasons of public interest*** (see to that effect, judgement in Case 71/76 *Thieffry v Conseil de l' Ordre des Avocats à la Cour de Paris* [1977] ECR 765, paragraphs 12 and 15). ***It would however also be necessary in such a case for application of the national rules in question to be appropriate for ensuring attainment of the objective they pursue and not to go beyond what is necessary for that purpose*** (see judgement in Case C-106/91 *Ramrath v Ministre de la Justice* [1992] ECR I-3351, paragraphs 29 and 30).

Case C-19/92 Kraus [1993] ECR 1663 §32

That Article is therefore directed towards reconciling freedom of establishment with the application of national professional rules justified by the general good, in particular rules relating to organisation, qualifications, professional ethics, supervision and liability, ***provided that such application is effected without discrimination.***

Case C-71/76 Thieffry [1977] ECR 765 §12

It follows from ***the provisions cited taken as a whole that freedom of establishment, subject to observance of professional rules justified by the general good, is one of the objectives of the Treaty.***

Case C-71/76 Thieffry [1977] ECR 765 §15

7.2.1. Absence of discrimination

Consequently, Articles 48 and 52 preclude any national measure governing the conditions under which an academic title obtained in another Member State may be used, where ***that measure, even though it is applicable without discrimination on grounds of nationality, is liable to hamper or to render less attractive the exercise by Community nationals***, including those of the Member State which enacted the measure, of fundamental freedoms guaranteed by the Treaty. The situation would be different only if such a measure pursued a legitimate

objective compatible with the Treaty and was justified by pressing reasons of public interest (see to that effect, judgement in Case 71/76 *Thieffry v Conseil de l' Ordre des Avocats à la Cour de Paris* [1977] ECR 765, paragraphs 12 and 15). It would however also be necessary in such a case for application of the national rules in question to be appropriate for ensuring attainment of the objective they pursue and not to go beyond what is necessary for that purpose (see judgement in Case C-106/91 *Ramrath v Ministre de la Justice* [1992] ECR I-3351, paragraphs 29 and 30).

Case C-19/92 Kraus [1993] ECR 1663 §32

However, in so far as those rules have the effect of restricting freedom of movement for workers, the right of establishment and the freedom to provide services within the Community, they are compatible with the Treaty only if the restrictions which they entail are actually justified in view of the general obligations inherent in the proper practice of the professions in question and apply to nationals and foreigners alike. ***That is not the case where the restrictions are such as to create discrimination against practitioners established in other member states*** or raise obstacles to access to the profession which go beyond what is necessary in order to achieve the intended goals.

Case C-96/85 Commission/France [1986] ECR 1485 §11

7.2.2. Measure justified by an imperative requirement in the general interest

Legislation of the kind at issue in the main proceedings affords no additional social protection to the persons concerned . Therefore, the impediment to the pursuit of occupational activities in more than one Member State may not in any event be justified on that basis .

Case C- 53/95 - Inasti/Kemmler (1996) ECR 703 §13

Consequently, Articles 48 and 52 preclude any national measure governing the conditions under which an academic title obtained in another Member State may be used, where that measure, even though it is applicable without discrimination on grounds of nationality, is liable to hamper or to render less attractive the exercise by Community nationals, including those of the Member State which enacted the measure, of fundamental freedoms guaranteed by the Treaty. ***The situation would be different only if such a measure pursued a legitimate objective compatible with the Treaty and was justified by pressing reasons of public interest*** (see to that effect, judgement in Case 71/76 *Thieffry v Conseil de l' Ordre des Avocats à la Cour de Paris* [1977] ECR 765, paragraphs 12 and 15). It would however also be necessary in such a case for application of the national rules in question to be appropriate for ensuring attainment of the objective they pursue and not to go beyond what is necessary for that purpose (see judgement in Case C-106/91 *Ramrath v Ministre de la Justice* [1992] ECR I-3351, paragraphs 29 and 30).

Case C-19/92 Kraus [1993] ECR 1663 §32

Community law does not preclude a Member State from adopting, in the absence of harmonisation, measures designed to prevent the opportunities created under the Treaty from ***being abused in a manner contrary to the legitimate interests of the State*** (see the judgement in *Knoors*, cited above, paragraph 25).

Case C-19/92 Kraus [1993] ECR 1663 §34

However, in view of the special nature of certain professional activities, the imposition of specific requirements pursuant to the rules governing such activities cannot be considered incompatible with the Treaty. Nevertheless, as one of the fundamental principles of the Treaty, ***freedom of movement for persons may be restricted only by rules which are justified in the general interest*** and are applied to all persons and undertakings pursuing those activities in the territory of the State in question, in so far as that interest is not already safeguarded by the rules to which a Community national is subject in the Member State where he is established (see the judgement in Case C-180/89 *Commission v Italy* [1991] ECR I-709, paragraph 17).

Case C-106/91 Ramrath [1992] ECR I-3351 §29

Furthermore, ***the risk of tax avoidance*** cannot be relied upon in this context. ***Article 52 of the EEC Treaty does not permit any derogation from the fundamental principle of freedom of establishment on such a ground.***

Case C-270/83 Commission/France [1986] ECR 273 §25

That Article is therefore directed towards reconciling freedom of establishment with the ***application of national professional rules justified by the general good, in particular rules relating to organisation, qualifications, professional ethics, supervision and liability***, provided that such application is effected without discrimination.

Case C-71/76 Thieffry [1977] ECR 765 §12

It follows from the provisions cited taken as a whole that freedom of establishment, ***subject to observance of professional rules justified by the general good,*** is one of the objectives of the Treaty.

Case C-71/76 Thieffry [1977] ECR 765 §15

7.2.3. Measure suitable for securing the attainment of the objective pursued

Consequently, Articles 48 and 52 preclude any national measure governing the conditions under which an academic title obtained in another Member State may be used, where that measure, even though it is applicable without discrimination on grounds of nationality, is

liable to hamper or to render less attractive the exercise by Community nationals, including those of the Member State which enacted the measure, of fundamental freedoms guaranteed by the Treaty. The situation would be different only if such a measure pursued a legitimate objective compatible with the Treaty and was justified by pressing reasons of public interest (see to that effect, judgement in Case 71/76 *Thieffry v Conseil de l' Ordre des Avocats à la Cour de Paris* [1977] ECR 765, paragraphs 12 and 15). ***It would however also be necessary in such a case for application of the national rules in question to be appropriate for ensuring attainment of the objective they pursue*** and not to go beyond what is necessary for that purpose (see judgement in Case C-106/91 *Ramrath v Ministre de la Justice* [1992] ECR I-3351, paragraphs 29 and 30).

Case C-19/92 Kraus [1993] ECR 1663 §32

In addition, such requirements must be ***objectively justified by the need to ensure that professional rules of conduct are complied with*** and that the interests which such rules are designed to safeguard are protected (ibid, paragraph 17).

Case C-106/91 Ramrath [1992] ECR I-3351 §30

A Member State may carry out that task by requiring compliance with rules of professional practice, justified by the public interest, ***relating to the integrity and independence of auditors*** and applying to all persons practising as auditors within the territory of that State. In that respect, ***requirements relating to the existence of infrastructure within the national territory and the auditor's actual presence appear to be justified in order to safeguard that interest.***

Case C-106/91 Ramrath [1992] ECR I-3351 §35

7.2.4. Measures not going beyond what is necessary

Consequently, Articles 48 and 52 preclude any national measure governing the conditions under which an academic title obtained in another Member State may be used, where that measure, even though it is applicable without discrimination on grounds of nationality, is liable to hamper or to render less attractive the exercise by Community nationals, including those of the Member State which enacted the measure, of fundamental freedoms guaranteed by the Treaty. The situation would be different only if such a measure pursued a legitimate objective compatible with the Treaty and was justified by pressing reasons of public interest (see to that effect, judgement in Case 71/76 *Thieffry v Conseil de l' Ordre des Avocats à la Cour de Paris* [1977] ECR 765, paragraphs 12 and 15). It would however also be necessary in such a case for application of the national rules in question to be appropriate for ensuring attainment of the objective they pursue ***and not to go beyond what is necessary for that purpose*** (see judgement in Case C-106/91 *Ramrath v Ministre de la Justice* [1992] ECR I-3351, paragraphs 29 and 30).

Case C-19/92 Kraus [1993] ECR 1663 §32

However, in order to satisfy the requirements laid down by Community law ***with respect to the observance of the principle of proportionality***, national rules of that kind must fulfil certain conditions.

Case C-19/92 Kraus [1993] ECR 1663 §37

It follows that such requirements may be regarded as compatible with the provisions on the free movement of persons only if it is shown that there are, with regard to the activity in question, compelling reasons in the general interest which justify restrictions on freedom of movement, that that interest is not already safeguarded by the rules of the State where the Community national is established, ***and that the same result cannot be achieved by less restrictive rules.***

Case C-106/91 Ramrath [1992] ECR I-3351 §31

In that regard it must be stated that the Italian Government had sufficient legal powers at its disposal to be able to adapt the performance of contracts to meet future and unforeseeable circumstances and to ensure compliance with the general interest, and that ***in order to protect the confidential nature of the data in question the Government could have adopted measures less restrictive of freedom of establishment and freedom to provide services*** than those in issue, in particular by imposing a duty of secrecy on the staff of the companies concerned, breach of which might give rise to criminal proceedings. There is nothing in the documents before the Court to suggest that the staff of companies none of whose share capital is in Italian public ownership could not comply just as effectively with such a duty.

Case C-3/88 Commission/Italy [1989] ECR 4035 §11

7.2.5. General interest not already being protected in the country of origin (non-duplication)

Likewise, in applying their national provisions, ***Member States may not ignore the knowledge and qualifications already acquired by the person concerned in another Member State***.

Case C-55/94 Gebhard [1995] ECR 4165 §38

Thus, ***the authorisation procedure must in the first place be intended solely to verify whether the postgraduate academic title obtained in another Member State was properly awarded***, following a course of studies which was actually completed, in an establishment of higher education which was competent to award it.

Case C-19/92 Kraus [1993] ECR 1663 §38

However, in view of the special nature of certain professional activities, the imposition of specific requirements pursuant to the rules governing such activities cannot be considered incompatible with the Treaty. Nevertheless, as one of the fundamental principles of the Treaty, freedom of movement for persons may be restricted only by rules which are justified in the general interest and are applied to all persons and undertakings pursuing those activities in the territory of the State in question, ***in so far as that interest is not already safeguarded by the rules to which a Community national is subject in the Member State where he is established*** (see the judgement in Case C-180/89 *Commission v Italy* [1991] ECR I-709, paragraph 17).

Case C-106/91 Ramrath [1992] ECR I-3351 §29

It follows that such requirements may be regarded as compatible with the provisions on the free movement of persons only if it is shown that there are, with regard to the activity in question, compelling reasons in the general interest which justify restrictions on freedom of movement, ***that that interest is not already safeguarded by the rules of the State where the Community national is established***, and that the same result cannot be achieved by less restrictive rules.

Case C-106/91 Ramrath [1992] ECR I-3351 §31

7.3. Measures aiming to prohibit the circumvetion of national rules

Community law does not preclude a Member State from adopting, in the absence of harmonisation, measures designed to prevent the opportunities created under the Treaty from being abused in a manner contrary to the legitimate interests of the State (see the judgement in *Knoors*, cited above, paragraph 25).

Case C-19/92 Kraus [1993] ECR 1663 §34

The need to protect a public which will not necessarily be alerted to abuse of academic titles which have not been awarded according to the rules laid down in the country in which the holder of the title intends to make use of it ***constitutes a legitimate interest such as to justify a restriction***, by the Member State in question, of the fundamental freedoms guaranteed by the Treaty.

Case C-19/92 Kraus [1993] ECR 1663 §35

Similarly, as the Court held in its judgement of 3 December 1974 (Case 33/*74 Van Binsbergen v Bedrijfsvereniging Metaalnijverheid* (1974) ECR 1299) ***a Member State cannot be denied the right to take measures to prevent the exercise by a person providing services whose activity is entirely or principally directed towards its territory of the freedom guaranteed by Article 59 for the purpose of avoiding the professional rules of conduct***

which would be applicable to him if he were established within that State. Such a situation may be subject to judicial control under the provisions of the chapter relating to the right of establishment and not of that on the provision of services.

Case C-205/84 Commission/Germany [1986] ECR 3793 §22

However, ***it is not possible to disregard the legitimate interest which a Member State may have in preventing certain of its nationals***, by means of facilities created under the Treaty, ***from attempting wrongly to evade the application of their national legislation as regards training for a trade***.

Case C-115/78 Knoors [1979] ECR 399 §25

8. PROCEDURAL GUARANTIES

8.1. Obligation to verify and compare on the part of the State of destination

Likewise, in applying their national provisions, Member States may not ignore the knowledge and qualifications already acquired by the person concerned in another Member State (see Case C-340/89 *Vlassopoulou v Ministerium fuer Justiz, Bundes- und Europaangelegenheiten Baden-Wuerttemberg* [1991] ECR I-2357, paragraph 15). Consequently, they must take account of the equivalence of diplomas (see the judgement in *Thieffry*, paragraphs 19 and 27) and, if necessary, **proceed to a comparison of the knowledge and qualifications required by their national rules and those of the person concerned** (see the judgement in *Vlassopoulou*, paragraph 16).

Case C-55/94 Gebhard [1995] ECR 4165 §38

Thus, ***the authorisation procedure must in the first place be intended solely to verify whether the postgraduate academic title obtained in another Member State was properly awarded***, following a course of studies which was actually completed, in an establishment of higher education which was competent to award it.

Case C-19/92 Kraus [1993] ECR 1663 §38

It follows that such requirements may be regarded as compatible with the provisions on the free movement of persons only if it is shown that there are, with regard to the activity in question, compelling reasons in the general interest which justify restrictions on freedom of movement, ***that that interest is not already safeguarded by the rules of the State where the***

Community national is established, and that the same result cannot be achieved by less restrictive rules.

Case C-106/91 Ramrath [1992] ECR I-3351 §31

Consequently, ***a Member State*** which receives a request to admit a person to a profession to which access, under national law, depends upon the possession of a diploma or a professional qualification ***must take into consideration the diplomas***, certificates and other evidence of qualifications which the person concerned has acquired in order to exercise the same profession in another Member State ***by making a comparison between the specialised knowledge and abilities certified by those diplomas and the knowledge and qualifications required by the national rules.***

Case C-340/89 Vlassopoulou [1991] ECR 2357 §16

That examination procedure must enable the authorities of the host Member State to assure themselves, on an objective basis, that the foreign diploma certifies that its holder has knowledge and qualifications which are, if not identical, at least equivalent to those certified by the national diploma. That assessment of the ***equivalence*** of the foreign diploma must be carried out ***exclusively in the light of the level of knowledge and qualifications*** which its holder can be assumed to possess in the light of that diploma, having regard to the nature and duration of the studies and practical training to which the diploma relates (see the judgement in Case 222/86 *UNECTEF v Heylens*, cited above, paragraph 13).

Case C-340/89 Vlassopoulou [1991] ECR 2357 §17

8.2. Other procedural guaranties: reason for refusal, right to legal proceedings, penalties

In the absence of Community rules governing the matter, the Member States remain competent to impose penalties for breach of such an obligation. However, it follows from settled case-law concerning non-compliance with formalities for establishing the right of residence of an individual enjoying the protection of Community law that **Member States may not impose a penalty so disproportionate to the gravity of the infringement that this becomes an obstacle to the free movement of persons; this would be especially so if the penalty consisted of imprisonment** (see, in particular, Case C-265/88 *Messner* [1989] ECR 4209, paragraph 14). In view of the effect which the right to drive a motor vehicle has on the actual exercise of the rights relating to the free movement of persons, the same considerations must apply with regard to breach of the obligation to exchange driving licences.

Case C-193/94 Skanavi §36

Moreover, ***verification of the academic title***, referred to in paragraph 38 of this judgement, ***must be carried out by the national authorities in accordance with a procedure which is in conformity with the requirements of Community law as regards the effective protection of the fundamental rights conferred by the Treaty on Community nationals***. It follows that any ***refusal of authorisation by the competent national authority must be capable of being subject to judicial proceedings*** in which its legality under Community law can be reviewed and that **the person concerned must be able to ascertain the reasons for the decision taken with respect to him** (see judgement in *Heylens*, cited above, paragraphs 14 to 17, and judgement in Case 340/89 *Vlassopoulou v Ministerium fuer Justiz, Bundes-und Europaangelegenheiten Baden-Wuerttemburg* [1991] ECR I-2357, paragraph 22).

Case C-19/92 Kraus [1993] ECR 1663 §40

It follows that the answer to the question put by the national court must be that Articles 48 and 52 of the Treaty must be interpreted as meaning that they do not preclude a Member State from prohibiting one of its own nationals, who holds a postgraduate academic title awarded in another Member State, from using that title on its territory without having obtained an administrative authorisation for that purpose, provided that the authorisation procedure is intended solely to verify whether the postgraduate academic title was properly awarded, ***that the procedure is easily accessible and does not call for the payment of excessive administrative fees, that any refusal of authorisation is capable of being subject to proceedings, that the person concerned is able to ascertain the reasons for the decision and that the penalties prescribed for non-compliance with the authorisation procedure are not disproportionate to the gravity of the offence.***

Case C-19/92 Kraus [1993] ECR 1663 §42

9. SPECIFIC QUESTIONS

9.1. Relation to other primary law

9.1.1. Article 2 EC

It must be observed *in limine* that, in view of the objectives of the European Economic Community, ***participation in a community based on religion or another form of philosophy*** falls within the field of application of Community law only ***in so far as it can be regarded as an economic activity*** within the meaning of Article 2 of the Treaty.

Case C-196/87 Steymann [1988] ECR 6159 §9

Having regard to the objectives of the Community, ***the practice of sport is subject to Community law only in so far as it constitutes an economic activity*** within the meaning of Article 2 of the Treaty. This applies to the activities of professional or semi-professional football players, which are in the nature of gainful employment or remunerated service.

Case C-13/76 Donà/Mantero [1976] ECR 1333 §12

Having regard to the objectives of the Community, ***the practice of sport is subject to Community law only in so far as it constitutes an economic activity*** within the meaning of Article 2 of the Treaty.

Case C-36/74 Walrave [1974] ECR 1405 §4

9.1.2. Article 3 EC

Under Article 3 of the Treaty, the activities of the Community include, *inter alia*, ***the abolition of obstacles*** to freedom of movement for persons and services.

Case C-71/76 Thieffry [1977] ECR 765 §7

With a view to attaining this objective, the first paragraph of Article 52 provides that restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be abolished ***by progressive stages in the course of the transitional period.***

Case C-71/76 Thieffry [1977] ECR 765 §8

The Court has confirmed that Articles 48 and 52 of the Treaty implement the fundamental principle contained in Article 3c of the Treaty in which it is stated that, for the purposes set out in Article 2, ***the activities of the Community are to include the abolition, as between Member States, of obstacles to freedom of movement for persons*** (see, in particular, judgements in Case 118/75 *Watson and Belmann* [1976] ECR 1185, paragraph 16; in *Heylens*, cited above, paragraph 8 and in Case C-370/90 *The Queen, ex parte Secretary of State for the Home Department v Immigration Appeal Tribunal and Surinder Singh* [1992] ECR I-4265).

Case C-19/92 Kraus [1993] ECR 1663 §29

9.1.3. Article 5 EC

In so far as Community law makes no special provision, these objectives may be attained by measures enacted by the ***Member States*** , which under Article 5 of the Treaty ***are bound to take 'all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community', and to abstain 'from any measure which could jeopardise the attainment of the objectives of this Treaty'.***

Case C-71/76 Thieffry [1977] ECR 765 §16

Furthermore, *Member States are required,* in conformity with Article 5 of the Treaty, ***to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaty and to abstain from any measures which could jeopardise the attainment of the objectives of the Treaty.***

Case C-19/92 Kraus [1993] ECR 1663 §31

9.1.4. Article 6 EC (formerly Art. 7)

The Court has held that ***the general prohibition of discrimination on grounds of nationality laid down in Article 7 of the EEC Treaty has been implemented by Article 52*** of that Treaty in the specific domain which it governs and that, consequently, any rules incompatible with the latter provision are also incompatible with Article 7 of the Treaty (*Commission v United Kingdom*, paragraph 18). Article 7 of the EEC Treaty has become Article 6 of the EC Treaty.

Case C-334/94 Commission/France §13

The Court has consistently held that ***Article 6*** of the Treaty, which lays down the general principle of the prohibition of discrimination on grounds of nationality, ***applies independently only to situations governed by Community law in respect of which the Treaty lays down no specific prohibition of discrimination*** (see, in particular, Case C-18/93 *Corsica Ferries Italia v Corpo dei Piloti del Porto di Genova* [1994] ECR I-1783, paragraph 19).

Case C-193/94 Skanavi §20

The principle of non-discrimination was implemented and specifically laid down, in relation to the right of establishment, by Article 52 of the Treaty.

Case C-193/94 Skanavi §21

Under Article 7 of the Treaty the prohibition of discrimination applies "within the scope of application of this Treaty" and "without prejudice to any special provisions contained therein ". This latter expression refers particularly to other provisions of the Treaty in which the application of the general principle set out in that article is given concrete form in respect of specific situations. ***Examples of that are the provisions concerning*** free movement of workers, ***the right of establishment*** and the freedom to provide services.

Case C-186/87 Cowan §14

Article 7 of the Treaty, which forms part of the 'principle' of the Community, provides that within the scope of application of the Treaty and ***without prejudice to any special provisions*** contained therein, '***any discrimination on grounds of nationality shall be prohibited'***.

Case C-2/74 Reyners [1974] ECR 631 §15

Article 52 provides for the implementation of this general provision in the special sphere of the right of establishment.

Case C-2/74 Reyners [1974] ECR 631 §16

9.1.5. Article 8A EC

Article 8a of the Treaty, which sets out generally the right of every citizen of the Union to move and reside freely within the territory of the Member States, finds specific expression in Article 52 of the Treaty. Since the facts with which the main proceedings are concerned fall within the scope of the latter provision, it is not necessary to rule on the interpretation of Article 8a.

Case C-193/94 Skanavi §22

9.1.6. Article 48 EC

Furthermore, according to the order for reference, ***Mr Kemmler is not an employed person but a self-employed person with professional establishments in both Frankfurt and Brussels. His situation is not therefore covered by Articles 48 and 51*** of the Treaty, which concern the free movement of workers, or by Article 59, which concerns the freedom to provide services. ***Since Mr Kemmler has a stable and permanent establishment in both the Member States concerned, only Article 52, concerning the right of establishment, is relevant to the decision in the case.***

Case C-53/95 Inasti/Kemmler §8

The same reasoning must be followed as regards Article 48 of the Treaty. In its judgement in *Knoors*, cited above (paragraph 20), the Court held that freedom of movement for workers and the right of establishment guaranteed by ***Article 48 and 52 of the Treaty were fundamental rights in the Community system***, and would not be fully realised if the Member States were able to refuse to grant the benefit of the provisions of Community law to those of their nationals who had taken advantage of its provisions to acquire vocational qualifications in a Member State other than that of which they were nationals.

Case C-19/92 Kraus [1993] ECR 1663 §16

His position might therefore come within the chapter of the Treaty on workers, more particularly Article 48, ***or*** within the chapters on the right of establishment and on services, in particular Articles 52, 56 and 59.

Case C-106/91 Ramrath [1992] ECR I-3351 §16

Furthermore, ***a comparison of those different provisions shows that they are based on the same principles*** as regards both the entry into and residence in the territory of the Member States of persons covered by Community law and also the prohibition of all discrimination against them on grounds of nationality.

Case C-106/91 Ramrath [1992] ECR I-3351 §17

On that point it should be observed that ***Articles 48 and 52 of the EEC Treaty afford the same legal protection*** and that therefore the classification of an economic activity is without significance.

Case C-363/89 Roux [1991] ECR §23

It is clear from the actual wording of Article 60 that ***an activity carried out on a permanent basis*** or, in any event, without a foreseeable limit to its duration does not fall within the Community provisions concerning the provision of services. On the other hand, such activities ***may fall within the scope of Articles 48 to 51 or Articles 52 to 58 of the Treaty, depending on the case.***

Case C-196/87 Steymann [1988] ECR 6159 §16

His position might therefore come within the chapter of the Treaty on workers, more particularly Article 48, ***or*** within the chapters on the right of establishment and on services, in particular Articles 52, 56 and 59.

Case C-106/91 Ramrath [1992] ECR I-3351 §16

It follows from all those considerations that the answer to the second and third questions of the Luxembourg Conseil d'État must be that ***Articles 48 and 52 of the Treaty do not preclude a Member State from making practice as an auditor within its territory by a person who is already authorised to practise as an auditor in another Member State subject to conditions which are objectively necessary*** for ensuring compliance with the rules of professional practice and which relate to a permanent infrastructure for carrying out the work, actual presence in that Member State and supervision of compliance with the rules of professional conduct, unless compliance with such rules and conditions is already ensured through an auditor, ***whether a natural or legal person, who is established and authorised in that State's territory and in whose service the person who intends to practise as an auditor is employed for the duration of the work.***

Case C-106/91 Ramrath [1992] ECR I-3351 §37

9.1.7. Article 53 EC

Article 53 emphasises the ***irreversible nature of the liberalisation achieved in this regard at any given time,*** by providing that ***Member States shall not introduce any new restrictions*** on the right of establishment in their territories of nationals of other Member States.

Case C-71/76 Thieffry [1977] ECR 765 §10

9.1.8. Article 54 EC

In these circumstances ***the 'general programme' and the directives provided for by Article 54 were of significance only during the transitional period,*** since the freedom of establishment was fully attained at the end of it.

Case C-2/74 Reyners [1974] ECR 631 §13

For the purpose of achieving this objective by progressive stages during the transitional period ***Article 54 provides for the drawing up by the Council of a 'general programme' and, for the implementation of this programme, directives intended to attain freedom of establishment*** in respect of the various activities in question.

Case C-2/74 Reyners [1974] ECR 631 §19

It is right therefore to reply to the question raised that, ***since the end of the transitional period, Article 52 of the Treaty is a directly applicable provision despite the absence in a***

particular sphere, of the directives prescribed by Articles 54(2) and 57(1) of the Treaty.

Case C-2/74 Reyners [1974] ECR 631 §32

It is not possible to invoke against the direct effect of the rule on equal treatment with nationals contained in Article 52 the fact that the Council has failed to issue the directives provided for by Articles 54 and 57 or the fact that certain of the directives actually issued have not fully attained the objectives of non-discrimination required by Article 52.

Case C-11/77 Patrick [1977] ECR 1199 §12

9.1.9. Article 57 EC

With a view to making it easier for persons to take up and pursue activities as self-employed persons, Article 57 assigns to the Council the duty of issuing directives concerning, first, the mutual recognition of diplomas, and secondly, the coordination of the provisions laid down by law or administrative action in Member States concerning the taking up and pursuit of activities as self-employed persons.

Case C-71/76 Thieffry [1977] ECR 765 §11

That Article is therefore directed towards ***reconciling freedom of establishment with the application of national professional rules justified by the general good***, in particular rules relating to organisation, qualifications, professional ethics, supervision and liability, provided that such application is effected without discrimination.

Case C-71/76 Thieffry [1977] ECR 765 §12

Consequently, if the freedom of establishment provided for by Article 52 can be ensured in a Member State either under the provisions of the laws and regulations in force, or by virtue of the practices of the public service or of professional bodies, ***a person subject to Community law cannot be denied the practical benefit of that freedom solely by virtue of the fact that, for a particular profession, the directives provided for by Article 57 of the Treaty have not yet been adopted.***

Case C-71/76 Thieffry [1977] ECR 765 §17

It is not possible to invoke against the direct effect of the rule on equal treatment with nationals contained in Article 52 ***the fact that the Council has failed to issue the directives provided for by Articles 54 and 57 or the fact that certain of the directives actually issued have not fully attained the objectives of non-discrimination required by Article 52.***

Case C-11/77 Patrick [1977] ECR 1199 §12

Besides these liberalising measures, ***Article 57 provides for directives intended to ensure mutual recognition of diplomas, certificates and other evidence of formal qualifications and in a general way for the coordination of laws with regard to establishment and the pursuit of activities as self-employed persons.***

Case C-2/74 Reyners [1974] ECR 631 §20

It appears from the above that in the system of the chapter on the right of establishment the 'general programme' and the directives provided for by the Treaty are intended to accomplish two functions, the first being ***to eliminate obstacles*** in the way of attaining freedom of establishment during the transitional period, the second being ***to introduce into the law of Member States a set of provisions intended to facilitate the effective exercise of this freedom*** for the purpose of assisting economic and social interpenetration within the Community in the sphere of activities as self-employed persons.

Case C-2/74 Reyners [1974] ECR 631 §21

9.1.10. Article 58 EC

The Treaty has taken account of that variety in national legislation. In defining, in Article 58, the companies which enjoy the right of establishment, ***the Treaty places on the same footing, as connecting factors, the registered office, central administration and principal place of business of a company***. Moreover, Article 220 of the Treaty provides for the conclusion, so far as is necessary, of agreements between the Member States with a view to securing inter alia the retention of legal personality in the event of transfer of the registered office of companies from one country to another. No convention in this area has yet come into force.

Case C-81/87 Daily Mail [1988] ECR 5483 §21

Under those circumstances, **Articles 52 and 58 of the Treaty cannot be interpreted as conferring on companies incorporated under the law of a Member State a right to transfer their central management** and control and their central administration to another Member State ***while retaining their status as companies incorporated under the legislation of the first Member State.***

Case C-81/87 Daily Mail [1988] ECR 5483 §24

The answer to the first part of the first question must therefore be that in the present state of Community law ***Articles 52 and 58 of the Treaty, properly construed, confer no right on a company incorporated under the legislation of a Member State and having its registered***

office there to transfer its central management and control to another Member State.

Case C-81/87 Daily Mail [1988] ECR 5483 §25

9.1.11. Article 59 EC

See chapter 1.5.

9.1.12. Article 220 EC

The Treaty has taken account of that variety in national legislation. In defining, in Article 58, the companies which enjoy the right of establishment, the Treaty places on the same footing, as connecting factors, the registered office, central administration and principal place of business of a company. Moreover, ***Article 220 of the Treaty provides for the conclusion, so far as is necessary, of agreements between the Member States with a view to securing inter alia the retention of legal personality in the event of transfer of the registered office of companies from one country to another. No convention in this area has yet come into force.***

Case C-81/87 Daily Mail [1988] ECR 5483 §21

9.1.13. Article 221 EC

Furthermore, ***the condition relating to the control of the capital*** of certain legal persons owning vessels ***is also contrary to Article 221 of the Treaty since it restricts participation by nationals of other Member States*** in the capital of such legal persons.

Case C-334/94 Commission/France §18

In the case of a company, the right of establishment is generally exercised by the setting-up of agencies, branches or subsidiaries, as is expressly provided for in the second sentence of the first paragraph of Article 52. Indeed, that is the form of establishment in which the applicant engaged in this case by opening an investment management office in the Netherlands. A company may also exercise its right of establishment by taking part in the incorporation of a company in another Member State, and in that regard ***Article 221 of the Treaty ensures that it***

will receive the same treatment as nationals of that Member State as regards participation in the capital of the new company.

Case C-81/87 Daily Mail [1988] ECR 5483 §17

9.2. Relation to secondary law

9.2.1. Absence of harmonisation

In the absence of harmonisation of the conditions under which a person holding a postgraduate academic title may make use of it in Member States other than the one in which it was awarded, ***the Member States remain, as a matter of principle, competent to lay down the detailed rules governing the use of such a title on their territory.***

Case C-19/92 Kraus [1993] ECR 1663 §27

Community law does not preclude a Member State from adopting, in the absence of harmonisation, ***measures designed to prevent the opportunities created under the Treaty from being abused in a manner contrary to the legitimate interests of the State*** (see the judgement in Knoors, cited above, paragraph 25).

Case C-19/92 Kraus [1993] ECR 1663 §34

9.2.2. During the transitional period

In these circumstances ***the 'general programme' and the directives provided for by Article 54 were of significance only during the transitional period***, since the freedom of establishment was fully attained at the end of it.

Case C-2/74 Reyners [1974] ECR 631 §13

It appears from the above that in the system of the chapter on the right of establishment the ***'general programme'*** and the directives provided for by the Treaty are intended to accomplish two functions, ***the first being to eliminate obstacles in the way of attaining freedom of establishment during the transitional period***, the second being to introduce into the law of Member States a set of provisions intended to facilitate the effective exercise of this

freedom for the purpose of assisting economic and social interpenetration within the Community in the sphere of activities as self-employed persons.

Case C-2/74 Reyners [1974] ECR 631 §21

9.2.2.1. General programmes

The same idea is expressed by Title I of ***the general programme*** for the abolition of restrictions on freedom of establishment, ***which designates as beneficiaries, in the first and third indents, the "nationals of member states" without any distinction as regards nationality or residence.***

Case C-115/78 Knoors [1979] ECR 399 §16

For the purpose of achieving this objective by progressive stages during the transitional period ***Article 54 provides for the drawing up by the Council of a 'general programme'*** and, for the implementation of this programme, directives intended to attain freedom of establishment in respect of the various activities in question.

Case C-2/74 Reyners [1974] ECR 631 §19

9.2.2.2. Role of directive

For the purpose of achieving this objective by progressive stages during the transitional period Article 54 provides for the drawing up by the Council of a 'general programme' and, for the implementation of this programme, directives intended to attain freedom of establishment in respect of the various activities in question.

Case C-2/74 Reyners [1974] ECR 631 §19

9.2.3. After the transitional period

At the end of the transitional period, the Member States no longer have the possibility of maintaining restrictions on the freedom of establishment, since ***Article 52 has***, as from this period, ***the character of a provision which is complete in itself and legally perfect.***

Case C-2/74 Reyners [1974] ECR 631 §12

9.2.3.1. Role of directives

It is not possible to invoke against the direct effect of the rule on equal treatment with nationals contained in Article 52 ***the fact that the Council has failed to issue the directives*** provided for by Articles 54 and 57 ***or the fact that certain of the directives actually issued have not fully attained the objectives of non-discrimination*** required by Article 52.

Case C-11/77 Patrick [1977] ECR 1199 §12

Besides these liberalising measures, ***Article 57 provides for directives intended to ensure mutual recognition of diplomas, certificates and other evidence of formal qualifications and in a general way for the coordination of laws with regard to establishment and the pursuit of activities as self-employed persons.***

Case C-2/74 Reyners [1974] ECR 631 §20

After the expiry of the transitional period the directives provided for by the chapter on the right of establishment ***have become superfluous*** with regard to implementing the rule on nationality, since this is henceforth sanctioned by the Treaty itself with direct effect.

Case C-2/74 Reyners [1974] ECR 631 §30

These directives have however not lost all interest since ***they preserve an important scope*** in the field of measures intended to make easier the effective exercise of the right of freedom of establishment.

Case C-2/74 Reyners [1974] ECR 631 §31

It is right therefore to reply to the question raised that, since the end of the transitional period, Article 52 of the Treaty is a directly applicable provision ***despite the absence in a particular sphere, of the directives*** prescribed by Articles 54(2) and 57(1) of the Treaty.

Case C-2/74 Reyners [1974] ECR 631 §32

9.2.3.2. Sector-based directives

As far as ***Directive 64/223*** is concerned, the aim of that directive is the attainment**, in the field of wholesale trade activities**, of freedom of establishment, as guaranteed, with direct effect after the expiry of the transition period, by Article 52 of the Treaty (see the judgement in Case 198/86 *Conradi and Others* [1987] ECR 4469, paragraph 8).

Case C-418/93 Semeraro §30

There is therefore no need to examine Directive 64/223 separately from Article 52 in this instance.

Case C-418/93 Semeraro §31

The answer to the second question must therefore be that ***Directive 73/148,*** properly construed, ***confers no right on a company to transfer its central management and control to another Member State.***

Case C-81/87 Daily Mail [1988] ECR 5483 §29

The purpose of directive ***77/249*** is to facilitate the ***effective exercise by lawyers of the freedom to provide services.*** To that end the directive requires the Member States to recognise as a lawyer for the purpose of pursuing the activities of lawyers any person established in another Member State as a lawyer under one of the designations set out in Article 2(1), which include "Rechtsanwalt" in the Federal Republic of Germany.

Case C-292/86 Gullung [1988] ECR 111 §15

Directive no 64/427 is intended to facilitate the realisation of freedom of establishment and of freedom to provide services ***in a large group of trade activities relating to industry and small craft industries,*** pending the harmonisation of the conditions for access to the trades in question in the various Member States, which is an indispensable precondition for complete freedom in this sphere.

Case C-115/78 Knoors [1979] ECR 399 §9

It may therefore be stated that ***directive no 64/427 is based on a broad definition of the "beneficiaries"*** of its provisions, in the sense that the nationals of all Member States must be able to avail themselves of the liberalising measures which it lays down, provided that they come objectively within one of the situations provided for by the directive, and no differentiation of treatment on the basis of their residence or nationality is permitted.

Case C-115/78 Knoors [1979] ECR 399 §17

In this case, however, it should be borne in mind that, having regard to the nature of the trades in question, **the precise conditions set out in Article 3 of directive no 64/427**, as regards the length of periods during which the activity in question must have been pursued, **have the effect of excluding**, in the fields in question, ***the risk of abuse*** referred to by the Netherlands government.

Case C-115/78 Knoors [1979] ECR 399 §26

9.2.3.3. General system of mutual recognition of diplomas

Council ***Directive 89/48/EEC*** of 21 December 1988, ***relating to a general system of recognition of higher education diplomas*** awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p.16) ***does not cover an academic title*** such as that in point before the national court, ***which was awarded on completion of studies of only one year's duration.***

Case C-19/92 Kraus [1993] ECR 1663 §25

In contrast, ***Council Directive 92/51/EEC on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC*** (OJ 1992 L 209, p.25) ***extends the system of recognition to diplomas evidencing completion of studies of at least one year's duration***. That directive, however, was adopted after the occurrence of the circumstances giving rise to the main proceedings and the period prescribed for its transposition into national law has not yet expired.

Case C-19/92 Kraus [1993] ECR 1663 §26

With a view to making it easier for persons to take up and pursue activities as self-employed persons, Article 57 assigns to the Council the duty of issuing directives concerning, first, the mutual recognition of diplomas, and secondly, the coordination of the provisions laid down by law or administrative action in Member States concerning the taking up and pursuit of activities as self-employed persons.

Case C-71/76 Thieffry [1977] ECR 765 §11

Besides these liberalising measures, ***Article 57 provides for directives intended to ensure mutual recognition of diplomas, certificates and other evidence of formal qualifications*** and in a general way for the coordination of laws with regard to establishment and the pursuit of activities as self-employed persons.

Case C-2/74 Reyners [1974] ECR 631 §20

9.2.4. Specific professions

9.2.4.1. Lawyers

It is established that ***no measure has yet been adopted under Article 57(2) of the EEC Treaty concerning the harmonisation of the conditions of access to a lawyer's activities.***

Case C-340/89 Vlassopoulou [1991] ECR 2357 §10

In the course of that examination, a Member State may, however, take into consideration objective differences relating to both the legal framework of the profession in question in the Member State of origin and to its field of activity. ***In the case of the profession of lawyer, a Member State may therefore carry out a comparative examination of diplomas, taking account of the differences identified between the national legal systems concerned.***

Case C-340/89 Vlassopoulou [1991] ECR 2357 §18

Consequently, the answer to the question submitted by the Bundesgerichtshof must be that *Article 52 of the EEC Treaty must be interpreted as requiring the national authorities of a Member State to which an application for admission to the profession of lawyer is made* by a Community subject who is already admitted to practise as a lawyer in his country of origin and who practises as a legal adviser in the first-mentioned Member State ***to examine to what extent the knowledge and qualifications attested by the diploma obtained by the person concerned in his country of origin correspond to those required by the rules of the host State;*** if those diplomas correspond only partially, the national authorities in question are entitled to require the person concerned to prove that he has acquired the knowledge and qualifications which are lacking.

Case C-340/89 Vlassopoulou [1991] ECR 2357 §23

In view of the special nature of the legal profession, however , ***the second Member State must have the right***, in the interests of the due administration of justice, ***to require that lawyers enrolled at a bar in its territory should practise in such a way as to maintain sufficient contact with their clients and the judicial authorities and abide by the rules of the profession***. nevertheless such requirements must not prevent the nationals of other Member States from exercising properly the right of establishment guaranteed them by the Treaty.

Case C-107/83 Klopp [1984] ECR 2971 §20

The question must therefore be answered to the effect that even in the absence of any directive coordinating national provisions governing access to and the exercise of the legal profession, Article 52 *et seq.* of the EEC Treaty prevent the competent authorities of a Member State from ***denying,*** on the basis of the national legislation and the rules of professional conduct which are in force in that State, to a national of another Member State ***the right to enter and to exercise the legal profession solely on the ground that he maintains chambers simultaneously in another Member State.***

Case C-107/83 Klopp [1984] ECR 2971 §22

In these circumstances, the answer to the question referred to the Court should be that when a national of one Member State desirous of exercising a professional activity such as the profession of advocate in another Member State has obtained a ***diploma in his country of origin which has been recognised as an equivalent qualification by the competent authority under the legislation of the country of establishment*** and which has thus enabled him to sit and pass the special qualifying examination for the profession in question, ***the act of demanding the national diploma prescribed by the legislation of the country of establishment constitutes***, even in the absence of the directives provided for in Article 57, **a**

restriction incompatible with the freedom of establishment guaranteed by Article 52 of the Treaty.

Case C-71/76 Thieffry [1977] ECR 765 §27

Differences exist, however, between the governments referred to as regards the nature of the activities which are thus excepted from the principle of the freedom of establishment, ***taking into account the different organisation of the professions corresponding to that of avocat from one Member State to another.***

Case C-2/74 Reyners [1974] ECR 631 §40

The most typical activities of the profession of avocat, in particular, such as consultation and legal assistance and also representation and the defence of parties in court, even when the intervention or assistance of the avocat is compulsory or is a legal monopoly, ***cannot be considered as connected with the exercise of official authority.***

Case C-2/74 Reyners [1974] ECR 631 §52

9.2.4.2. Insurance

In that respect, it must be acknowledged that an insurance undertaking of another Member State which maintains a permanent presence in the Member State in question comes within the scope of the provisions of the Treaty on the right of establishment, even if that presence does not take the form of a branch or agency, but consists merely of an office managed by the undertaking's own staff or by a person who is independent but authorised to act on a permanent basis for the undertaking, as would be the case with an agency. In the light of the aforementioned definition contained in the first paragraph of Article 60, such an insurance undertaking cannot therefore avail itself of Articles 59 and 60 with regard to its activities in the Member State in question.

Case C-205/84 Commission/Germany [1986] ECR 3793 §21

9.2.4.3. Architects

The answer to the question referred to the Court must therefore be that, with effect from 1 January 1973, ***a national of a new Member State who holds a qualification recognised by the competent authorities of the Member State of establishment as equivalent to the certificate issued and required in that State enjoys the right to be admitted to the profession***

of architect and to practise it under the same conditions as nationals of the Member State of establishment without being required to satisfy any additional conditions.

Case C-11/77 Patrick [1977] ECR 1199 §18

9.2.4.4. Medical professions

It must first be pointed out that nationals of a Member State who pursue their occupation in another Member State are obliged to comply with the rules which govern the pursuit of the occupation in question in that Member State. As the french government rightly observes, **in the case of the medical and dental professions those rules reflect in particular a concern to ensure that individuals enjoy the most effective and complete health protection possible.**

Case C-96/85 Commission/France [1996] ECR 1475 §10

However, in so far as those rules have the effect of restricting freedom of movement for workers, the right of establishment and the freedom to provide services within the community, they are compatible with the treaty only ***if the restrictions which they entail are actually justified in view of the general obli gations inherent in the proper practice of the professions in question and apply to nationals and foreigners alike***. That is not the case where the restrictions are such as to create discrimination against practitioners established in other member states or raise obstacles to access to the profession which go beyond what is necessary in order to achieve the intended goals.

Case C-96/85 Commission/France [1996] ECR 1475 §11

In that context, it must be stated first of all that the principle that a practitioner may have only one practice, put forward by the french government as indispensable to the continuity of medical care, ***is applied more strictly with regard to practitioners from other member states than practitioners established in France***. Although, according to the documents before the court and the information provided by the parties, the councils of the ordre des medecins authorize doctors established in france to open a second practice only at a short distance from their main practice, doctors established in another Member State, even close to the frontier, are never permitted to open a second practice in France. ***Similarly, the french legislation makes it possible in principle for dental surgeons established in france to be authorized to open one or more secondary practices , but a dental practitioner established in another Member State can never be authorized to open a second practice in France.***

Case C-96/85 Commission/France [1996] ECR 1475 §12

Secondly, it must be observed that ***the general rule prohibiting doctors and dental practitioners established in another Member State from practising in france is unduly restrictive***. First of all, in the case of certain medical specialties, it is not necessary that the

specialist should be close to the patient on a continuous basis after the treatment has been given. That is so where the specialist carries out a single procedure, as is often the case of a radiologist, for example, or where subsequent care is provided by other medical personnel, as is often the case of a surgeon. Furthermore, as the french government indeed recognized , recent developments in the medical profession show that even in the area of general medicine the increasing trend is for practitioners to belong to group practices, so that a patient cannot always consult the same general practitioner.

Case C-96/85 Commission/France [1996] ECR 1475 §13

Those considerations show that the prohibition on the enrolment in a register of the ordre in france of any doctor or dental surgeon who is still enrolled or registered in another Member State is too absolute and general in nature to be justified by the need to ensure continuity of medical treatment or of applying french rules of medical ethics in France.

Case C-96/85 Commission/France [1996] ECR 1475 §14

9.2.4.5. Others

At Community level, authorization to practise as an **auditor** is dealt with in the Eighth Council Directive 84/253/EEC of 10 April 1984 based on Article 54(3)(g) of the Treaty on the approval of persons responsible for carrying out the statutory audits of accounting documents (OJ 1984 L 126, p. 20, hereinafter referred to as "the Eighth Directive").

Case C-106/91 Ramrath [1992] ECR I-3351 §6

9.3. Relation to national law

On that point, it must however be stressed that Community law sets limits to the exercise of those powers by the Member States in so far as ***provisions of national law adopted in that connection must not constitute an obstacle to the effective exercise of the fundamental freedoms guaranteed by Articles 48 and 52 of the Treaty*** (see, to that effect, the judgement in Case 222/86 *UNECTEF v Heylens and Others* [1987] ECR 4097, paragraph 11).

Case C-19/92 Kraus [1993] ECR 1663 §28

Although in principle ***criminal legislation and the rules of criminal procedure***, among which the national provision in issue is to be found, ***are matters for which the Member States are responsible***, the Court has consistently held (see *inter alia* the judgement of 11 November 1981 in Case 203/80 *Casati* ((1981)) ECR 2595) that Community law sets certain limits to

their power. ***Such legislative provisions may not discriminate against persons*** to whom Community law gives the right to equal treatment or restrict the fundamental freedoms guaranteed by Community law.

Case C-186/87 Cowan §19

However, it is not possible to disregard the legitimate interest which a Member State may have in preventing certain of its nationals, by means of facilities created under the Treaty, from attempting wrongly to evade the application of their national legislation as regards training for a trade.

Case C-115/78 Knoors [1979] ECR 399 §25

It must be observed in that regard that ***directly applicable provisions of the Treaty are binding on all the authorities of the Member States and they must therefore comply with them without its being necessary to adopt national implementing provisions***. However, as the Court held in its judgement of 20 March 1986 in Case 72/85 (*Commission v Netherlands* (1986) ECR 1219), the right of individuals to rely on directly applicable provisions of the Treaty before national courts is only a minimum guarantee and is not sufficient in itself to ensure the full and complete implementation of the Treaty. It is clear from previous judgements of the Court, in particular its judgement of 25 October 1979, cited above, that ***if a provision of national law that is incompatible with a provision of the Treaty, even one directly applicable in the legal order of the Member States, is retained unchanged, this creates an ambiguous state of affairs*** by keeping the persons concerned in a state of uncertainty as to the possibility of relying on Community law and that ***maintaining such a provision in force therefore amounts to a failure by the state in question to comply with its obligations under the Treaty.***

Case C-168/85 Commission/Italy [1986] ECR 2945 §11

In so far as Community law makes no special provision, these objectives may be attained by measures enacted by the ***Member States*** , which under Article 5 of the Treaty ***are bound to take 'all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community', and to abstain 'from any measure which could jeopardise the attainment of the*** objectives of this Treaty'.

Case C-71/76 Thieffry [1977] ECR 765 §16

The fact that a *national legislation provides for recognition of equivalence only for university purposes* ***does not of*** itself ***justify the refusal to recognise such equivalence*** as evidence of a professional qualification.

Case C-71/76 Thieffry [1977] ECR 765 §25

In these circumstances, the answer to the question referred to the Court should be that when a national of one Member State desirous of exercising a professional activity such as the profession of advocate in another Member State has obtained a diploma in his country of origin which has been recognised as an equivalent qualification by the competent authority ***under the legislation of the country of establishment*** and which has thus enabled him to sit and pass the special qualifying examination for the profession in question, ***the act of demanding the national diploma prescribed by the legislation of the country of establishment constitutes***, even in the absence of the directives provided for in Article 57, ***a restriction*** incompatible with the freedom of establishment guaranteed by Article 52 of the Treaty.

Case C-71/76 Thieffry [1977] ECR 765 §27

Besides these liberalising measures, Article 57 provides for directives intended to ensure ***mutual recognition*** of diplomas, certificates and other evidence of formal qualifications and in a general way for the ***coordination of laws*** with regard to establishment and the pursuit of activities as self-employed persons.

Case C-2/74 Reyners [1974] ECR 631 §20

It appears from the above that in the system of the chapter on the right of establishment the 'general programme' and the directives provided for by the Treaty are intended to accomplish two functions, the first being to eliminate obstacles in the way of attaining freedom of establishment during the transitional period, the second being ***to introduce into the law of Member States a set of provisions intended to facilitate the effective exercise of this freedom*** for the purpose of assisting economic and social interpenetration within the Community in the sphere of activities as self-employed persons.

Case C-2/74 Reyners [1974] ECR 631 §21

As a reference to a set of legislative provisions effectively applied by the country of establishment to its own nationals, this rule is, by its essence, capable of being directly invoked by nationals of all the other Member States.

Case C-2/74 Reyners [1974] ECR 631 §25

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