SENSIBILISATION
DES PROFESSIONS JURIDIQUES
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ROBERT SCHUMAN ACTION PROJECT

IMPROVING
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FOR THE LEGAL PROFESSIONS

GUIDE TO THE CASE-LAW

OF THE EUROPEAN COURT OF JUSTICE IN ARTICLES 59 ET SEQ. E.C. TREATY

FREEDOM TO PROVIDE SERVICES

EUROPEAN COMMISSION
1.1.1999

NOTE TO THE READER

Further to the entry into force of the Amsterdam Treaty, on 1st May 1999, the Articles of the EC Treaty have been renumbered .

Consequently, the principle of **freedom of establishment** is no longer governed by Articles 52 to 58 but by **Articles 43 to 48** of the EC Treaty .

Furthermore, the principle of **freedom to provide services**, which was encompassed under Articles 59 to 66, now falls under **Articles 49 to 55** of the EC Treaty .

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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 D3 (freedom of establishment and freedom to provide services).

As the present guide is intended to facilitate the understanding and analysis of issues concerning Article 59 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 freedom to provide 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 judgment 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 harmonization.

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 the freedom to provide services can thus be followed.

UPDATES OF THE GUIDE

The fourth edition of this guide follows those of 30 June 1994, 31 December 1995 and 1 January 1997 and is the second 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 1997 and 31 December 1998. In the light of recent cases, the structure and content of the Guide have been revised.

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1 DEFINITION OF SERVICES

1.1 GENERAL PRINCIPLES

1.1.1 Economic activity

1.1.1.1 Principle

Where such a service is provided by a member of a profession and therefore, as required by Article 60 of the Treaty, ***is normally provided for remuneration, the principle of equal treatment laid down in Article 59 applies***.

Case C-20/92 Hubbard [1993] ECR I-3777 §13

According to the first paragraph of that provision, services are to be considered to be "services" within the meaning of the Treaty where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement of goods, capital or persons. Indent (d) of the second paragraph of Article 60 expressly states that activities of the professions fall within the definition of services.

Case C-159/90 Grogan [1991] ECR I-4685 §17
See also: Case C-205/84 Commission v Germany [1986] ECR 3755 §18

The essential characteristic of remuneration thus lies in the fact that it constitutes consideration for the service in question, and is normally agreed upon between the provider and the recipient of the service.

Case 263/86 Humbel [1988] ECR 5365 § 17

According to Article 60 of the Treaty, ***services are deemed to be "services" within the meaning of the Treaty where they are normally provided for remuneration***, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons. Within the context of Title III of Part Two of the Treaty ("Free movement of persons, services and capital"), the free movement of persons includes the movement of workers within the Community and freedom of establishment within the territory of the Member States.

Joined Cases C-286/82 and 26/83 Luisi & Carbone [1984] ECR 377 §9

1.1.1.2Examples

The dispute before the national court concerns treatment provided by an ***orthodontist*** established in another Member State, outside any hospital infrastructure. ***That service, provided for remuneration, must be regarded as a service within the meaning of Article 60 of the Treaty, which expressly refers to activities of the professions.***

Cases C-158/96 Kohll [1998] ECR I-1931 §29

However, ***that does not permit them to exclude the public health sector, as a sector of economic activity and from the point of view of freedom to provide services, from the application of the fundamental freedom of movement*** (see Case 131/85 *Gül v Regierungspräsident Düsseldorf* [1986] ECR 1573, paragraph 17).

Case C-158/96 Kohll [1998] ECR I-1931 §46

Since ***the provision of insurance constitutes a service within the meaning of Article 60 of the Treaty***, it must next be borne in mind that, according to the case-law of the Court, Article 59 of the Treaty precludes the application of any national legislation which, without objective justification, impedes the provider of services from actually exercising the freedom to provide them (see, in particular, Case C-381/93 *Commission v France* [1994] ECR I- 5145, paragraph 16).

Case C-118/96 Safir [1998] ECR I-1897 §22

As was held in Case 352/85 *Bond van Adverteerders* [1988] ECR 2085, ***advertising broadcast for payment by a television broadcaster established in one Member State for an advertiser established in another Member State constitutes provision of a service within the meaning of Article 59 of the Treaty.***

Joined Cases C-34/95, 35/95 & 36/95 De Agostini [1997] ECR I-3843 §48

It should be pointed out at the outset that the activities of a tourist guide may be subject to two distinct sets of rules. A tourist agency may itself employ guides but it may also engage self-employed tourist guides. ***In the latter case, the service is provided by the tourist guide to the tourist agency and constitutes an activity carried on for remuneration within the meaning of Article 60 of the Treaty*** (Case C-198/89 *Commission v Greece* [1991] ECR I-727, paragraphs 5 and 6).

Case C-398/95 SETTG [1997] ECR I-3091 §7

Since ***transactions such as building loans provided by banks constitute services within the meaning of Article 59 of the Treaty***, it is also necessary to ascertain whether the rule referred to by the national court is compatible with the Treaty provisions on freedom to provide services.

Case C-484/93 Svensson & Gustavsson [1995] ECR I-3955 §11

Before considering that question, the Court notes that it has already held in Case 155/73 *Sacchi* [1974] ECR 409, paragraph 6, that ***the transmission of television signals comes, as such, within the rules of the Treaty relating to the provision of services.*** In *Debauve*, cited above, paragraph 8, ***the Court stated that there was no reason to treat the transmission of such signals by cable television any differently.***

Case C-23/93 TV10 [1994] ECR I-4795 §13

Some governments stress the chance character of lottery winnings. However, a normal lottery transaction consists of the payment of a sum by a gambler who hopes in return to receive a prize or winnings. ***The element of chance inherent in that return does not prevent the transaction having an economic nature.***

Case C-275/92 Schindler [1994] ECR I-1039 §33

It is also the case that, like amateur sport, a lottery may provide ***entertainment*** for the players who participate. ***However, that recreational aspect of the lottery does not take it out of the realm of the provision of services.*** Not only does it give the players, if not always a win, at least the hope of a win, it also yields a gain for the operator. ***Lotteries are operated by private or public persons with a view to profit since, in most cases, not all the money staked by the participants is redistributed as prizes or winnings.***

Case C-275/92 Schindler [1994] ECR I-1039 §34

Although in many Member States the law provides that the profits made by a lottery may be used only for certain purposes, in particular in the public interest, or may even be required to be paid into the State budget, ***the rules on the allocation of profits do not alter the nature of the activity in question or deprive it of its economic character.***

Case C-275/92 Schindler [1994] ECR I-1039 §35

.../...

As the Court has already emphasized in Case 263/86 *Belgian State v Humbel* [1988] ECR 5365, at paragraphs 17, 18 and 19, the essential characteristic of remuneration lies in the fact that it constitutes consideration for the service in question, and is normally agreed upon between the provider and the recipient of the service. In the same judgment the Court considered that ***such a characteristic is absent in the case of courses provided under the national education system***. First of all, the State, in establishing and maintaining such a system, is not seeking to engage in gainful activity, but is fulfilling its duties towards its own population in the social, cultural and educational fields. Secondly, the system in question is, as a general rule, funded from the public purse and not by pupils or their parents. The Court added that ***the nature of the activity is not affected by the fact that pupils or their parents must sometimes pay teaching or enrolment fees in order to make a certain contribution to the operating expenses of the system***.

Case C-109/92 Wirth [1993] ECR I-6447 §15
see also: Case 263/86 Humbel [1988] ECR 5365 §§16-18

Those considerations are equally applicable to courses given in an institute of higher education which is financed, essentially, out of public funds.

Case C-109/92 Wirth [1993] ECR I-6447 §16

However, as the United Kingdom has observed, whilst most establishments of higher education are financed in this way, some are nevertheless financed essentially out of private funds, in particular by students or their parents, and which ***seek to make an economic profit. When courses are given in such establishments, they become services within the meaning of Article 60 of the Treaty***. Their aim is to offer a service for remuneration.

Case C-109/92 Wirth [1993] ECR I-6447 §17

It must be held that termination of pregnancy, as lawfully practised in several Member States, is a medical activity which is normally provided for remuneration and may be carried out as part of a professional activity. In any event, the Court has already held in the judgment in *Luisi and Carbone* (Joined Cases 286/82 and 26/83 *Luisi and Carbone v. Ministero del Tesoro* (1984) ECR 377, paragraph 16) that ***medical activities fall within the scope of Article 60 of the Treaty.***

Case C-159/90 Grogan [1991] ECR I-4685 §18

The information to which the national court's questions refer is not distributed on behalf of an economic operator established in another Member State. On the contrary, the information constitutes a manifestation of freedom of expression and of the freedom to impart and receive information which is independent of the ***economic activity*** carried on by clinics established in another Member State.

Case C-159/90 Grogan [1991] ECR I-4685 §26

(...) the person providing a service such as that referred to in the present case does not advise his clients, who are themselves often patent agents or undertakings which employ qualified patent experts. He confines himself to alerting them when renewal fees have to be paid in order to prevent a patent from lapsing, to requesting them to state whether they wish to renew the patent and to paying the corresponding fees on their behalf if they so desire. Those tasks, which are carried out without its being necessary for the provider of the service to travel, are essentially of a straightforward nature and do not call for specific professional aptitudes, as is indicated by the high level of computerisation which, in the present case, appears to have been attained by the defendant in the main proceedings.

Case C-76/90 Säger [1991] ECR I-4221 §18

The two cases described above thus relate to ***the provision of services by the tour company to tourists and by the self-employed tourist guide to the tour company*** respectively. Such services, which are of limited duration and are not governed by the provisions on the free movement of goods, capitals and persons, ***constitute activities carried on for remuneration within the meaning of Article 60 of the EEC Treaty.***

Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §6
See also: Case C-180/89 Tourist Guides Italy [1991] ECR I-709 §6
Case C-154/89 Tourist Guides France [1991] ECR I-659 §7

The two services in question are also ***provided for remuneration*** within the meaning of Article 60 of the Treaty. Firstly, ***the cable network operators are paid, in the form of the fees which they charge their subscribers, for the service which they provide for the broadcasters***. It is irrelevant that the broadcasters generally do not themselves pay the cable network operators for relaying their programmes. ***Article 60 does not require the service to be paid for by those for whom it is performed.*** Secondly, ***the broadcasters are paid by the advertisers for the service which they perform for them in scheduling their advertisements***.

Case C-352/85 Bond van Adverteerders [1988] ECR 2085 §16

Where an undertaking ***hires out, for remuneration, staff*** who remain in the employ of that undertaking, no contract of employment being entered into with the user, its activities constitute an occupation which satisfies the conditions laid down in the first paragraph of Article 60. ***Accordingly they must be considered a "service" within the meaning of that provision***.

Case C-279/80 Webb [1981] ECR 3305 §9

In the absence of express provision to the contrary in the Treaty, ***a television signal must***, by reason of its nature, ***be regarded as provision of services***. Although it is not ruled out that services normally provided for remuneration may come under the provisions relating to free movement of goods, such is however the case, as appears from Article 60, only insofar as they are governed by such provisions. ***It follows that the transmission of television signals, including those in the nature of advertisements, comes, as such, within the rules of the treaty relating to services***.

Case C-155/73 Sacchi [1974] ECR 409 §6

1.1.2 Cross-border character

1.1.2.1 Principle

Finally it has been consistently been held that ***the Treaty rules governing freedom of movement and acts adopted to implement them cannot be applied to activities*** which have no factor linking them with any of the situations governed by Community law and ***which are confined in all respects within a single Member State*** (Joined Cases C-64/96 and C-65/96 *Land Nordrhein-Westfalen* v *Uecker* and *Jacquet* v *Land Nordrhein-Westfalen* [1997] ECR I-3171, paragraph 16; Case C-134/95 *USSL No 47 di Biella* v *INAIL* [1997] ECR I-195, paragraph 19 and Case C-332/90 *Steen* v *Deutsche Bundespost* [1992] ECR I-341, paragraph 9)

Joined Cases C-225/95, C-226/95 & C-227/95 Kapasakalis [1998] ECR I-0000 §22
See also: Case C-70/95 Sodemare [1997] ECR I-3395 §38
Case C-134/95 USSL No.47 Di Biella [1997] ECR I-195 §19
Case C-3/95 Reisebüro Broede [1996] ECR I-6511 §14
Case C-60/91 Batista Morais [1992] ECR I-2085 §§7 & 9
Joined Cases C-330 & 331/90 López Brea & Hidalgo Palacios[1992] ECR I-323 §§7 & 9
Case C-41/90 Höfner & Elser [1991] ECR I-1979 §37

In paragraph 42 the Court went on to say that a Member State's jurisdiction *ratione personae* over a television broadcaster could be based only on the broadcaster's connection to that Member State's legal system, which in substance overlaps with the concept of establishment ***as used in the first paragraph of Article 59 of the EC Treaty, the wording of which presupposed that the supplier and the recipient of the service were 'established' in two different Member States***

Case C-56/96 VT4 [1997] ECR I-3143 §17
See also: Case C-14/96 Denuit [1997] ECR I-2785 §23
Case C-222/94 Commission v United Kingdom [1996] ECR I-4025 §42
Case C-55/94 Gebhard [1995] ECR I-4165 §22

It is settled case-law that ***the provisions of the Treaty on*** freedom of establishment and ***freedom to provide services do not apply to purely internal situations*** in a Member State (see most recently the judgment of 16 November 1995 in Case C-152/94 *Openbaar Ministerie v Van Buynder* [1995] ECR I-3981, Paragraph 10).

Case C-17/94 Gervais [1995] ECR I-4353 §24

Although Article 59 of the Treaty expressly contemplates only the situation of a person providing services who is established in a Member State other than that in which the recipient of the service is established, the purpose of that Article is nevertheless to abolish restrictions on the freedom to provide services by persons who are not established in the State in which the service is to be provided (see judgment in Case 76/81 *Transporoute v Minister of Public Works* [1982] ECR 417, at paragraph 14). ***It is only when all the relevant elements of the activity in question are confined within a single Member State that the provisions of the Treaty on freedom to provide services cannot apply*** (judgment in Case 52/79, *Procureur du Roi v Debauve* [1980] ECR 833, at paragraph 9).

Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §9
See also: Case C-180/89 Tourist Guides Italy [1991] ECR I-709 §8
Case C-154/89 Tourist Guides France [1991] ECR I-659 §9

Consequently, ***the provisions of Article 59 must apply in all cases where a person providing services offers those services in a Member State other than that in which he is established, wherever the recipients of those services may be established.***

Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §10
See also: Case C-180/89 Tourist Guides Italy [1991] ECR I-709 §9
Case C-154/89 Tourist Guides France [1991] ECR I-659 §10

By virtue of Article 59 of the Treaty, restrictions on freedom to provide such services are to be abolished in respect of nationals of Member States who are ***established in a Member State other than that of the person for whom the service is intended. In order to enable services to be provided, the person providing the service may go to the Member State where the person for whom it is provided is established or else the latter may go to the State in which the person providing the service is established.*** Whilst the former case is expressly mentioned in the third paragraph of Article 60, which permits the person providing the service to pursue his activity temporarily in the Member State where the service is provided, the latter case is the necessary corollary thereof, which fulfils the objective of liberalising all gainful activity not covered by the free movement of goods, persons and capital.

Joined Cases C-286/82 & 26/83 Luisi & Carbone [1984] ECR 377 §10

However, ***it should be observed that the provisions of the Treaty on the freedom to provide services cannot apply to activities whose relevant elements are confined within a single Member State. Whether that is the case depends on findings of fact which are for the national court to establish.*** Since the tribunal correctionnel has concluded that in the given circumstances of this case the services out of which the prosecutions brought before it arose are such as to come under provisions of the Treaty relating to services, the questions referred to the Court should be examined from the same point of view.

Case C-52/79 Debauve [1980] ECR 833 §9

1.1.2.2Examples

In this case, ***the offers of services are made by a provider established in one Member State to a potential recipient established in another Member State.*** It follows from the express terms of Article 59 that ***there is therefore a provision of services within the meaning of that provision.***

Case C-384/93 Alpine Investments [1995] ECR I-1141 §21

The answer to the first question is therefore that, on a proper construction, ***Article 59 of the EEC Treaty covers services which the provider offers by telephone to potential recipients established in other Member States and provides without moving*** from the Member State in which he is established.

Case C-384/93 Alpine Investments [1995] ECR I-1141 §22

In pursuance of those rules ***the freedom to provide services may be relied on not only by nationals of Member States established in a Member State other than that of the recipient of the services but also by an undertaking against the State in which it is established where the services are provided to recipients established in another Member State*** (see judgment in Case C-18/93 *Corsica Ferries Italia* [1994] ECR I-1783, paragraph 30), ***and more generally whenever a provider of services offers services in a Member State other than the one in which he is established*** (see judgment in Case C-154/89 *Commission v France* [1991] ECR I-659, paragraphs 9 and 10, and the above-mentioned *Peralta* judgment, at paragraph 41).

Case C-381/93 Commission v France [1994] ECR I-5145 §14

The circumstance that, according to the Raad van State, ***TV10 established itself in the Grand Duchy of Luxembourg in order to escape the Netherlands legislation does not preclude its broadcasts being regarded as services within the meaning of the Treaty***. That is distinct from the question of what measures a Member State may take to prevent a provider of services established in another Member State from evading its domestic legislation. The latter point is the subject of the Raad van State's second question.

Case C-23/93 TV10 [1994] ECR I-4795 §15

Second, in a judgment delivered on 17 May 1994 in Case C-18/93 *Corsica Ferries v Corpo dei Piloti del Porto di Genova*, not yet published in the ECR, paragraph 30, ***the Court held that the freedom to provide maritime transport services between Member States may be relied on by an undertaking as against the State in which it is established, if the services are provided for persons established in another Member State.***

Case C-379/92 Peralta [1994] ECR I-3453 §40

The services in question are ***cross-border services*** when, as in the main proceedings, they are offered in a Member State other than that in which the lottery operator is established.

Case C-275/92 Schindler [1994] ECR I-1039 §29

Each of those services are ***transfrontier*** services for the purposes of Article 59 of the Treaty. In each case ***the supplier of the service are established in a Member State other than that of certain of the persons for whom it is intended.***

Case C-352/85 Bond van Adverteerders [1988] ECR 2085 §15

1.1.3 Temporary character

1.1.3.1 Principle

(...) ***the temporary nature of the provision of services***, envisaged in the third paragraph of Article 60 of the EC Treaty, ***is to be determined in the light of its duration, regularity, periodicity and continuity.***

Case C-55/94 Gebhard [1995] ECR I-4165 §39

The aim of those provisions is primarily to enable the person providing the service to pursue his activities in the host Member State without suffering discrimination in favour of nationals of that State. As the Court pointed out in its judgment in Case 279/80 *Webb* [1981] ECR 3305, at paragraph 16, ***those provisions do not mean that all national legislation applicable to nationals of that State and usually applied to the permanent activities of persons established therein may be similarly applied in their entirety to the temporary activities of persons who are established in other Member States.***

Case C-294/89 Commission v France [1991] ECR I-3591 §26
See also: Case C-205/84 Commission v Germany [1986] ECR 3755 §26
Case C-279/80 Webb [1981] ECR 3305 §16

The two cases described above thus relate to the provision of services by the tour company to tourists and by the self-employed tourist guide to the tour company respectively. Such ***services, which are of limited duration*** and are not governed by the provisions on the free movement of goods, capitals and persons, constitute activities carried on for remuneration within the meaning of Article 60 of the EEC Treaty.

Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §6
See also: Case C-180/89 Tourist Guides Italy [1991] ECR I-709 §6
Case C-154/89 Tourist Guides France [1991] ECR I-659 §7

Under Article 59 and the third paragraph of Article 60 of the EEC Treaty a person providing a service may, in order to do so, ***temporarily*** pursue his activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals. As the Court has repeatedly emphasised, most recently in its judgment of 17 December 1981 in Case 279/80 *Webb* [1981] ECR 3305, those provisions entail the abolition of all discrimination against a person providing a service on the grounds of his nationality or the fact that he is established in a Member State other than that in which the service must be provided. Thus they prohibit not only overt discrimination based on the nationality of the person providing a service but also all forms of covert discrimination which, although based on criteria which appear to be neutral, in practice lead to the same result.

Cases C-62 and 63/81 Seco [1982] ECR 223 §8

1.1.3.2Examples

The answer to the fourth question must therefore be that ***Article 59 of the Treaty does not cover the situation of a company which, having established itself in a Member State*** in order to run old people's homes there, ***provides services to residents who***, for that purpose, ***reside in those homes permanently or for an indefinite period.***

Case C-70/95 Sodemare [1997] ECR I-3395 §40

The rule of territorial exclusivity laid down in the fourth paragraph of Article 126-3 of Decree No 72-468 is in fact part of national legislation ***normally relating to a permanent activity*** of lawyers established in the territory of the Member State concerned, all of whom are entitled to plead before the Tribunal de Grande Instance within whose area of jurisdiction they are established. However, a lawyer providing services who is established in another Member State is not in a position where he can plead before a French Tribunal de Grande Instance.

Case C-294/89 Commission v France [1991] ECR I-3591 §27

In those circumstances, it must be stated that the rule of territorial exclusivity cannot be applied to ***activities of a temporary nature*** pursued by lawyers established in other Member States, ***since the conditions of law and fact which apply to those lawyers are not in that respect comparable to those applicable to lawyers established on French territory.***

Case C-294/89 Commission v France [1991] ECR I-3591 §28

It must be stated that the requirements in question in these proceedings, namely that an insurer who is established in another Member State, authorized by the supervisory authority of that State and subject to the supervision of that authority, must have a permanent establishment within the territory of the State in which the service is provided and that he must obtain a separate authorization from the supervisory authority of that State, constitute restrictions on the freedom to provided services inasmuch as they increase the cost of such services in the State in which they are provided, in particular where the insurer conducts business in that State ***only occasionally***.

Case C-205/84 Commission v Germany [1986] ECR 3755 §28

It must be stated that the requirement that an insurance undertaking which is already established and authorized in another Member State and which wishes to provide services solely as a leading insurer must have a permanent establishment in the State in which the service is provided constitutes a serious restriction of the freedom of that leading insurer to provide services, in particular because, as a rule, insurance undertakings conduct business as leading insurers ***only occasionally***.

Case C-252/83 Commission v Denmark [1986] ECR 3713 §18

1.1.4 Residual application

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*** (...)

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

Finally, lotteries are ***governed neither by the Treaty rules on the free movement of goods*** (see paragraph 24 above), ***nor by the rules on the free movement of persons***, which concern only movements of persons, ***nor by the rules on free movement of capital***, which concern only capital movements though not all monetary transfers necessary to economic activities (see the judgment in Case 7/78 *Regina v. Thompson* (1978) ECR 2247).

Case C-275/92 Schindler [1994] ECR I-1039 §30

According to the first paragraph of that provision, services are to be considered to be "services" within the meaning of the Treaty where they are normally provided for remuneration, in so far as they are ***not governed by the provisions relating to freedom of movement for goods, capital or persons.*** Indent (d) of the second paragraph of Article 60 expressly states that activities of the professions fall within the definition of services.

Case C-159/90 Grogan [1991] ECR I-4685 §17
Case C-205/84 Commission v Germany [1986] ECR 3755 §18

The two cases described above thus relate to the provision of services by the tour company to tourists and by the self-employed tourist guide to the tour company respectively. Such services, which are of limited duration and are ***not governed by the provisions on the free movement of goods, capitals and persons***, constitute activities carried on for remuneration within the meaning of Article 60 of the EEC Treaty.

Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §6
See Also: Case C-180/89 Tourist Guides Italy [1991] ECR I-709 §6
Case C-154/89 Tourist Guides France [1991] ECR I-659 §7

By virtue of Article 59 of the Treaty, restrictions on freedom to provide such services are to be abolished in respect of nationals of Member States who are established in a Member State other than that of the person for whom the service is intended. In order to enable services to be provided, the person providing the service may go to the Member State where the person for whom it is provided is established or else the latter may go to the State in which the person providing the service is established. Whilst the former case is expressly mentioned in the third paragraph of Article 60, which permits the person providing the service to pursue his activity temporarily in the Member State where the service is provided, the latter case is the necessary corollary thereof, which fulfils the objective of liberalising all gainful activity ***not covered by the free movement of goods, persons and capital.***

Cases C-286/82 and 26/83 Luisi & Carbone [1984] ECR 377 §10

1.2 RECIPIENTS OF SERVICES

Situations governed by Community law include those covered by the freedom to provide services, the right to which is laid down in Article 59 of the Treaty. The Court has consistently held that ***this right includes the freedom for the recipient of services to go to another Member State in order to receive a service there*** (Cowan, paragraph 15). ***Article 59 therefore covers all national of Member States who,*** independently of other freedoms guaranteed by the Treaty, ***visit another Member State where they intend or are likely to receive services.*** Such persons – and they include both Mr Bickel and Mr Franz – are free to visit and move around within the host State. Furthermore, pursuant to Article 8a of the Treaty, '[e]very citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect'.

Case C-274/96 Bickel & Franz [1998] ECR I-0000 §15

While ***the national rules*** at issue in the main proceedings ***do not deprive insured persons of the possibility of approaching a provider of services established in another Member State, they do nevertheless make reimbursement of the costs incurred in that Member State subject to prior authorisation, and deny such reimbursement to insured persons who have not obtained that authorisation.*** Costs incurred in the State of insurance are not, however, subject to that authorisation.

Case C-158/96 Kohll [1998] ECR I-1931 §34

Consequently, ***such rules*** deter insured persons from approaching providers of medical services established in another Member State and ***constitute, for*** them and ***their patients, a barrier to freedom to provide services*** (see Joined Cases 286/82 and 26/83 *Luisi and Carbone v Ministero del Tesoro* [1984] ECR 377, paragraph 16, and Case C-204/90 *Bachmann v Belgium* [1992] ECR I-249, paragraph 31).

Case C-158/96 Kohll [1998] ECR I-1931 §35

Furthermore, ***Article 59 of the Treaty applies*** not only where a person providing services and the recipient thereof are established in different Member States, but also ***in all cases where the person providing services offers those services in a Member State other than that in which he is established, wherever the recipients of those services may be established*** (*Commission* v *Greece*, cited above, paragraph 8 to 10)

Case C-398/95 SETTG [1997] ECR I-3901 §8

On the other hand, ***those same provisions do not cover the situation where a national of a Member State goes to the territory of another Member State and establishes his principal residence there in order to receive services there for an indefinite period*** (Case 196/87 *Steymann* v *Staatssecretaris van Justitie* [1988] ECR 6159, paragraph 17). Those provisions cannot be applied to activities which are confined in all respects within a single Member State (Case 52/79 *Procureur du Roi* v *Debauve and Others* [1980] ECR 833, paragraph 9, and Case C-41/90 *Höfner and Elser* [1991] ECR I-1979, paragraph 37).

Case C-70/95 Sodemare [1997] ECR I- 3395 §38

It should be borne in mind that ***the nationals of Member States of the Community have the right to enter the territory of the other Member States in the exercise of the various freedoms recognised by the Treaty and in particular the freedom to provide services which***, according to settled case-law, ***is enjoyed both by providers and by recipients of services*** (see the judgments in Case 186/87 *Cowan v Trésor Public* [1989] ECR 195 and in Case C-68/89 *Commission v Netherlands* [1991] ECR I-2637, paragraph 10).

Case C-43/93 Vander Elst [1994] ECR I-3803 §13

By virtue of Article 59 of the Treaty, restrictions on freedom to provide such services are to be abolished in respect of nationals of Member States who are established in a Member State other than that of the person for whom the service is intended. In order to enable services to be provided, ***the person providing the service may go to the Member State where the person for whom it is provided is established or else the latter may go to the State in which the person providing the service is established. Whilst the former case is expressly mentioned in the third paragraph of Article 60, which permits the person providing the service to pursue his activity temporarily in the Member State where the service is provided, the latter case is the necessary corollary thereof***, which fulfils the objective of liberalising all gainful activity not covered by the free movement of goods, persons and capital.

Cases C-286/82 and 26/83 Luisi & Carbone [1984] ECR 377 §10

It follows that the freedom to provide services ***includes the freedom, for the recipients of services, to go to another Member State in order to receive a service there***, without being obstructed by restrictions, even in relation to payments and that tourists, persons receiving medical treatment and persons travelling for the purpose of education or business are to be regarded as recipients of services.

Cases C-286/82 and 26/83 Luisi & Carbone [1984] ECR 377 §16

2 RESTRICTIONS TO THE PRINCIPLE OF FREEDOM TO PROVIDE SERVICES

2.1 GENERAL PRINCIPLES

Since the provision of insurance constitutes a service within the meaning of Article 60 of the Treaty, it must next be borne in mind that, according to the case-law of the Court, ***Article 59 of the Treaty precludes the application of any national legislation which, without objective justification, impedes the provider of services from actually exercising the freedom to provide them*** (see, in particular, Case C-381/93 *Commission v France* [1994] ECR I- 5145, paragraph 16).

Case C-118/96 Safir [1998] ECR I-1897 §22

In the perspective of a single market and in order to enable its objectives to be attained, ***Article 59 of the Treaty likewise precludes the application of any national legislation which has the effect of making the provision of services between Member States more difficult than the provision of services exclusively within one Member State*** (Case C-381/93 *Commission v France*, cited above, paragraph 17).

Case C-118/96 Safir [1998] ECR I-1897 §23

The freedom to provide services would become illusory if national rules were at liberty to restrict offers of services. The prior existence of an identifiable recipient cannot therefore be a condition for application of the provisions on the freedom to provide services.

Case C-384/93 Alpine Investments [1995] ECR I-1141 §19

An analysis of the above-mentioned General Programmes for the abolition of restrictions on freedom of establishment and freedom to provide services reveals that the restrictions envisaged by those provisions are essentially measures discriminating, directly or indirectly, between nationals of other Member States and nationals of the host country.

Cases C-330 and 331/90 López Brea & Hidalgo Palacios[1992] ECR I-323 §13

It should first be pointed out that Article 59 of the Treaty requires not only the elimination of all discrimination against a person providing services on the ground of his nationality but also the abolition of any restriction, even if it applies without distinction to national providers of services and to those of other Member States, when it is liable to prohibit or otherwise impede the activities of a provider of services established in another Member State where he lawfully provides similar services.

Case C-76/90 Säger [1991] ECR I-4221 §12

The requirement imposed by the abovementioned provisions of Greek legislation amount to such a restriction. By making the provision of services by tourist guides accompanying a group of tourists from another Member State subject to possession of a specific qualification, ***that legislation prevents both tour companies from providing that service with their own staff and self-employed tourist guides from offering their services to those companies for organized tours. It also prevents tourists taking part in such organized tours from availing themselves at will of the services in question.***

Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §17
See also: Case C-180/89 Tourist Guides Italy [1991] ECR I-709 §16
Case C-154/89 Tourist Guides France [1991] ECR I-659 §13

Articles 59 and 60 of the Treaty therefore preclude a Member State from prohibiting a person providing services established in another Member State from moving freely on its territory with all his staff and preclude that Member State from making the movement of staff in question subject to restrictions such as a condition as to engagement *in situ* or an obligation to obtain a work permit. ***To impose such conditions on the person providing services established in another Member State discriminates against that person in relation to his competitors established in the host country who are able to use their own staff without restrictions, and moreover affects his ability to provide the service.***

Case C-113/89 Rush Portuguesa [1990] ECR I-1417 §12

It must be stated that ***the requirements*** in question in these proceedings, namely that an insurer who is established in another Member State, authorized by the supervisory authority of that State and subject to the supervision of that authority, must have a permanent establishment within the territory of the State in which the service is provided and that he must obtain a separate authorization from the supervisory authority of that State, ***constitute restrictions on the freedom to provide services inasmuch as they increase the cost of such services in the State in which they are provided***, in particular where the insurer conducts business in that State only occasionally.

Case C-205/84 Commission v Germany [1986] ECR 3755 §28

Such is the case with national legislation of the kind in question when the obligation to pay the employer's share of social security contributions imposed on persons providing services within the national territory is extended to employers established in another Member State who are already liable under the legislation of that State for similar contributions in respect of the same workers and the same periods of employment. In such a case ***the legislation of the State in which the service is provided proves in economic terms to be more onerous for employers established in another Member State***, who in fact have to bear a heavier burden than those established within the national territory.

Cases C-62 and 63/81 Seco [1982] ECR 223 §9

Whilst Article 59 of the Treaty prohibits restrictions upon freedom to provide services, it does not thereby encompass limits upon the exercise of certain economic activities which have their origin in the application of national legislation for the protection of intellectual property, ***save where such application constitutes a means of arbitrary discrimination or a disguised restriction on trade between Member States***. Such would be the case if that application enabled parties to an assignment of copyright to create ***artificial barriers*** to trade between Member States.

Case C-62/79 Coditel [1980] ECR 881 §15

From information given to the Court during these proceedings it appears that the television broadcasting of advertisements is subject to widely divergent systems of law in the various Member States, passing from almost total prohibition, as in Belgium, by way of rules comprising more or less strict restrictions, to systems affording broad commercial freedom. In the absence of any approximation of national laws and taking into account the considerations of general interest underlying the restrictive rules this area, ***the application of the laws*** in question ***cannot be regarded as a restriction upon freedom to provide services so long as those laws treat all such services identically whatever their origin or the nationality or place of establishment of the persons providing them.***

Case C-52/79 Debauve [1980] ECR 833 §13

The answer must therefore be that Articles 59 an 60 of the Treaty do not preclude national rules prohibiting the transmission of advertisements by cable television - as they prohibit the broadcasting of advertisements by television - ***if those rules are applied without distinction as regards the origin, whether national or foreign, of those advertisements, the nationality of the person providing the service, or the place where he is established.***

Case C-52/79 Debauve [1980] ECR 833 §16

As the Court has already ruled in its judgment of 12 December 1974 in *Walrave v Union Cycliste Internationale* (Case 36/74 [1974] ECR 1405), ***the prohibition on discrimination based on nationality does not only apply to the action of public authorities but extends likewise to rules of any other nature aimed at collectively regulating gainful employment and services.***

Case C-13/76 Donà [1976] ECR 1333 §17

The answer to the questions referred to the court must therefore be that ***rules or a national practice, even adopted by a sporting organisation***, which limit the right to take part in football matches as professional or semi-professional players solely to the nationals of the State in question, ***are incompatible with*** Article 7 and, as the case may be, with ***Articles*** 48 to 51 or ***59 to 66 of the Treaty unless such rules or practice exclude foreign players from participation in certain matches for reasons which are not of an economic nature***, which relate to the particular nature and context of such matches and are thus of sporting interest only.

Case C-13/76 Donà [1976] ECR 1333 §19

The restrictions to be abolished pursuant to this provision ***include all requirements imposed on the person providing the service by reason in particular of his nationality or of the fact that he does not habitually reside in the State where the service is provided, which do not apply to persons established within the national territory or which may prevent or otherwise obstruct the persons providing the service.***

Case C-39/75 Coenen [1975] ECR 1547 §6
See also: Case C-33/74 Van Binsbergen [1974] ECR 1299 §10

2.2 DISCRIMINATORY MEASURES

However, it is settled law that ***discrimination can arise only through the application of different rules to comparable situations or the application of the same rules to different situations*** (see, inter alia Case C-279/93 *Finanzamt Köln-Altstadt v Schumacher* [1995] ECR I-225, paragraph 30).

Case C-390/96 Lease Plan [1998] ECR I-2553 §34

An analysis of the abovementioned General Programmes for the abolition of restrictions on freedom of establishment and freedom to provide services reveals that the restrictions envisaged by those provisions are essentially measures ***discriminating, directly or indirectly***, between nationals of other Member States and nationals of the host country.

Cases C-330 and 331/90 López Brea & Hidalgo Palacios[1992] ECR I-323 §13

In this respect, the Court has consistently held (see, most recently, the judgments in Case C-154/89 *Commission v France* [1991] ECR I-659, paragraph 12, Case C-180/89 *Commission v Italy* [1991] ECR I-709, paragraph 15, and Case C-198/89 *Commission v Greece* [1991] ECR I-727, paragraph 16) that Article 59 of the Treaty entails, in the first place, ***the abolition of any discrimination against a person providing services on account of his nationality or the fact that he is established in a Member State other than the one in which the service is provided.***

Case C-288/89 Mediawet I [1991] ECR I-4007 §10

As the Court held in its judgment 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 judgment (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 [1991] ECR I-4007 §11
see also: Case C-352/85 Bond van Adverteerders [1988] ECR 2085 §§32-34

In any event, that fact is not such as to exclude the preferential system enjoyed by the NOPB from the field of application of Article 59 of the Treaty. Moreover, it is not necessary for all undertakings in a Member State to be advantaged in comparison with foreign undertakings. ***It is sufficient that the preferential system set up should benefit a national provider of services.***

Case C-353/89 Mediawet II [1991] ECR I-4069 §25

The ***aim*** of those provisions is ***primarily*** to enable the person providing the service to pursue his activities in the host Member State ***without suffering discrimination in favour of nationals of that State***. As the Court pointed out in its judgment in Case 279/80 *Webb* [1981] ECR 3305, at paragraph 16, those provisions do not mean that all national legislation applicable to nationals of that State and usually applied to the permanent activities of persons established therein may be similarly applied in their entirety to the temporary activities of persons who are established in other Member States.

Case C-294/89 Commission v France [1991] ECR I-3591 §26

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 [1991] ECR I-2925 §24

Articles 59 and 60 of the Treaty therefore preclude a Member State from prohibiting a person providing services established in another Member State from moving freely on its territory with all his staff and preclude that Member State from making the movement of staff in question subject to restrictions such as a condition as to engagement in situ or an obligation to obtain a work permit. To impose such conditions on the person providing services established in another Member State ***discriminates*** against that person in relation to his competitors established in the host country who are able to use their own staff without restrictions, and moreover affects his ability to provide the service.

Case C-113/89 Rush Portuguesa [1990] ECR I-1417 §12

It should also be emphasised that ***the right to equal treatment is conferred directly by Community law*** and may not therefore be made subject to the issue of a certificate to that effect by the authorities of the relevant Member State (in that respect see the judgment of 3 July 1980 in Case 157/79 *Regina v Pieck* [1980] ECR 2171).

Case C-186/87 Cowan [1989] ECR 195 §11

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 v France [1986] ECR 1475 §11

.../...

Under Article 59 and the third paragraph of Article 60 of the EEC Treaty a person providing a service may, in order to do so, temporarily pursue his activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals. As the Court has repeatedly emphasised, most recently in its judgment of 17 December 1981 in Case 279/80 *Webb* [1981] ECR 3305, those provisions entail the ***abolition of all discrimination*** against a person providing a service on the grounds of his ***nationality or the fact that he is established in a Member State other than that in which the service must be provided***. Thus they prohibit not only overt discrimination based on the nationality of the person providing a service but also all forms of covert discrimination which, although based on criteria which appear to be neutral, in practice lead to the same result.

Cases C-62 and 63/81 Seco [1982] ECR 223 §8
see also: Cases 110 and 111/78 Van Wesemael [1979] ECR 35 §27

Such is the case with national legislation of the kind in question when the obligation to pay the employer's share of social security contributions imposed on persons providing services within the national territory is extended to employers established in another Member State who are already liable under the legislation of that State for similar contributions in respect of the same workers and the same periods of employment. In such a case the legislation of the State in which the service is provided proves in economic terms to be more onerous for employers established in another Member State, ***who*** in fact ***have to bear a heavier burden than those established within the national territory.***

Cases C-62 and 63/81 Seco [1982] ECR 223 §9

That argument cannot be accepted. A Member State's power to control the employment of nationals from a non-member country may not be used in order to impose a ***discriminatory burden*** on an undertaking from another Member State enjoying the freedom under Articles 59 and 60 of the Treaty to provide services.

Cases C-62 and 63/81 Seco [1982] ECR 223 §12

The reply to the second and third questions raised by the Hoge Raad is therefore that Article 59 does not preclude a Member State which requires agencies for the provision of manpower to hold a licence from requiring a provider of services established in another Member State and pursuing such activities on the territory of the first Member State to comply with that condition even if he holds a licence issued by the State in which he is established, provided however, that in the first place when considering applications for licences and in granting them the Member State in which the service is provided makes ***no distinction based on the nationality of the provider of the services or his place of establishment***, and in the second place that it takes into account the evidence and guarantees already produced by the provider of the services for the pursuit of his activities in the Member State in which he is established.

Case C-279/80 Webb [1981] ECR 3305 §21

The national court is referring in this question to the spatial limits on the diffusion of television programmes depending, on the one hand, on the natural relief of the ground and of built-up areas and, on the other, on the technical features of the broadcasting systems used. These natural and technical factors undoubtedly lead to differences as regards reception of television signals in view of the correlation between the location of broadcasting stations and television receivers. ***However, such differences, which are due to natural phenomena, cannot be described as "discrimination" within the meaning of the Treaty, the latter regards only differences in treatment arising from human activity, and especially from measures taken by public authorities, as discrimination.*** Moreover, it should be pointed out that even if the Community has in some respects intervened to compensate for natural inequalities, it has no duty to take steps to eradicate differences in situations such as those contemplated by the national court.

Case C-52/79 Debauve [1980] ECR 833 §21

The answer to the questions referred to the court must therefore be that rules or a national practice, even adopted by a sporting organisation, ***which limit the right to take part in football matches as professional or semi-professional players solely to the nationals of the State in question***, are incompatible with Article 7 and, as the case may be, with Articles 48 to 51 or 59 to 66 of the Treaty unless such rules or practice ***exclude foreign players*** from participation in certain matches for reasons which are not of an economic nature, which relate to the particular nature and context of such matches and are thus of sporting interest only.

Case C-13/76 Donà [1976] ECR 1333 §19

2.3 NON-DISCRIMINATORY MEASURES

It should be noted that, according to the Court's case-law, Article 59 of the Treaty precludes the application of any ***national rules which have the effect of making the provision of services between Member States more difficult than the provision of services purely within one Member State*** (Case C-381/93 *Commission v France* [1994] ECR I-5145, paragraph 17).

Cases C-158/96 Kohll [1998] ECR I-1931 §33

The Court has consistently held in this regard that ***Articles 59 and 60 of the Treaty require*** not only the elimination of all discrimination on the grounds of nationality against providers of services who are established in another Member State but also ***the abolition of any restriction, even if it applies without distinction to national providers of services and to those of other Member States, which is liable to prohibit, impede or otherwise render less advantageous the activities of a provider of services established in another Member State where he lawfully provides similar services*** (see, in particular, Case C-3/95 *Reisebüro Broede v Sanker* [1996] ECR I-6511, paragraph 25).

Case C-222/95 Parodi [1997] ECR I-3899 §18
See also: Case C-398/95 SETTG [1997] ECR I-3091 §16
Case C-3/95 Reisebüro Broede [1996] ECR I-6511 §25
Case C-272/94 Guiot[1996] ECR I-1905 §10
Case C-43/93 Vander Elst [1994] ECR I-3803 §14

However, ***such a prohibition deprives the operators concerned of a rapid and direct technique for marketing and for contacting potential clients in other Member States. It can therefore constitute a restriction on the freedom to provide cross-border services***

Case C-384/93 Alpine Investments [1995] ECR I-1141 §28

Although a prohibition such as the one at issue in the main proceedings ***is general and non-discriminatory and neither its object nor its effect is to put the national market at an advantage over providers of services from other Member States, it can none the less,*** as has been held above (see paragraph 28), ***constitute a restriction on the freedom to provide cross-border services.***

Case C-384/93 Alpine Investments [1995] ECR I-1141 §35

The answer to the second question is therefore that ***rules of a Member State which prohibit providers of services established in its territory from making unsolicited telephone calls to potential clients established in other Member States in order to offer their services constitute a restriction on freedom to provide services*** within the meaning of Article 59 of the Treaty.

Case C-384/93 Alpine Investments [1995] ECR I-1141 §39

In the perspective of a single market and in order to permit the realisation of its objectives, that freedom likewise precludes the application of any national legislation which has the effect of making the provision of services between Member States more difficult than the provision of services purely within one Member State.

Case C-381/93 Commission v France [1994] ECR I-5145 §17

Where national legislation, though applicable without discrimination to all vessels whether used by national providers of services or by those from other Member States, operates a distinction according to whether those vessels are engaged in internal transport or in intra-Community transport, thus securing a ***special*** advantage for the domestic market and the internal transport services of the Member State in question, ***that legislation must be deemed to constitute a restriction on the freedom to provide maritime transport services*** contrary to Regulation No 4055/86.

Case C-381/93 Commission v France [1994] ECR I-5145 §21

In France ***the requirement that undertakings should obtain work permits in order to employ nationals of non-member countries is coupled with the obligation to pay a fee which, like the heavy administrative fine imposed for non-compliance with that obligation, may entail a considerable financial burden for employers.***

Case C-43/93 Vander Elst [1994] ECR I-3803 §12

Finally, as regards the ***work permits*** which are the focus of the main proceedings, they are ***required in order for a national of a non-member country to be employed by an undertaking established in France***, whatever the nationality of the employer, because a short-stay visa is not equivalent to a permit. Such a system is intended to regulate access to the French labour market for workers from non-member countries.

Case C-43/93 Vander Elst [1994] ECR I-3803 §20

.../...

It is to be noted that provisions such as those contained in the Belgian legislation at issue constitute a restriction on freedom to provide services. ***Provisions*** requiring an insurer to be established in a Member State as a condition of the eligibility of insured persons to benefit from certain tax deductions in that State ***operate to deter*** those seeking insurance from approaching insurers ***established in another Member State***, and thus ***constitute a restriction of the latter's freedom to provide services.***

Case C-300/90 Commission v Belgium [1992] ECR I-305 §22
See also: Case C-204/90 Bachmann [1992] ECR I-249 §31

As regards, first, the provisions of Article 59 of the Treaty, which prohibit any restriction on the freedom to supply services, it is apparent from the facts of the case that the ***link between the activity*** of the students associations of which Mr Grogan and the other defendants are officers and medical terminations of pregnancies carried out in clinics in another Member State ***is too tenuous for the prohibition on the distribution of information to be capable of being regarded as a restriction within the meaning of Article 59 of the Treaty.***

Case C-159/90 Grogan [1991] ECR I-4685 §24

The information to which the national court's questions refer is not distributed on behalf of an economic operator established in another Member State. On the contrary, the information constitutes a manifestation of freedom of expression and of the freedom to impart and receive information which is independent of the economic activity carried on by clinics established in another Member State.

Case C-159/90 Grogan [1991] ECR I-4685 §26

It follows that, in any event, a ***prohibition on the distribution of information*** in circumstances such as those which are the subject of the main proceedings ***cannot be regarded as a restriction within the meaning of Article 59 of the Treaty***.

Case C-159/90 Grogan [1991] ECR I-4685 §27

It should first be pointed out that ***Article 59 of the Treaty requires*** not only the elimination of all discrimination against a person providing services on the ground of his nationality but also ***the abolition of any restriction, even if it applies without distinction to national providers of services and to those of other Member States, when it is liable to prohibit or otherwise impede the activities of a provider of services established in another Member State where he lawfully provides similar services.***

Case C-76/90 Säger [1991] ECR I-4221 §12
Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §16
Case C-180/89 Tourist Guides Italy [1991] ECR I-709 §15
Case C-154/89 Tourist Guides France [1991] ECR I-659 §12

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 v France [1986] ECR 1475 §11

(...). As the Court has repeatedly emphasised, most recently in its judgment of 17 December 1981 in Case 279/80 *Webb* [1981] ECR 3305, those provisions entail the ***abolition of all discrimination*** against a person providing a service on the grounds of his ***nationality or the fact that he is established in a Member State other than that in which the service must be provided. Thus they prohibit not only overt discrimination based on the nationality of the person providing a service but also all forms of covert discrimination which, although based on criteria which appear to be neutral, in practice lead to the same result.***

Cases C-62 and 63/81 Seco [1982] ECR 223 §8

2.4 RESTRICTIONS IMPOSED BY THE STATE IN WHICH THE SERVICES ARE PROVIDED

2.4.1 Non-recognition of the rules of the service provider's state of establishment

In that respect, it should be recalled that the Court has consistently held that ***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-375/92 Tourist Guides Spain [1994] ECR I-923 §12

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 judgments in Case C-340/89 *Vlassopoulou v Ministerium für Justiz, Bundes- und Europaangelegenheiten Baden- Württemberg* [1991] ECR I-2357, paragraphs 16 and 17, and Case C-104/91 *Aguirre Borrell and Others v Colegio Oficial de Agentes de la Propriedad Immobiliaria* [1992] ECR I-3003).

Case C-375/92 Tourist Guides Spain [1994] ECR I-923 §13

It should however be emphasised that the authorization must be granted on request to any undertaking established in another Member State which meets the conditions laid down by the legislation of the State in which the service is provided, that ***those conditions may not duplicate equivalent statutory conditions which have already been satisfied in the State in which the undertaking is established and that the supervisory authority of the State in which the service is provided must take into account supervision and verifications which have already been carried out in the Member State of establishment.*** According to the German government, which has not been contradicted on that point by the Commission, the German authorization procedure conforms fully to those requirements.

Case C-205/84 Commission v Germany [1986] ECR 3755 §47

The answer to the questions submitted by the Cour de Cassation of the Grand Duchy of Luxembourg must therefore be that Community law precludes a Member State from requiring an employer who is established in another Member State and temporarily carrying out work in the first-named Member State, using workers who are nationals of non-member countries, to pay the employer's share of social security contributions in respect of those workers ***when that employer is already liable under the legislation of the State in which he is established for similar contributions in respect of the same workers and the same periods of employment*** and the contributions paid in the State in which the work is performed do not entitle those workers to any social security benefits. Nor would such a requirement be justified if it were intended to offset the economic advantages which the employer might have gained by not complying with the legislation on minimum wages in the State in which the work is performed.

Cases C-62 and 63/81 Seco [1982] ECR 223 §15

Such a measure would be excessive in relation to the aim pursued, however, if the requirements to which the issue of a licence is subject ***coincided with the proofs and guarantees required in the State of establishment.*** In order to maintain the principle of freedom to provide services the first requirement is that in considering applications for licences and in granting them the Member State in which the service is to be provided may not make any distinction based on the nationality of the provider of the services or the place of his establishment; ***the second requirement is that it must take into account the evidence and guarantees already furnished by the provider of the services for the pursuit of his activities in the Member State of his establishment.***

Case C-279/80 Webb [1981] ECR 3305 §20

Taking into account the particular nature of certain services to be provided, such as the placing of entertainers in employment, specific requirements imposed on persons providing services cannot be considered incompatible with the Treaty where they have as their purpose the application of professional rules, justified by the general good or by the need to ensure the protection of the entertainer, which are binding upon any person established in the said State, ***in so far as the person providing the service is not subject to similar requirements in the Member State in which he is established.***

Cases 110 and 111/78 Van Wesemael [1979] ECR 35 §28

2.4.2 Application of the rules of the Member State of destination of the services

Where the rules applicable to services have not been harmonized, ***restrictions on the freedom guaranteed by the Treaty in this field may result from application of national rules affecting any person established in the national territory to persons providing services established in the territory of another Member State who already have to satisfy the requirements of that State' s legislation.***

Joined Cases C-34/95, C-35/95 and C36/95 De Agostini [1997] ECR I-3843 §51
See also: Case C-288/89 Mediawet I [1991] ECR I-4007 §12

It should next be stated that ***national legislation which makes the provision of certain services on the national territory by an undertaking established in another Member State subject to the issue of an administrative licence for which the possession of certain professional qualifications is required constitutes a restriction on the freedom to provide services*** within the meaning of Article 59 of the Treaty. By reserving the provision of services in respect of the monitoring of patents to certain economic operators possessing certain professional qualifications, national legislation prevents an undertaking established abroad from providing services to the holders of patents in the national territory and also prevents those holders from freely choosing the manner in which their patents are to be monitored.

Case C-76/90 Säger [1991] ECR I-4221 §14

As the Court has consistently held (see, most recently, the judgments in *Commission v France*, cited above, paragraph 15; *Commission v Italy*, cited above, paragraph 18; and *Commission v Greece*, cited above, paragraph 18), ***such restrictions come within the scope of Article 59 if the application of the national legislation to foreign persons providing services is not justified by overriding reasons relating to the public interest or if the requirements embodied in that legislation are already satisfied by the rules imposed on those persons in the Member State in which they are established.***

Case C-288/89 Mediawet I [1991] ECR I-4007 §13

The aim of those provisions is primarily to enable the person providing the service to pursue his activities in the host Member State without suffering discrimination in favour of nationals of that State. As the Court pointed out in its judgment in Case 279/80 *Webb* [1981] ECR 3305, at paragraph 16, ***those provisions do not mean that all national legislation applicable to nationals of that State and usually applied to the permanent activities of persons established therein may be similarly applied in their entirety to the temporary activities of persons who are established in other Member States.***

Case C-294/89 Commission v France [1991] ECR I-3591 §26
Case C-205/84 Commission v Germany [1986] ECR 3755 §26
Case C-279/80 Webb [1981] ECR 3305 §16

In those circumstances, it must be stated that ***the rule of territorial exclusivity cannot be applied to activities of a temporary nature*** pursued by lawyers established in other Member States, since the conditions of law and fact which apply to those lawyers are not in that respect comparable to those applicable to lawyers established on French territory.

Case C-294/89 Commission v France [1991] ECR I-3591 §28

It should however be emphasised that the authorization must be granted on request to any undertaking established in another Member State which meets ***the conditions laid down by the legislation of the State in which the service is provided, that those conditions may not duplicate equivalent statutory conditions which have already been satisfied in the State in which the undertaking is established*** and that the supervisory authority of the State in which the service is provided must take into account supervision and verifications which have already been carried out in the Member State of establishment. According to the German government, which has not been contradicted on that point by the Commission, the German authorization procedure conforms fully to those requirements.

Case C-205/84 Commission v Germany [1986] ECR 3755 §47

Such is the case with national legislation of the kind in question when the obligation to pay the employer's share of social security contributions imposed on persons providing services within the national territory is extended to employers established in another Member State who are already liable under the legislation of that State for similar contributions in respect of the same workers and the same periods of employment. In such a case ***the legislation of the State in which the service is provided proves in economic terms to be more onerous*** for employers established in another Member State, who in fact have to bear a heavier burden than those established within the national territory.

Cases C-62 and 63/81 Seco [1982] ECR 223 §9

2.5 RESTRICTIONS IMPOSED BY THE SERVICE PROVIDER'S STATE OF ESTABLISHMENT

Provisions such as those in question in the main proceedings, ***where they restrict the possibility for television broadcasters established in the broadcasting State to broadcast, for advertisers established in the receiving State, television advertising specifically directed at the public in the receiving State, involve a restriction on freedom to provide services.***

Joined Cases C-34/95, C-35/95 and C36/95 De Agostini [1997] ECR I-3843 §50

The first paragraph of ***Article 59 of the Treaty prohibits restrictions on freedom to provide services within the Community in general.*** Consequently, ***that provision covers not only restrictions laid down by the State of destination but also those laid down by the State of origin.*** As the Court has frequently held, ***the right freely to provide services may be relied on by an undertaking as against the State in which it is established if the services are provided for persons established in another Member State*** (see Case C-18/93 *Corsica Ferries Italia v. Corpo dei Piloti del Porto di Genova* (1994) ECR I-1783, paragraph 30; *Peralta*, cited above, paragraph 40, and Case C-381/93 *Commission v. France* (1994) ECR I-5145, paragraph 14).

Case C-384/93 Alpine Investments [1995] ECR I-1141 §30

It follows that the prohibition of cold calling does not fall outside the scope of Article 59 of the Treaty simply because it is imposed by the State in which the provider of services is established.

Case C-384/93 Alpine Investments [1995] ECR I-1141 §31

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A prohibition such as that at issue ***is imposed by the Member State in which the provider of services is established and affects not only offers made by him to addressees who are established in that State or move there*** in order to receive services ***but also offers made to potential recipients in another Member State.*** It therefore directly affects access to the market in services in the other Member States and is thus ***capable of hindering intra-Community trade in services.***

Case C-384/93 Alpine Investments [1995] ECR I-1141 §38

The answer to the second question is therefore that ***rules of a Member State which prohibit providers of services established in its territory from making unsolicited telephone calls to potential clients established in other Member States in order to offer their services constitute a restriction on freedom to provide services*** within the meaning of Article 59 of the Treaty.

Case C-384/93 Alpine Investments [1995] ECR I-1141 §39

In pursuance of those rules ***the freedom to provide services may be relied on not only by nationals of Member States established in a Member State other than that of the recipient of the services but also by an undertaking against the State in which it is established where the services are provided to recipients established in another Member State*** (see judgment in Case C-18/93 *Corsica Ferries Italia* [1994] ECR I-1783, paragraph 30), and more generally ***whenever a provider of services offers services in a Member State other than the one in which he is established*** (see judgment in Case C-154/89 *Commission v France* [1991] ECR I-659, paragraphs 9 and 10, and the abovementioned *Peralta* judgment, at paragraph 41).

Case C-381/93 Commission v France [1994] ECR I-5145 §14

3 SPECIFIC RESTRICTIONS

3.1 NATIONALITY

Next, it must be held that the fact that a Member State requires security for costs to be given by a national of another Member State who, in his capacity as an executor, has brought an action before one of its courts, whilst its own nationals are not subject to such a requirement, ***constitutes discrimination on grounds of nationality contrary to Articles 59 and 60.***

Case C-20/92 Hubbard [1993] ECR I-3777 §14

The reply to the national court' s first and third questions must therefore be that ***Articles 59 and 60 must be interpreted as precluding a Member State from requiring security for costs to be given by a member of a profession*** established in another Member State who brings an action before one of its courts, ***on the sole ground that he is a national of another Member State.***

Case C-20/92 Hubbard [1993] ECR I-3777 §15

By prohibiting "any discrimination on grounds of nationality" Article 7 of the Treaty requires that persons in a situation governed by Community law be placed on a completely equal footing with nationals of the Member State. In so far as this principle is applicable it therefore precludes a Member State from making the grant of a right to such a person subject to the condition that he reside on the territory of that State - that condition is not imposed on the State's own nationals.

Case C-186/87 Cowan [1989] ECR 195 §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 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 v France [1986] ECR 1475 §11

Under Article 59 and the third paragraph of Article 60 of the EEC Treaty a person providing a service may, in order to do so, temporarily pursue his activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals. As the Court has repeatedly emphasised, most recently in its judgment of 17 December 1981 in Case 279/80 *Webb* [1981] ECR 3305, ***those provisions entail the abolition of all discrimination against a person providing a service on the grounds of his nationality*** or the fact that he is established in a Member State other than that in which the service must be provided. Thus they prohibit not only overt discrimination based on the nationality of the person providing a service but also all forms of covert discrimination which, although based on criteria which appear to be neutral, in practice lead to the same result.

Cases C-62 and 63/81 Seco [1982] ECR 223 §8
Case C-279/80 Webb [1981] ECR 3305 §14
Cases 110 and 111/78 Van Wesemael [1979] ECR 35 §27
Case C-33/74 Van Binsbergen [1974] ECR 1299 §25

3.2 RESIDENCE, ESTABLISHMENT REQUIREMENTS

Such rules, which treat taxable persons differently depending on whether they are established in the territory of the Member State concerned or not, are such as to constitute discrimination prohibited by Article 59 of the Treaty.

Case C-390/96 Lease Plan [1998] ECR I-2553 §33

As no other grounds have been put forward to justify such discrimination, ***it must be concluded that rules*** such as those in the main proceedings ***are contrary to Artcile 59 of the Treaty, insomuch as they give taxable persons not established in the territory of the Member State concerned interest only as from the date of service of notice to pay on that State and at a rate lower than that applicable to the interest received automatically by taxable persons established in the territory of that State on the expiry of the statutory time limit for re-imbursement.***

Case C-390/96 Lease Plan [1998] ECR I-2553 §39

In those circumstances, ***legislation*** such as that in question in the main proceedings ***contains a number of elements liable to dissuade individuals from taking out capital life assurance with companies not established in Sweden*** and liable to dissuade insurance companies from offering their services on the Swedish market.

Case C-118/96 Safir [1998] ECR I-1897 §30

Subject to the national court's determination of this issue, it must be noted that, as the Court has already pointed out, if the requirement of an authorization constitutes a restriction on the freedom to provide services, ***the requirement of a permanent establishment is the very negation of that freedom***. It has the result of depriving Article 59 of the Treaty of all effectiveness, a provision whose very purpose is to abolish restrictions on the freedom to provide services of persons who are not established in the State in which the service is to be provided. If such a requirement is to be accepted, it must be shown that it constitutes a condition which is indispensable for attaining the objective pursued (see *Commission v Germany*, cited above, paragraph 52, and Case C-101/94 *Commission v Italy* [1996] ECR I-2691, paragraph 31).

Case C-222/95 Parodi [1997] ECR I-3899 §31
see also: Case C-101/94 Commission v Italy [1996] ECR I-2691 §31
Case C-205/84 Commission v Germany [1986] ECR 3755 §52

It must be noted, first, that ***a rule which makes the grant of interest rate subsidies subject to the requirement that the loans have been obtained from an establishment approved in the Member State in question also constitutes discrimination against credit institutions established in other Member States, which is prohibited by the first paragraph of Article 59*** of the Treaty.

Case C-484/93 Svensson & Gustavsson [1995] ECR I-3955 §12

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 & Gustavsson [1995] ECR I-3955 §15

(...) However, the Decree-Law links the grant of licences for dubbing such films to the obligation to distribute a Spanish film. ***It thus accords preferential treatment to the producers of national films in comparison with producers established in other Member States***, since the former have a guarantee that their films will be distributed and that they will receive the corresponding receipts, whereas the latter are dependent solely on the choice of the Spanish distributors. That obligation therefore ***has the effect of protecting undertakings producing Spanish films and by the same token places undertakings of the same type established in other Member States at a disadvantage.*** Since the producers of films from other Member States are thus deprived of the advantage granted to the producers of Spanish films, that restriction is of a ***discriminatory nature***.

Case C-17/92 Distribuidores Cinematográficos [1993] ECR I-2239 §15

It is important to note that the legislation in question ***constitutes a barrier to the freedom to provide services*** in that ***it prevents broadcasting stations established in other Member States from having programmes that are transmitted in a language other than that of the country in which they are established*** relayed by the cable networks of the Flemish Community.

Case C-211/91 Commission v Belgium [1992] ECR I-6757 §5

That barrier is ***discriminatory*** not only because, as the Belgian Government admits, it does not apply to broadcasting stations established in Belgium but above all because it prevents stations established in a Member State other than the Netherlands from offering programmes in Dutch to audiences in the Flemish Community, ***when that possibility naturally exists for national broadcasting stations***.

Case C-211/91 Commission v Belgium [1992] ECR I-6757 §6

It is to be noted that provisions such as those contained in the Belgian legislation at issue ***constitute a restriction on freedom to provide services.*** Provisions ***requiring an insurer to be established in a Member State*** as a condition of the eligibility of insured persons to benefit from certain tax deductions in that State operate to ***deter*** those seeking insurance from approaching insurers established in another Member State, and thus ***constitute a restriction of the latter's freedom to provide services***.

Case C-204/90 Bachmann [1992] ECR I-249 §31
Case C-300/90 Commission v Belgium [1992] ECR I-305 §22

However, as the Court has previously held (see the judgment in *Commission v Germany*, referred to above, paragraph 52), ***the requirement of an establishment is compatible with Article 59 of the Treaty where it constitutes a condition which is indispensable to the achievement of the public-interest objective pursued***.

Case C-204/90 Bachmann [1992] ECR I-249 §32
Case C-300/90 Commission v Belgium [1992] ECR I-305 §23

In particular, ***a Member State may not make the provision of services in its territory subject to compliance with all the conditions required for establishment*** and ***thereby deprive of all practical effectiveness the provisions of the Treaty whose object is, precisely, to guarantee the freedom to provide services.*** Such restriction is all the less permissible where, as in the main proceedings, and unlike the situation governed by the third paragraph of Article 60 of the Treaty, the service is supplied without its being necessary for the person providing it to visit the territory of the Member State where it is provided.

Case C-76/90 Säger [1991] ECR I-4221 §13

By prohibiting "any discrimination on grounds of nationality" Article 7 of the Treaty requires that persons in a situation governed by Community law be placed on a completely equal footing with nationals of the Member State. In so far as this principle is applicable ***it therefore precludes a Member State from making the grant of a right to such a person subject to the condition that he reside on the territory of that State - that condition is not imposed on the State's own nationals.***

Case C-186/87 Cowan [1989] ECR 195 §10

It must be stated that the requirements in question in these proceedings, namely that an insurer who is established in another Member State, authorized by the supervisory authority of that State and subject to the supervision of that authority, must ***have a permanent establishment*** within the territory of the State in which the service is provided and that he must obtain a separate authorization from the supervisory authority of that State, ***constitute restrictions on the freedom to provided services*** inasmuch as they increase the cost of such services in the State in which they are provided, in particular where the insurer conducts business in that State only occasionally.

Case C-205/84 Commission v Germany [1986] ECR 3755 §28

It must be stated that the requirement that an insurance undertaking which is already established and authorized in another Member State and which wishes to provide services solely as a leading insurer must have a permanent establishment in the State in which the service is provided ***constitutes a serious restriction*** of the freedom of that leading insurer to provide services, in particular because, as a rule, insurance undertakings conduct business as leading insurers only occasionally.

Case C-252/83 Commission v Denmark [1986] ECR 3713 §18

In those circumstances the requirement imposed by the Danish legislation that the leading insurer must ***have a permanent establishment in the State in which the service is provided***, which requirement is the sole subject of the first head of claim, cannot be justified in respect of an insurance undertaking which is established and authorized in another Member State and which wishes to conduct its business as a leading insurer pursuant to directive 78/473 solely in the context of the provision of services. ***Such a requirement is contrary to Articles 59 and 60 of the Treaty.***

Case C-252/83 Commission v Denmark [1986] ECR 3713 §22

It should be noted that the result of that interpretation of directive 71/305 is in conformity with the scheme of the Treaty provisions concerning the provision of services. ***To make the provision of services in one Member State by a contractor established in another Member State conditional upon the possession of an establishment permit in the first State would be to deprive Article 59 of the Treaty of all effectiveness***, the purpose of that Article being precisely to abolish restrictions on the freedom to provide services by persons who are not established in the State in which the service is to be provided.

Case C-76/81 Transporoute [1982] ECR 417 §14

Accordingly, the reply to the first question must be that Council directive 71/305 must be interpreted as precluding a Member State from requiring a tenderer established in another Member State ***to furnish proof by any means, for example by an establishment permit***, other than those prescribed in Articles 23 to 26 of that directive, that he satisfies the criteria laid down in those provisions and relating to his good standing and qualifications.

Case C-76/81 Transporoute [1982] ECR 417 §15

Those essential requirements abolish all discrimination against the person providing the service by reason of his nationality or ***the fact he is established in a Member State other than that in which the service is to be provided.***

Case C-279/80 Webb [1981] ECR 3305 §14

The restrictions to be abolished pursuant to this provision include all requirements imposed on the person providing the service by reason in particular of his nationality or ***of the fact that he does not habitually reside in the State where the service is provided***, which do not apply to persons established within the national territory or which may prevent or otherwise obstruct the persons providing the service.

Case C-39/75 Coenen [1975] ECR 1547 §6

In particular, a requirement that the person providing the service must be ***habitually resident*** within the territory of the State where the service is to be provided may, according to the circumstances, have the result of ***depriving Article 59 of all effectiveness***, in view of the fact that the precise object of that Article is to abolish restrictions on freedom to provide services imposed on persons who do not reside in the State where the service is to be provided.

Case C-39/75 Coenen [1975] ECR 1547 §7

It must be recalled in this respect that as regards the period during which the restrictions on the freedom to provide services were not yet abolished ***Article 65 already stated*** that each Member State shall apply such restrictions ***'without distinction on grounds of... residence'*** to all persons providing services within the meaning of the first paragraph of Article 59.

Case C-39/75 Coenen [1975] ECR 1547 §8

Although, in the light of the special nature of certain services, it cannot be denied that a Member State is entitled to adopt measures which are intended to prevent the freedom guaranteed by Article 59 being used by a person whose activities are entirely or chiefly directed towards his territory in order to avoid the professional rules which would apply to him if he resided in that State, the requirement of residence in the territory of the State where the service is provided can only be ***allowed as an exception where the Member State is unable to apply other, less restrictive, measures to ensure respect for these rules.***

Case C-39/75 Coenen [1975] ECR 1547 §9

On these grounds it must be concluded that the provisions of the EEC Treaty, in particular Articles 59, 60 and 65, must be interpreted as meaning that national legislation may not, by means of a ***requirement of residence in the territory***, make it impossible for ***persons residing in another Member State to provide services*** when less restrictive measures enable the professional rules to which provision of the service is subject in that territory to be complied with.

Case C-39/75 Coenen [1975] ECR 1547 §12

In particular, a ***requirement that the person providing the service must be habitually resident within the territory of the State where the service is to be provided may***, according to the circumstances, ***have the result of depriving Article 59 of all useful effect***, in view of the fact that the precise object of that Article is to abolish restrictions on freedom to provide services imposed on persons who are not established in the State where the service is to be provided.

Case C-33/74 Van Binsbergen [1974] ECR 1299 §11

That cannot, however, be the case when the provision of certain services in a Member State is not subject to any sort of qualification or professional regulation and ***when the requirement of habitual residence is fixed by reference to the territory of the State in question.***

Case C-33/74 Van Binsbergen [1974] ECR 1299 §15

3.3 PROFESSIONAL QUALIFICATIONS REQUIREMENTS

3.3.1 Diplomas

The answer to the first question must therefore be that Article 31(1)(a) of Directive 93/16 ***does not make access to specific training in general medical practice subject to the condition that a basic diploma*** referred to in Article 3 ***must first be obtained.***

Case C-93/97 Fédération Belge des chambres syndicales de médecines ASBL [1998] ECR I-0000 §29

The mere fact that ***tourist guides from another Member State*** do not need such a licence when they accompany a group of tourists to Greece ***does not mean that they cannot have an interest in acquiring the said diploma, in order to secure a higher qualification***, and thus obtaining the licence to pursue the profession in that State. In those circumstances, the rules in question apply to them.

Case C-398/95 SETTG [1997] ECR I-3091 §12

In that respect, it should be recalled that the Court has consistently held that 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-375/92 Tourist Guides Spain [1994] ECR I-923 §12

In the absence of harmonization of the conditions of access to a particular profession, the Member States are entitled to specify the knowledge and qualifications needed in order to pursue it and to require the production of a diploma certifying that the holder has the relevant knowledge and qualifications (see the judgment in Case 222/86 *UNECTEF v Heylens* [1987] ECR 4097, paragraph 10, and in Case C-340/89 *Vlassopoulou v Ministerium für Justiz, Bundes-und Europaangelegenheiten Baden-Württemberg* [1991] ECR I-2357, paragraph 9).

Case C-104/91 Colegio Oficial de Agentes [1992] ECR I-3003 §7

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*** (see the judgment in ***Vlassopoulou***, cited above, paragraph 16).

Case C-104/91 Colegio Oficial de Agentes [1992] ECR I-3003 §11

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 effected 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 judgment in *UNECTEF v Heylens*, cited above, paragraph 13).

Case C-104/91 Colegio Oficial de Agentes [1992] ECR I-3003 §12

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 estate agent, a Member State may therefore carry out ***a comparative examination of diplomas***, taking account of the differences identified between the national legal systems concerned (see the judgment in *Vlassopoulou*, cited above, paragraph 18).

Case C-104/91 Colegio Oficial de Agentes [1992] ECR I-3003 §13

If that comparative examination of diplomas results in the finding that the knowledge and qualifications certified by the foreign diploma correspond to those required by the national provisions, ***the Member State must recognise that diploma as fulfilling the requirements laid down by those provisions.*** If, on the other hand, the comparison reveals that the knowledge and qualifications certified by the foreign diploma and those required by the national provisions correspond only partially, the host Member State is entitled to require the person concerned to show that he has acquired the knowledge and qualifications which are lacking (see the judgment in *Vlassopoulou*, cited above, paragraph 19).

Case C-104/91 Colegio Oficial de Agentes [1992] ECR I-3003 §14

In those circumstances, the answer to the second question referred by the Juzgado de Instrucción No 20 of Madrid, as recast, must be that Articles 52 and 57 of the Treaty are to be interpreted as meaning that:

- in the absence of a directive on the mutual recognition of diplomas, certificates or other evidence of formal qualifications relating to the profession of estate agent, the authorities of a Member State, in response to a request for permission to practice that profession from a national of another Member State who holds a diploma or qualification relating to the pursuit of that profession in his State of origin, must assess the extent to which the knowledge and skills certified by the diplomas or professional qualifications obtained by the person concerned in his State of origin correspond to those required by the rules of the host State;

- where there is only partial equivalence between the diplomas or qualifications, the authorities of the host State are entitled to require the person concerned to show that he has acquired the knowledge and skills which are lacking by requiring him to pass an examination if necessary;

- the decision to deny a national of another Member State recognition or equivalent treatment of the diploma or professional qualification awarded to him by the Member State of which he is a national must be capable of being made the subject of judicial proceedings in which its legality under Community law can be reviewed and the person concerned must be able to ascertain the reasons for the decision taken.

Case C-104/91 Colegio Oficial de Agentes [1992] ECR I-3003 §16

That is true in particular where the fact that a national of a Member State has obtained in another Member State a diploma whose scope and value are not recognised by any Community provision might place his Member State of origin under an obligation to allow him to exercise the activities covered by that diploma within its territory even though access to those activities is restricted there to the holders of a higher qualification which enjoys ***mutual recognition*** at Community level and there is nothing to indicate that the restriction is arbitrary.

Case C-61/89 Bouchoucha [1990] ECR I-3551 §15

3.3.2 Other Professional Qualifications

It should next be stated that national legislation which makes the provision of certain services on the national territory by an undertaking established in another Member State subject to the issue of an ***administrative licence for which the possession of certain professional qualifications is required constitutes a restriction on the freedom to provide services within the meaning of Article 59 of the Treaty.*** By reserving the provision of services in respect of the monitoring of patents to certain economic operators possessing certain professional qualifications, national legislation prevents an undertaking established abroad from providing services to the holders of patents in the national territory and also prevents those holders from freely choosing the manner in which their patents are to be monitored.

Case C-76/90 Säger [1991] ECR I-4221 §14

The requirement imposed by the abovementioned provisions of Greek legislation amount to such a restriction. By making the provision of services by tourist guides accompanying a group of tourists from another Member State subject to ***possession of a specific qualification, that legislation prevents both tour companies from providing that service with their own staff and self-employed tourist guides from offering their services to those companies for organized tours. It also prevents tourists taking part in such organized tours from availing themselves at will of the services*** in question.

Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §17
See also: Case C-180/89 Tourist Guides Italy [1991] ECR I-709 §16
Case C-154/89 Tourist Guides France [1991] ECR I-659 §13

However, as has been rightly pointed out by the French Government, the SNMOF and the SNMSRRF, the diploma from the European School of Osteopathy held by Mr Bouchoucha does not at present enjoy any mutual recognition within the Community. ***It cannot therefore be regarded as a professional qualification recognised by the provisions of Community law.*** Furthermore, according to *Knoors*, ***supra***, 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 to evade the application of their national legislation as regards vocational training (paragraph 25).

Case C-61/89 Bouchoucha [1990] ECR I-3551 §14

3.3.3 Registration with Governing Bodies or Authorities

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 v France [1986] ECR 1475 §14

The Commission is therefore correct to argue that the French ***legislation prohibiting any*** doctor or dentist ***established in another Member State from practising*** in France ***as a locum, as a principal in a practice or as an employee is contrary to the provisions of the Treaty on freedom of movement for persons.***

Case C-96/85 Commission v France [1986] ECR 1475 §15

With regard to the specific question raised by the Italian government as to whether the person affected may be so entitled ***even if he has not been enrolled on the relevant professional register***, it should be stated that the conformity of such requirement with Community law depends upon whether the fundamental principles of Community law and in particular the principle of non-discrimination are observed.

Case C-5/83 Rienks [1983] ECR 4233 §9

As the Court made clear in the aforementioned judgment, enrolment on a professional register cannot be refused on grounds which fail to take into account the validity of a professional qualification obtained in another Member State in so far as such a qualification is one which all the Member States and their professional organisations, acting as bodies entrusted with a public duty, are required to recognise under Community law. Thus legislation which provides for the bringing of criminal or administrative proceedings against a veterinary surgeon practising his profession without having been enrolled on the professional register, to the extent to which such enrolment has been refused in breach of Community law, is incompatible with Community law in so far as its result is to deprive of any effectiveness the provisions of the Treaty and of directive 78/1026, the second recital in the preamble to which states that it is to facilitate the 'effective' exercise of the right of establishment and freedom to provide services in respect of the activities of veterinary surgeons.

Case C-5/83 Rienks [1983] ECR 4233 §10

The reply to the first question referred to the Court by the Pretore di Lodi must therefore be that a Member State ***may not enforce a penal measure*** in respect of the improper practice of the profession of veterinary surgeon against a national of another Member State, who is entitled to practise as a veterinary surgeon in his own country, on the ground that he is not enrolled on the register of veterinary surgeons of the first Member State, where such enrolment is refused in breach of Community law.

Case C-5/83 Rienks [1983] ECR 4233 §11

3.3.4 General System of Mutual Recognition of Diplomas

It must be borne in mind at the outset that Directive 93/16 is intended, according to the twenty-first recital in its preamble, only to institute specific training in general medical practice which satisfies minimum quality and guantity requirements, and supplements the minimum basic training which medical practitioners must receive in accordance with that directive. Although they are entitled to impose more stringent requirements, the Member States are required, by Artcile 2 of Directive 93/16, to recognise each other's diplomas, certificates and other evidence of formal qualifications awarded in accordance with the minimum requirements laid down by Directive 93/16.

Case C-93/97 Fédération Belge des chambres syndicales de médecines ASBL [1998] ECR I-0000 §21
see also §25 and §26

It must be observed, first, that ***the Directive***, which is based on Articles 49, 57(1) and 66 of the Treaty, ***aims to facilitate freedom of movement of*** persons and ***services by allowing nationals of the Member States to pursue a profession, on a self-employed or employed basis, in a Member State other than that in which they have obtained their professional qualifications.***

Joined Cases C-225/95, 226/95 and 227/95 Kapasakalis [1998] ECR I-0000 §18

However, as has been rightly pointed out by the French Government, the SNMOF and the SNMSRRF, the diploma from the European School of Osteopathy held by Mr Bouchoucha ***does not at present enjoy any mutual recognition*** within the Community. ***It cannot therefore be regarded as a professional qualification recognised by the provisions of Community law***. Furthermore, according to *Knoors*, ***supra***, 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 ***to evade*** the application of their national legislation as regards vocational training (paragraph 25).

Case C-61/89 Bouchoucha [1990] ECR I-3551 §14

That is true in particular where the fact that a national of a Member State has obtained in another Member State a diploma whose scope and value are not recognised by any Community provision might place his Member State of origin under an obligation to allow him to exercise the activities covered by that diploma within its territory even though access to those activities is restricted there to the holders of a higher qualification which enjoys ***mutual recognition*** at Community level and there is nothing to indicate that the restriction is arbitrary.

Case C-61/89 Bouchoucha [1990] ECR I-3551 §15

3.4 LICENCES AND AUTHORIZATIONS AND RELATED FEES

While national rules at issue in the main proceedings do not deprive insured persons of the possibility of approaching a provider of services established in another Member State, ***they do nevertheless make reimbursement of the costs incurred in that Member State subject to prior authorisation, and deny such reimbursement to insured persons who have not obtained that authorisation. Costs incurred in the State of insurance are not, however, subject to that authorisation.***

Cases C-158/96 Kohll [1998] ECR I-1931 §34

Subject to the national court's determination of this issue, it must be noted that, as the Court has already pointed out, ***if the requirement of an authorization constitutes a restriction on the freedom to provide services,*** the requirement of a permanent establishment is the very negation of that freedom. It has the result of depriving Article 59 of the Treaty of all effectiveness, a provision whose very purpose is to abolish restrictions on the freedom to provide services of persons who are not established in the State in which the service is to be provided. If such a requirement is to be accepted, it must be shown that it constitutes a condition which is indispensable for attaining the objective pursued (see *Commission v Germany*, cited above, paragraph 52, and Case C-101/94 *Commission v Italy* [1996] ECR I-2691, paragraph 31).

Case C-222/95 Parodi [1997] ECR I-3899 §31

In France the requirement that undertakings should obtain work permits in order to employ nationals of non-member countries is coupled with the obligation to pay a fee which, like the heavy administrative fine imposed for non-compliance with that obligation, ***may entail a considerable financial burden for employers.***

Case C-43/93 Vander Elst [1994] ECR I-3803 §12

Similarly, the Court has already held that national legislation which makes the provision of certain services on national territory by an undertaking established in another Member State subject to the issue of an ***administrative licence constitutes a restriction on the freedom to provide services within the meaning of Article 59 of the Treaty*** (see the judgment in *Sager*, paragraph 14). Furthermore, it is apparent from the judgment in Joined Cases 62/81 and 63/81 *Seco and Desquenne & Giral v Etablissement d' Assurance contre la Vieillesse et l' Invalidité* [1982] ECR 223 that legislation of a Member State which requires undertakings established in another Member State to pay fees in order to be able to employ in its own territory workers in respect of whom they are already liable for the same periods of employment to pay similar fees in the State in which they are established ***proves financially to be more onerous for those employers, who in fact have to bear a heavier burden than those established within the national territory.***

Case C-43/93 Vander Elst [1994] ECR I-3803 §15

In that respect, it should be recalled that the Court has consistently held that 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-375/92 Tourist Guides Spain [1994] ECR I-923 §12

It should next be stated that ***national legislation which makes the provision of certain services on the national territory by an undertaking established in another Member State subject to the issue of an administrative licence for which the possession of certain professional qualifications is required constitutes a restriction on the freedom to provide services within the meaning of Article 59 of the Treaty***. By reserving the provision of services in respect of the monitoring of patents to certain economic operators possessing certain professional qualifications, national legislation ***prevents*** an undertaking established abroad from providing services to the holders of patents in the national territory and also prevents those holders from freely choosing the manner in which their patents are to be monitored.

Case C-76/90 Säger [1991] ECR I-4221 §14

.../...

The general interest in the proper appreciation of places and things of historical interest and the widest possible dissemination of knowledge of the artistic and cultural heritage of a country can constitute an overriding reason justifying a restriction on the freedom to provide services. However, the requirement in question contained in the Greek legislation goes beyond what is necessary to ensure the safeguarding of that interest ***inasmuch as it makes the activities*** of a tourist guide accompanying groups of tourists from another Member State ***subject to possession of a licence***.

Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §21
Case C-154/89 Tourist Guides France [1991] ECR I-659 §17

In those circumstances ***a licence requirement imposed by the Member State of destination*** has the effect of reducing the number of tourist guides qualified to accompany tourists in a closed group, which may lead a tour operator to have recourse instead to local guides employed or established in the Member State in which the service is to be performed. However, that consequence may have the drawback that tourists who are the recipients of the services in question do not have a guide who is familiar with their language, their interests and their specific expectations.

Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §23
See also: Case C-180/89 Tourist Guides Italy [1991] ECR I-709 §22
Case C-154/89 Tourist Guides France [1991] ECR I-659 §19

In that respect it should be noted that in all the Member States the supervision of insurance undertakings ***is organized in the form of an authorization procedure*** and that the necessity of such a procedure is ***recognised in the two first co-ordination directives*** as regards the activities to which they refer. In each of those directives Article 6 thereof provides that each Member State must make the ***taking-up of the business*** of insurance in its territory subject to an ***official authorization***. An undertaking which sets up branches and agencies in Member States other than that in which its head office is situated must therefore obtain an authorization from the supervisory authority of each of those States.

Case C-205/84 Commission v Germany [1986] ECR 3755 §44

In those circumstances the German government's argument to the effect that only the requirement of an ***authorization can provide an effective means of ensuring the supervision*** which, having regard to the foregoing considerations, is justified on grounds relating to the protection of the consumer both as a policy-holder and as an insured person, must be accepted. Since a system such as that proposed in the draft for a second directive, which entrusts the operation of the authorization procedure to the Member State in which the undertaking is established, working in close co-operation with the State in which the service is provided, can be set up only by legislation, it must also be acknowledged that in the present state of Community law, it is for the State in which the service is provided to grant and withdraw that authorization.

Case C-205/84 Commission v Germany [1986] ECR 3755 §46

It should however be emphasised that the ***authorization must be granted*** on request to any undertaking established in another Member State which meets the conditions laid down by the legislation of the State in which the service is provided, that those conditions ***may not duplicate equivalent statutory conditions which have already been satisfied in the State in which the undertaking is established*** and that the supervisory authority of ***the State in which the service is provided must take into account supervision and verifications which have already been carried out in the Member State of establishment.*** According to the German government, which has not been contradicted on that point by the Commission, the German authorization procedure conforms fully to those requirements.

Case C-205/84 Commission v Germany [1986] ECR 3755 §47

It follows from the foregoing that the ***requirement of authorization may be maintained only in so far as it is justified on the grounds relating to the protection of policy-holders and insured persons*** relied upon by the German government. It must also be recognised that those grounds are not equally important in every sector of insurance and that there may be cases where because of the nature of the risk insured and of the party seeking insurance, ***there is no need*** to protect the latter by the application of the mandatory rules of his national law.

Case C-205/84 Commission v Germany [1986] ECR 3755 §49

It follows from the foregoing that the Commission's first head of claim must be ***rejected as it is directed against the requirement of authorization.***

Case C-205/84 Commission v Germany [1986] ECR 3755 §51

.../...

That has not been shown to be the case. As has been stated above, Community law on insurance does not, as it stands at present, prohibit the State in which the service is provided from requiring that the assets representing the technical reserves covering business conducted on its territory be localised in that State. In that case the presence of such assets may be verified *in situ*, even if the undertaking does not have any permanent establishment in the State. As regards the other conditions for the conduct of business which are subject to supervision, it appears to the Court that such supervision may be effected on the basis of copies of balance sheets, accounts and commercial documents, including the conditions of insurance and schemes of operation, sent from the State of establishment and duly certified by the authorities of that Member State. ***It is possible under an authorization procedure to subject the undertaking to such conditions of supervision by means of a provision in the certificate of authorization*** and to ensure compliance with those conditions, if necessary by withdrawing that certificate.

Case C-205/84 Commission v Germany [1986] ECR 3755 §55

Consideration of the first head of claim has shown, in addition, that ***the requirement of authorization in the State in which the service is provided is not justified where the undertaking providing the services already satisfies equivalent conditions in the Member State in which the service is provided is not justified where the undertaking providing the services already satisfies equivalent conditions in the Member State in which it is established and where there exists a system of co-operation between the supervisory authorities of the Member States concerned ensuring effective supervision of compliance with such conditions also as regards the provision of services***. According to the preamble to directive 78/473, the directive is intended to establish the minimum co-ordination necessary to facilitate the effective pursuit of Community co-insurance business and to organise special co-operation between the supervisory authorities of the Member States and between those authorities and the Commission which, for the provision of services in the insurance business in general, is provided for only in the proposal for a second directive.

Case C-205/84 Commission v Germany [1986] ECR 3755 §65

With regard to the first complaint, it must be stated that no provision of Community law prevents a Member State from requiring insurance undertakings and their branches which are established on its territory to obtain an ***authorization*** not only in respect of business conducted on its territory but also for business conducted in other Member States in the context of the provision of services. On the contrary, such a requirement is consistent with the principles laid down in directive 73/239. Article 7(1) of that directive provides that an insurance undertaking may request and obtain an official authorization to carry on its business only in a part of the national territory. In that case, if it wishes to extend its business beyond such part, it is required under Article 6(2)(d) to request further authorization and, in accordance with Article 8(2), a new scheme of operations must be submitted with that request.

Case C-252/83 Commission v Denmark [1986] ECR 3713 §28

It follows in particular that it ***is permissible*** for Member States, and amounts for them to a legitimate choice of policy pursued in the public interest, to subject the provision of manpower within their borders to a ***system of licensing*** in order to be able to refuse licences where there is a reason to fear that such activities may harm good relations on the labour market or that the interests of the workforce affected are not adequately safeguarded. In view of the differences there may be in conditions on the labour market between one Member State and another, on the one hand, and the diversity of the criteria which may be applied with regard to the pursuit of activities of that nature on the other hand, the Member State in which the services are to be supplied has unquestionably the right to require possession of a licence issued on the same conditions as in the case of its own nationals.

Case C-279/80 Webb [1981] ECR 3305 §19

The reply to the second and third questions raised by the Hoge Raad is therefore that Article 59 does not preclude a Member State which requires agencies for the provision of manpower to hold a licence from requiring a provider of services established in another Member State and pursuing such activities on the territory of the first Member State to comply with that condition even if he holds a licence issued by the State in which he is established, provided however, that in the first place when considering applications for licences and in granting them the Member State in which the service is provided makes ***no distinction based on the nationality*** of the provider of the services or his place of establishment, and in the second place that it takes into account the evidence and guarantees already produced by the provider of the services for the pursuit of his activities in the Member State in which he is established.

Case C-279/80 Webb [1981] ECR 3305 §21

However, when the pursuit of the employment agency activity at issue is made subject in the State in which the service is provided to the issue of a ***licence*** and to supervision by the competent authorities, that State may not, without failing to fulfil the essential requirements of Article 59 of the Treaty, impose on the persons providing the service who are established in another Member State any obligation either to satisfy such requirements or to act through the holder of a licence, except where such requirement is objectively justified by the need to ensure observance of the professional rules of conduct and to ensure the said protection.

Cases 110 and 111/78 Van Wesemael [1979] ECR 35 §29

Such a requirement is not objectively justified when the service is provided by an employment agency which comes under the public administration of a Member State or when the person providing the service is established in another Member State and in that State holds a licence issued under conditions comparable to those required by the State in which the service is provided and his activities are subject in the first state to proper supervision covering all employment agency activity whatever may be the Member State in which the service is provided.

Cases 110 and 111/78 Van Wesemael [1979] ECR 35 §30

For all these reasons, the answer should be that when the pursuit of the activity of fee-charging employment agencies for entertainers is made subject in the State in which the service is provided to the issue of a licence, that State may not impose on the persons providing the service who are established in another Member State any obligation either to satisfy that requirement or to act through a fee-charging employment agency which holds such a licence when the service is provided by an employment agency which comes under the public administration of a Member State or when the person providing the services holds in the Member State in which he is established a licence issued under conditions comparable to those required by the State in which the service is provided and his activities are subject in the first State to proper supervision covering all employment agency activity whatever may be the Member State in which the service is provided.

Cases 110 and 111/78 Van Wesemael [1979] ECR 35 §39

3.5 PURSUIT OF AN ECONOMIC ACTIVITY

3.5.1 Restrictions on the Conditions of this Pursuit

The provider of services, within the meaning of the Treaty, may equip himself in the host Member State with the infrastructure necessary for the purposes of performing the services in question.

Case C-55/94 Gebhard [1995] ECR I-4165 §39
(SEE ALSO §27, 28, 37 and 38)

The Commission is therefore correct to argue that the french legislation prohibiting any doctor or dentist established in another Member State from practising in France as a locum, as a principal in a practice or as an employee is contrary to the provisions of the Treaty on freedom of movement for persons.

Case C-96/85 Commission v France [1986] ECR 1475 §15

The French government's argument that the freedom of doctors established in other Member States to provide services is recognised in France on the basis of Article 356-1 of the Code de la Sante Publique is not relevant. In both its reasoned opinion and its application to the Court the Commission merely contended that because of its generality the French system was contrary to the freedom to provide services inasmuch as it never permitted a doctor established in another Member State to act as ***locum*** for a doctor established in France. ***The application of article 356-1 is subject to the requirements set out in the implementing decree, according to which a doctor established in another Member State can provide medical treatment to only a single patient for a period of not more than two days. Such a limited possibility of carrying out medical treatment does not allow that doctor to act as locum for a French colleague.***

Case C-96/85 Commission v France [1986] ECR 1475 §16

3.5.2 Useful Facilities for the Pursuit of these Activities

Similarly, with regard to freedom to provide services, ***access to ownership and the use of immovable property is guaranteed by Article 59 of the Treaty in so far as such access is appropriate to enable that freedom to be exercised effectively.***

Case C-305/87 Commission v Greece [1989] ECR 1461 §24

Among the examples mentioned in the ***General programme*** for the abolition of restrictions on freedom to provide services of 18 December 1961 (Official Journal, English Special Edition, Second Series IX, p. 3) is the ***right to acquire, use or dispose of immovable property or rights therein.***

Case C-305/87 Commission v Greece [1989] ECR 1461 §25

In that regard, the Court has already decided (judgment in Case 63/86, cited above) ***that persons providing services cannot be excluded from the benefit of the fundamental principle of non-discrimination in regard to access to ownership and the use of immovable property***. That is the case, in particular, in the circumstances envisaged in the third paragraph of Article 60 of the Treaty.

Case C-305/87 Commission v Greece [1989] ECR 1461 §26

.../...

As is apparent from the general programmes which were adopted by the Council on 18 December 1961 (Journal Officiel 1962, pp. 32 and 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 v Italy [1988] ECR 29 §14

For a natural person ***the pursuit of an occupation does not presuppose solely the possibility of access to premises from which the occupation can be pursued***, if necessary by borrowing the amount needed to purchase them, ***but also the possibility of obtaining housing***. It follows that restrictions contained in the housing legislation applicable to the place where the occupation is pursued are liable to constitute an ***obstacle to that pursuit***.

Case C-63/86 Commission v Italy [1988] ECR 29 §15

If complete equality of competition is to be assured, the national of a Member State who wishes to pursue an activity as a self-employed person in another Member State must therefore ***be able to obtain housing in conditions equivalent to those enjoyed by those of his competitors who are nationals of the latter State***. Accordingly, ***any restriction*** placed not only on ***the right of access to housing but also on the various facilities granted to those nationals in order to alleviate the financial burden must be regarded as an obstacle to the pursuit of the occupation itself***.

Case C-63/86 Commission v Italy [1988] ECR 29 §16

It is true, as the Italian government has contended, ***that in practice not all instances of establishment give rise to the same need to find permanent housing and that as a rule that need is not felt in the case of the provision of services***. It is also true that in most cases ***the provider of services will not satisfy the conditions, of a non-discriminatory nature, bound up with the objectives of the legislation on social housing.***

Case C-63/86 Commission v Italy [1988] ECR 29 §18

However, it cannot be held to be a priori out of the question that a person, whilst retaining his principal place of establishment in one Member State, may be led to pursue his occupational activities in another Member State for such an extended period that he needs to have permanent housing there and that he may satisfy the conditions of a non-discriminatory nature for access to social housing. it follows that no distinction can be drawn between different forms of establishment and that providers of services cannot be excluded from the benefit of the fundamental principle of national treatment.

Case C-63/86 Commission v Italy [1988] ECR 29 §19

3.6 SOCIAL SECURITY

3.6.1 Social Security Contributions

National legislation which requires an employer, as a person providing a service within the meaning of the Treaty, ***to pay employer' s contributions*** to the social security fund of the host Member State ***in addition to the contributions already paid by him to the social security fund of the State where he is established places an additional financial burden on him***, so that he is not, so far as competition is concerned, on an equal footing with employers established in the host State.

Case C-272/94 Guiot [1996] ECR I-1905 §14

Such legislation, even if it applies without distinction to national providers of services and to those of other Member States, is liable to restrict the freedom to provide services within the meaning of Article 59 of the Treaty.

Case C-272/94 Guiot [1996] ECR I-1905 §15

The reply to the question put by the national court must therefore be that Articles 59 and 60 of the Treaty ***preclude a Member State from requiring an undertaking established in another Member State and temporarily carrying out works*** in the first-mentioned Member ***State to pay employer's contributions in respect of timbres-fidélité and timbres-intempéries*** with respect to workers assigned to carry out those works, ***where that undertaking is already liable for comparable contributions***, with respect to the same workers and for the same period of work, in the State where it is established.

Case C-272/94 Guiot [1996] ECR I-1905 §22

.../...

Such is the case with national legislation of the kind in question when the ***obligation to pay the employer's share of social security contributions*** imposed on persons providing services within the national territory is extended to employers established in another Member State who are already liable under the legislation of that State for similar contributions in respect of the same workers and the same periods of employment. In such a case the legislation of the State in which the service is provided ***proves in economic terms to be more onerous for employers established in another Member State, who in fact have to bear a heavier burden than those established within the national territory.***

Cases C-62 and 63/81 Seco [1982] ECR 223 §9

Furthermore, legislation which requires employers to pay in respect of their workers social security contributions not related to any social security benefit for those workers, who are moreover exempt from insurance in the Member State in which the service is provided and remain compulsorily affiliated, for the duration of the work carried out, to the social security scheme of the Member State in which their employer is established, may not reasonably be considered justified on account of the general interest in providing workers with social security.

Cases C-62 and 63/81 Seco [1982] ECR 223 §10

The answer to the questions submitted by the Cour de Cassation of the Grand Duchy of Luxembourg must therefore be that Community law precludes a Member State from requiring an employer who is established in another Member State and temporarily carrying out work in the first-named Member State, using workers who are nationals of non-member countries, ***to pay the employer's share of social security contributions in respect of those workers when that employer is already liable under the legislation of the State in which he is established for similar contributions in respect of the same workers and the same periods of employment and the contributions paid in the State in which the work is performed do not entitle those workers to any social security benefits. Nor would such a requirement be justified if it were intended to offset the economic advantages which the employer might have gained by not complying with the legislation on minimum wages in the State in which the work is performed.***

Cases C-62 and 63/81 Seco [1982] ECR 223 §15

3.6.2 Other Social Security Considerations

It must be observed, first of all, that, according to settled case-law, ***Community law does not detract from the powers of the Member States to organise their social security systems*** (Case C238/82 *Duphar and Others v Netherlands* [1984] ECR 523, paragraph 16, and Case C70/95 *Sodemare and Others v Regione Lombardia* [1997] ECR I-3395, paragraph 27).

Cases C-158/96 Kohll [1998] ECR I-1931 §17

In the absence of harmonisation at Community level, it is therefore for the legislation of each Member State to determine, first, the conditions concerning the right or duty to be insured with a social security scheme (Case 110/79 *Coonan v Insurance Officer* [1980] ECR 1445, paragraph 12, and Case C-349/87 *Paraschi v Landesversicherungsanstalt Württemberg* [1991] ECR I-4501, paragraph 15) ***and second, the conditions for entitlement to benefits*** (Joined Cases C-4/95 and C-5/95 *Stöber and Piosa Pereira* v *Bundesanstalt für Arbeit* [1997] ECR I-511, paragraph 36).

Cases C-158/96 Kohll [1998] ECR I-1931 §18

The Court has held that ***the special nature of certain services does not remove them from the ambit of the fundamental principle of freedom of movement*** (Case 279/80 Webb [1981] ECR 3305, paragraph 10).

Cases C-158/96 Kohll [1998] ECR I-1931 §20

Consequently, ***the fact that the national rules at issue in the main proceedings fall within the sphere of social security cannot exclude the application of Articles 59 and 60 of the Treaty.***

Cases C-158/96 Kohll [1998] ECR I-1931 §21

3.7 EXCLUSIVE RIGHTS AND MONOPOLIES

It should be observed at the outset that the system set up by Article 61 of the Mediawet does in fact result in a ***restriction on the freedom to provide services*** within the Community within the meaning of Article 59 of the Treaty.

Case C-353/89 Mediawet II [1991] ECR I-4069 §22

The obligation imposed on all national broadcasting bodies established in a Member State to use exclusively or to some extent the technical resources provided by a national undertaking prevents those bodies from using the services of undertakings established in other Member States or, in any event, limits their opportunities of doing so. It therefore has a *protective effect* for the benefit of a service undertaking established in the national territory and, to that extent, disadvantages undertakings of the same kind established in other Member States.

Case C-353/89 Mediawet II [1991] ECR I-4069 §23

The Netherlands Government maintains that the restrictive effects of that preferential system affect service undertakings established in the Netherlands other than the NOPB and undertakings established in other Member States to the same extent.

Case C-353/89 Mediawet II [1991] ECR I-4069 §24

In any event, that fact is not such as to exclude the preferential system enjoyed by the NOPB from the field of application of Article 59 of the Treaty. Moreover, it is not necessary for all undertakings in a Member State to be advantaged in comparison with foreign undertakings. ***It is sufficient that the preferential system set up should benefit a national provider of services.***

Case C-353/89 Mediawet II [1991] ECR I-4069 §25

As has been indicated in paragraph 12 of this judgment, although ***the existence of a monopoly in the provision of services is not as such incompatible with Community law***, the possibility cannot be excluded that ***the monopoly may be organized in such a way as to infringe the rules relating to the freedom to provide services.*** Such a case arises, in particular, where the monopoly leads to ***discrimination*** between national television broadcasts and those originating in other Member States, to the detriment of the latter.

Case C-260/89 ERT [1991] ECR I-2925 §20

Accordingly the reply to the national court must be that Article 59 of the Treaty prohibits national rules which create a monopoly comprising exclusive rights to transmit the broadcasts of the holder of the monopoly and to retransmit broadcasts from other Member States, ***where such a monopoly gives rise to discriminatory effects*** to the detriment of broadcasts from other Member States, unless those rules are justified on the grounds indicated in Article 56 of the Treaty, to which Article 66 thereof refers.

Case C-260/89 ERT [1991] ECR I-2925 §26

3.8 MANDATORY LEGAL FORM OF EMPLOYMENT RELATIONSHIP

The mere fact that tourist guides from another Member State do not need such a licence when they accompany a group of tourists to Greece does not mean that they cannot have an interest in acquiring the said diploma, in order to secure a higher qualification, and thus obtaining the licence to pursue the profession in that State. In those circumstances, the rules in question apply to them.

Case C-398/95 SETTG [1997] ECR I-3091 §12

It follows that ***such rules may affect the right of self-employed tourist guides from another Member Sate freely to provide services*** where they are licensed to pursue the profession in the first State and offer their services in connection with the operation of tourist programmes organized in that State by tourist or travel agencies, wherever those agencies are established within the Community.

Case C-398/95 SETTG [1997] ECR I-3091 §13

The answer to the first question must therefore be that ***the rules*** of a Member State ***which, by prescribing a mandatory legal form of employment relationship between the parties, prevent tourist and travel agencies***, wherever they are established, ***from concluding***, in connection with the operation of tourist programmes organized by them in that Member State, ***a contract for the provision of services*** with a tourist guide from another Member State who is licensed to pursue his profession in the first State, ***constitute a barrier for the purposes of Article 59 of the Treaty***.

Case C-398/95 SETTG [1997] ECR I-3091 §19

4 JUSTIFICATION OF "RESTRICTIONS"

4.1 GENERAL PRINCIPLES - RESTRICTIVE INTERPRETATION OF EXCEPTIONS

It must be remembered, however, that, ***as a fundamental principle of the Treaty, the freedom to provide services may be limited only by rules which are justified by imperative reasons relating to the public interest and which apply to all persons or undertakings pursuing an activity in the State of destination, in so far as that interest is not protected by the rules to which the person providing the services is subject in the Member State in which he is established.*** In particular, the restrictions must be objectively necessary in order to ensure compliance with professional rules and to guarantee the protection of the recipient of services and they must not exceed what is necessary in order to attain those objectives (see in particular, Case 279/80 *Webb* [1981] ECR 3305, paragraphs 17 and 20; Case 205/84 *Commission v Germany* [1986] ECR 3755, paragraph 27 and Case C-76/90 *Säger v Dennemeyer* [1991] ECR I-4221, paragraph 15).

Case C-222/95 Parodi [1997] ECR I-3899 §21
See also: Case C-76/90 Säger [1991] ECR I-4221 §15
Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §18
Case C-180/89 Tourist Guides Italy [1991] ECR I-709 §17
Case C-154/89 Tourist Guides France [1991] ECR I-659 §14
Case C-205/84 Commission v Germany [1986] ECR 3755 §27

In such a case, ***it is for the national court to determine whether those provisions are necessary to meet overriding requirements of general public importance or one of the aims laid down in Article 56 of the EC Treaty***, whether they are proportionate for that purpose and whether the aims or overriding requirements could have been met by less restrictive means.

Joined Cases C-34/95, 35/95 & 36/95 De Agostini [1997] ECR I-3843 §52

The Court has consistently held that, ***as a fundamental principle of the Treaty, the freedom to provide services may be limited only by rules which are justified by overriding reasons relating to the general interest and which apply to all persons or undertakings pursuing an activity in the State of destination.*** In particular, the restrictions 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 (*Säger*, cited above, paragraph 15; Case C-288/89 *Gouda and Others* [1991] ECR I-407, paragraphs 13 to 15; *Kraus* [1993] ECR I-1663, paragraph 32, and Case C-55/94 *Gebhard* [1995] ECR I-4165, paragraph 37)

Case C-398/95 SETTG [1997] ECR I-3091 §21

(...) however, ***national measures liable to hinder or make less attractive the exercise of fundamental freedoms guarantied 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 to attain it.***

Case C-55/94 Gebhard [1995] ECR I-4165 §39
(SEE ALSO §27, 28, 37 and 38)

A prohibition such as that at issue in the main proceedings does not constitute a restriction on freedom to provide services within the meaning of Article 59 solely by virtue of the fact that other Member States apply less strict rules to providers of similar services established in their territory (see the judgment in Case C-379/92 *Peralta* (1994) ECR I-3453, paragraph 48).

Case C-384/93 Alpine Investments [1995] ECR I-1141 §27

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 judgment 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 is sufficient to observe in that regard that the measures taken by virtue of that Article must not be disproportionate to the intended objective. ***As an exception to a fundamental principle of the Treaty, Article 56 of the Treaty must be interpreted in such a way that its effects are limited to that which is necessary in order to protect the interests which it seeks to safeguard.***

Case C-352/85 Bond van Adverteerders [1988] ECR 2085 §36

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

4.2 JUSTIFICATION OF RESTRICTION ON GENERAL INTEREST GROUNDS

However, in view of the special nature of certain professional activities, the ***imposition of specific requirements*** pursuant to the rules governing such activities c***annot 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 judgment in Case C-180/89 *Commission v Italy* [1991] ECR I-709, paragraph 17).

Case C-106/91 Ramrath [1992] ECR I-3351 §29
Case C-76/90 Säger [1991] ECR I-4221 §15
Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §18-19
Case C-180/89 Tourist Guides Italy [1991] ECR I-709 §17-18
Case C-154/89 Tourist Guides France [1991] ECR I-659 §14-15
Case C-205/84 Commission v Germany [1986] ECR 3755 §27
Case C-252/83 Commission v Denmark [1986] ECR 3713 §17

It is appropriate to point out in the first place that ***national rules*** which are not applicable to services without distinction as regards their origin and ***which are*** therefore ***discriminatory*** are compatible with Community law only if they can be brought within the scope of ***an express derogation.***

Case C-352/85 Bond van Adverteerders [1988] ECR 2085 §32

The only derogation which may be contemplated in a case such as this is that provided for in ***Article 56*** of the Treaty, to which Article 66 refers, ***under which national provisions providing for special treatment for foreign nationals escape the application of Article 59 of the Treaty if they are justified on grounds of public policy***.

Case C-352/85 Bond van Adverteerders [1988] ECR 2085 §33

It follows that ***those requirements may be regarded as compatible with Articles 59 and 60 of the EEC Treaty only if it is established that in the field of activity concerned there are imperative reasons relating to the public interest which justify restrictions on the freedom to provide services, that the public interest is not already protected by the rules of the State of establishment and that the same result cannot be obtained by less restrictive rules***.

Case C-205/84 Commission v Germany [1986] ECR 3755 §29
Case C-252/83 Commission v Denmark [1986] ECR 3713 §19

4.2.1 Admissible Justifications

4.2.1.1 Short List of Discriminatory Restrictions

Moreover, the justifications put forward by the Belgian Government do not come within any of the grounds for exemption from the freedom to provide services permitted by Article 56, namely ***public policy, public security and public health.***

Case C-211/91 Commission v Belgium [1992] ECR I-6757 §10

As the Court has consistently held (see, in particular, the judgment in Case 288/89 *Collectieve Antennevoorziening Gouda v Commissariaat voor de Media* [1991] ECR I-4007, paragraph 11), ***those exemptions alone can effectively be relied upon to justify national rules which are not applicable to services without distinction as regards their origin.***

Case C-211/91 Commission v Belgium [1992] ECR I-6757 §11

As the Court held in its judgment 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 judgment (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 [1991] ECR I-4007 §11
See also: Case C-352/85 Bond van Adverteerders [1988] ECR 2085 § 32

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 [1991] ECR I-2925 §24

4.2.1.2Longer List for Non-discriminatory Restrictions

In this respect, the overriding reasons relating to the public interest which the Court has already recognised include professional rules intended to protect recipients of the service (Joined Cases 110/78 and 111/78 *Van Wesemael* [1979] ECR 35, paragraph 28); ***protection of intellectual property*** (Case 62/79 *Coditel* [1980] ECR 881); ***the protection of workers*** (Case 279/80 *Webb* [1981] ECR 3305, paragraph 19; Joined Cases 62/81 and 63/81 *Seco v EVI* [1982] ECR 223, paragraph 14; Case C-113/89 *Rush Portuguesa* [1990] ECR I-1417, paragraph 18); ***consumer protection*** (Case 220/83 *Commission v France* [1986] ECR 3663, paragraph 20; Case 252/83 *Commission v Denmark* [1986] ECR 3713, paragraph 20; Case 205/84 *Commission v Germany* [1986] ECR 3755, paragraph 30; Case 206/84 *Commission v Ireland* [1986] ECR 3817, paragraph 20; *Commission v Italy*, cited above, paragraph 20; and *Commission v Greece*, cited above, paragraph 21), ***the conservation of the national historic and artistic heritage*** (*Commission v Italy*, cited above, paragraph 20); ***turning to account the archaeological, historical and artistic heritage of a country and the widest possible dissemination of knowledge of the artistic and cultural heritage of a country*** (*Commission v France*, cited above, paragraph 17, and *Commission v Greece*, cited above, paragraph 21).

Case C-288/89 Mediawet I [1991] ECR I-4007 §14

4.2.1.3Circumvention of Establishment

According to the case-law of the Court, ***Community law cannot be relied on for abusive or fraudulent ends*** (***see***, in particular, ***regarding freedom to supply services***, Case 33/74 ***Van Binsbergen v Bedrijfsverenigung Metaalnijverheid*** [1974] ECR 1299, paragraph 13, and Case C-23/93 *TV10 v Commissariat voor de Media* [1994] ECR I-4795, paragraph 21;...).

Case C-367/96 Kefalas [1998] ECR I-2843 §20

Moreover, the Court has already held in connection with Article 59 of the Treaty on the freedom to provide services ***that 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 freedoms guaranteed by the Treaty for the purpose of avoiding the rules which would be applicable to him if he were established within that State*** (see *van Binsbergen*, cited above).

Case C-23/93 TV10 [1994] ECR I-4795 §20

(SEE ALSO §26)

see also: **Case C-33/74 Van Binsbergen [1974] ECR 1299 §13**

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 [1994] ECR I-4795 §21

By prohibiting national broadcasting organisations from helping to set up commercial radio and television companies abroad for the purpose of providing services there directed towards the Netherlands, the Netherlands legislation at issue has the specific effect, ***with a view to safeguarding the exercise of the freedoms guaranteed by the Treaty, of ensuring that those organisations cannot improperly evade the obligations deriving from the national legislation*** concerning the pluralistic and non-commercial content of programmes.

Case C-148/91 Veronica [1993] ECR I-487 §13

The argument that the Belgian Government seeks to derive from the judgment in Case 33/74 *Van Binsbergen v Bedrijfsvereniging Metaalnijverheid* [1974] ECR 1299, according to which a person providing services cannot avoid the rules applicable to providers of services established in the Member State towards which his activity is directed, cannot be accepted. While it is true that, according to paragraph 13 of that judgment, the State in which the service is provided may take measures to prevent a provider of services ***whose activity is entirely or principally directed towards its territory from exercising the freedom guaranteed by Article 59 for the purpose of avoiding the professional rules*** which would be applicable to him if he were established within that State, ***it does not follow that it is permissible for a Member State to prohibit altogether*** the provision of certain services by operators established in other Member States, as that would be tantamount to abolishing the freedom to provide services.

Case C-211/91 Commission v Belgium [1992] ECR I-6757 §12

Similarly, as the Court held in its judgment 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 v Germany [1986] ECR 3755 §22

Although, in the light of the special nature of certain services, it cannot be denied that a Member State is entitled to adopt measures which are intended to prevent the freedom guaranteed by Article 59 being used by a person whose activities are entirely or chiefly directed towards his territory ***in order to avoid the professional rules*** which would apply to him if he resided in that State, the requirement of residence in the territory of the State where the service is provided can only be allowed as an ***exception*** where the Member State is unable to apply other, less restrictive, measures to ensure respect for these rules.

Case C-39/75 Coenen [1975] ECR 1547 §9

4.2.2 Examples of Admissible Justifications

4.2.2.1 Article 55 EC

As regards the exception provided for in the first paragraph of Article 55 combined, where appropriate with Article 66 of the Treaty, it must be remembered that, ***as a derogation from the fundamental rule of freedom of establishment, it must be interpreted in a manner which limits its scope to what is strictly necessary for safeguarding the interests which that provision allows the Member States to protect*** (Case 147/86 *Commission v Greece* [1988] ECR 1637, paragraph 7).

Case C-114/97 Commission v Spain [1998] ECR I-0000 §34

According to established case-law, ***the derogation*** for which it provides ***must be restricted to activities which in themselves are directly and specifically connected with the exercise of official authority*** (Case 2/74 *Reyners* [1974] ECR 631, paragraph 45, and Case C-42/92 *Thijssen* [1993] ECR I-4047, paragraph 8).

Case C-114/97 Commission v Spain [1998] ECR I-0000 §35

In the present case, it is clear from the evidence before the Court that ***the activity of security undertakings and security staff is to carry out surveillance and protection tasks on the basis of relations governed by private law.***

Case C-114/97 Commission v Spain [1998] ECR I-0000 §36

However, the exercise of that activity does not mean that security undertakings and security staff are vested with powers of constraint. ***Merely making a contribution to the maintenance of public security***, which any individual may be called upon to do, ***does not constitute exercise of official authority***.

Case C-114/97 Commission v Spain [1998] ECR I-0000 §37

On that point, it need only be observed that the grant by the Netherlands State of recognition for the purposes of Article 9g of the WVW to garages established in other Member States involves ***the extension outside the national territory of rights and powers pertaining to the exercise of State authority and, consequently, does not fall within the scope of Article 59 of the Treaty***.

Case C-55/93 Van Schaik [1994] ECR I-4837 §16

It should be noted that, as the Advocate General showed in points 18 to 23 of his Opinion, the introduction of the computerised system at issue which, according to the invitation to tender relates to the premises, supplies, installations, maintenance, operation and transmission of data and everything else that is necessary for the conduct of the lottery, ***does not involve any transfer of responsibility to the concessionaire for the various activities inherent in the lottery.***

Case C-272/91 Commission v Italy [1994] ECR I-1409 §6

Since the activities in question ***do not therefore fall under the derogation in Article 55*** of the Treaty, it must be held that the restriction at issue is contrary to Articles 52 and 59 of the Treaty and the complaint of infringement of those articles must be upheld.

Case C-272/91 Commission v Italy [1994] ECR I-1409 §13

Accordingly, the object of the question referred by the court requesting the preliminary ruling is to ***ascertain whether activities*** of the kind exercised by an approved commissioner pursuant to the Law of 1975 ***entail direct and specific participation in the exercise of official authority.*** To reply to this question, ***it is necessary to consider the nature of the duties carried out*** by approved commissioners under that Law, as they have been described by the national court.

Case C-42/92 Thijssen [1993] ECR I-4047 §9

Consequently, ***the auxiliary and preparatory functions*** of an approved commissioner vis-à-vis the Insurance Inspectorate (which itself is the body which exercises official authority by taking the final decision) ***cannot be regarded as having a direct and specific connection with the exercise of official authority within the meaning of the first paragraph of Article 55 of the Treaty***.

Case C-42/92 Thijssen [1993] ECR I-4047 §22

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

The possible application of the restrictions on freedom of establishment provided for by the first paragraph of Article 55 ***must therefore be considered separately in connection with each Member State having regard to the national provisions applicable to the organisation and the practice of this profession.***

Case C-2/74 Reyners [1974] ECR 631 §49

Professional activities involving contacts, even regular and organic, with the courts, including even compulsory co-operation 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

The exercise of these activities leaves the discretion of judicial authority and the free exercise of judicial power intact.

Case C-2/74 Reyners [1974] ECR 631 §53

4.2.2.2 Article 56 EC

The rule according to which directors and managers of all security undertakings must reside in Spain ***constitutes an obstacle*** to freedom of establishment (see, in this regard, Case C-221/89 *Factortame* [1991] ECR I-3905, paragraph 35) and ***to the freedom to provide services***.

Case C-114/97 Commission v Spain [1998] ECR I-0000 §44

This condition is not necessary in order to ensure public security in the Member State concerned and ***is not therefore covered by the derogation provided by Article 56(1)*** combined, where appropriate, with Article 66 of the Treaty.

Case C-114/97 Commission v Spain [1998] ECR I-0000 §45

Recourse to this justification presupposes the existence of a genuine and sufficiently serious threat affecting one of the fundamental interests of society (see, as far as public policy is concerned, *Bouchereau,* cited above, paragraph 35).

Case C-114/97 Commission v Spain [1998] ECR I-0000 §46

.../...

With regard to the possible existence of a restriction on freedom to provide maritime transport services, it must be observed that the mooring service constitutes a technical nautical service which is essential to the maintenance of safety in port waters and has the characteristics of a public service (universality, continuity, satisfaction of public-interest requirements, regulation and supervision by the public authorities). Accordingly provided that the price supplement in relation to the actual cost of the service does indeed correspond to the additional cost occasioned by the need to maintain a universal mooring service, ***the requirement to have recourse to a local mooring service***, even if it were capable of constituting a hindrance or impediment to freedom to provide maritime transport services, ***could be justified, under Article 56 of the EC Treaty, by the considerations of public security*** relied on by the mooring groups, on the basis of which the national legislation on mooring was adopted.

Case C-266/96 Corsica Ferries France [1998] ECR I-3949 §60

It should be noted, first of all, that ***under Articles 56 and 66 of the EC Treaty Member States may limit freedom to provide services on grounds of public health.***

Case C-158/96 Kohll [1998] ECR I-1931 §45

However, ***that does not permit them to exclude the public health sector***, as a sector of economic activity and from the point of view of freedom to provide services, ***from the application of the fundamental principle of freedom of movement*** (see Case 131/85 *Gül v Regierungspräsident Düsseldorf* [1986] ECR 1573, paragraph 17).

Case C-158/96 Kohll [1998] ECR I-1931 §46

Consequently, ***rules*** such as those applicable in the main proceedings ***cannot be justified on grounds of public health in order to protect the quality of medical services*** provided in other Member States.

Case C-158/96 Kohll [1998] ECR I-1931 §49

As to ***the objective of maintaining a balanced medical and hospital service open to all***, that objective, although intrinsically linked to the method of financing the social security system, ***may also fall within the derogations on grounds of public health under Article 56 of the Treaty, in so far as it contributes to the attainment of a high level of health protection.***

Case C-158/96 Kohll [1998] ECR I-1931 §50

Article 56 of the Treaty permits Member States to restrict the freedom to provide medical and hospital services in so far as the maintenance of a treatment facility or medical service on national territory is essential for the public health and even the survival of the population (see in respect to public security within the meaning of Article 36 of the Treaty, Case 72/83 *Campus Oil v Ministry for Industry and Energy* [1984] ECR 2727, paragraphs 33 to 36).

Case C-158/96 Kohll [1998] ECR I-1931 §51

As the Court of Justice held in Joined Cases 115/81 and 116/81 *Adoui and Cornuaille v Belgian State* [1982] ECR 1665, paragraph 7, ***the reservations contained in Articles 48 and 56 of the EC Treaty permit Member States to adopt with respect to the nationals of other Member States and on the grounds specified in those provisions, in particular grounds justified by the requirements of public policy, measures which they cannot apply to their own nationals, in as much as they have no authority to expel the latter from the national territory or to deny them access thereto***;

Joined Cases C-65/95 and 111/95 Shingara & Radiom [1997] ECR I-3343 §28

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 & Gustavsson [1995] ECR I-3955 §15

Apart from the fact that ***cultural policy is not one of the justifications set out in Article 56***, it is important to note that the Decree-Law promotes the distribution of national films whatever their content or quality.

Case C-17/92 Distribuidores Cinematográficos [1993] ECR I-2239 §20

In those circumstances, the link between the grant of licences for dubbing films from third countries and the distribution of national films pursues an ***objective of a purely economic nature which does not constitute a ground of public policy within the meaning of Article 56 of the Treaty.***

Case C-17/92 Distribuidores Cinematográficos [1993] ECR I-2239 §21

Moreover, the justifications put forward by the Belgian Government do not come within any of the grounds for exemption from the freedom to provide services permitted by Article 56, ***namely public policy, public security and public health.***

Case C-211/91 Commission v Belgium [1992] ECR I-6757 §10

As the Court has consistently held (see, in particular, the judgment in Case 288/89 *Collectieve Antennevoorziening Gouda v Commissariaat voor de Media* [1991] ECR I-4007, paragraph 11), ***those exemptions alone can effectively be relied upon to justify national rules which are not applicable to services without distinction as regards their origin.***

Case C-211/91 Commission v Belgium [1992] ECR I-6757 §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 [1991] ECR I-2925 §24

In particular, ***where a Member State relies on the combined provisions of Articles 56 and 66 in order to justify rules which are likely to obstruct the exercise of the freedom to provide services, such justification, provided for by Community law, must be interpreted in the light of the general principles of law and in particular of fundamental rights.*** Thus the national rules in question can fall under the exceptions provided for by the combined provisions of Articles 56 and 66 only if they are compatible with the fundamental rights the observance of which is ensured by the court.

Case C-260/89 ERT [1991] ECR I-2925 §43

The reply to the national court must therefore be that the limitations imposed on the power of the Member States to apply the provisions referred to in Articles 66 and 56 of the Treaty on grounds of public policy, public security and public health ***must be appraised in the light of the general principle of freedom of expression*** embodied in Article 10 of the European Convention on Human Rights.

Case C-260/89 ERT [1991] ECR I-2925 §45

It is appropriate to point out in the first place that national rules which are ***not applicable*** to services ***without distinction*** as regards their origin and which are therefore discriminatory are compatible with Community law only if they can be brought within the scope of an express derogation.

Case C-352/85 Bond van Adverteerders [1988] ECR 2085 §32

The only derogation which may be contemplated in a case such as this is that provided for in Article 56 of the Treaty, to which Article 66 refers, under which national provisions providing for special treatment for foreign nationals escape the application of Article 59 of the Treaty ***if they are justified on grounds of public policy.***

Case C-352/85 Bond van Adverteerders [1988] ECR 2085 §33

For the implementation of those provisions, Title II of the General Programme for the Abolition of Restrictions on Freedom to Provide Services (Official Journal, English Special Edition, Second Series IX, p.3), which was drawn up by the Council pursuant to Article 63 of the Treaty on 18 December 1961, envisages *inter alia* the repeal of provisions laid down by law, regulation or administrative action which in any Member State govern, for economic purposes, the entry, exit and residence of nationals of Member State, where such provisions are not ***justified on grounds of public policy***, public security or public health and are liable to hinder the provision of services by such persons.

Cases C-286/82 and 26/83 Luisi & Carbone [1984] ECR 377 §11

4.2.2.3The Efficient Administration of Justice

Consequently, ***the fact***, pointed out by the Commission, ***that a creditor or a non-professional adviser acting on his behalf can lodge an application for an attachment order does not preclude legislative provisions*** such as those at issue in the main proceedings ***from being regarded as justified in the general interest*** on the ground that they protect creditors or ***safeguard the sound administration of justice*** in relation to the provision of litigation services on a professional basis.

Case C-3/95 Reisebüro Broede [1996] ECR I-6511 §36

.../...

In accordance with these principles, the requirement that persons whose functions are to assist the administration of justice must be permanently established for professional purposes within the jurisdiction of certain courts or tribunals cannot be considered incompatible with the provisions of Articles 59 and 60, ***where such requirement is objectively justified*** by the need to ensure observance of professional rules of conduct connected, in particular, ***with the administration of justice*** and with respect for professional ethics.

Case C-33/74 Van Binsbergen [1974] ECR 1299 §14

In relation to a professional activity the exercise of which is similarly unrestricted within the territory of a particular Member State, the requirement of residence within that State constitutes a restriction which is incompatible with Articles 59 and 60 of the Treaty ***if the administration of justice can satisfactorily be ensured by measures which are less restrictive***, such as the choosing of an address ***for service***.

Case C-33/74 Van Binsbergen [1974] ECR 1299 §16

4.2.2.4Cohesion of the Tax System

It is true that in the past ***the Court has accepted that the need to maintain the cohesion of tax systems could, in certain circumstances, provide sufficient justification for maintaining rules restricting fundamental freedoms*** (see, to this effect, Case C-204/90 *Bachmann* [1992] ECR I-249 and Case C-300/90 *Commission v Belgium* [1992] ECR I-305). Nevertheless, in the cases cited, there was a direct link between the deductibility of contributions from taxable income and the taxation of sums payable by insurers under old-age and life assurance policies, and that link had to be maintained in order to preserve the cohesion of the tax system in question. In the present case, there is no such direct link between the consortium relief granted for losses incurred by a resident subsidiary and the taxation of profits made by non-resident subsidiaries.

Case C-264/96 ICI [1998] ECR I-0000 §29

In the light of the foregoing, it must be recognised that, in the field of pensions and life assurance, provisions such as those contained in the Belgian legislation at issue are ***justified by the need to ensure the cohesion of the tax system*** of which they form part, and that such provisions are not, therefore, contrary to Article 48 of the Treaty.

Case C-204/90 Bachmann [1992] ECR I-249 §28

As is apparent from the foregoing analysis, this is the case as far as pensions and life assurance are concerned for the period after 1975. As regards the preceding years, and as far as sickness and invalidity insurance are concerned, it must be left to the national court to assess whether the provisions to which it refers were also ***necessary in order to ensure the cohesion of the tax system of which they form part.***

Case C-204/90 Bachmann [1992] ECR I-249 §33

It follows that, ***as Community law stands at present, it is not possible to ensure the cohesion of such a tax system by means of measures which are less restrictive*** than those provided for by the rules in question, and that the consequences of any other measure ensuring the recovery by the Belgian State of the tax due under its legislation on sums payable by insurers pursuant to the contracts concluded with them would ultimately be similar to those resulting from the non-deductibility of contributions.

Case C-300/90 Commission v Belgium [1992] ECR I-305 §20

In view of the foregoing, it must be accepted that the contested provisions of Belgian law ***are justified by the need to safeguard the cohesion of the tax system*** at issue and, consequently, that they do not infringe Article 48 of the Treaty. This is also the case as regards Article 7 of Regulation No 1612/68.

Case C-300/90 Commission v Belgium [1992] ECR I-305 §21

4.2.2.5Protection of the Recipients of Services

It should next be stated that the public interest in the protection of the recipients of the services in question against such harm justifies a restriction of the freedom to provide services. However, such a provision goes beyond what is necessary to protect that interest if it makes the pursuit, by way of business, of an activity such as that at issue, subject to the possession by the persons providing the service of a professional qualification which is quite specific and disproportionate to the needs of the recipients.

Case C-76/90 Säger [1991] ECR I-4221 §17
See also: Case C-288/89 Mediawet I [1991] ECR I-4007 §14 (at page 82)

4.2.2.6Consumer Protection

Further according to settled case law; fair-trading and ***the protection of consumers*** in general ***are overriding requirements of public interest which may justify restrictions on the freedom to provide services*** (see, in particular, *Collective Antennevoorziening Gouda*, cited above, paragraph 14, and Case C-384/93 Alpine Investments [1995] ECR I-1141).

Joined Cases C-34/95, 35/95 & 36/95 De Agostini [1997] ECR I-3843 §53

As the Court has held on several occasions, in the absence of co-ordination at a Community level ***the Member States may***, subject to certain conditions, ***impose national measures*** pursuing a legitimate aim that is compatible with the Treaty and is ***justified on overriding public interest grounds, which include the protection of consumers*** (see, in particular, Case 205/84 *Commission v Germany* [1986] ECR 3755)

Case C-233/94 Germany/Parliament & Council [1997] ECR I-2405 §16

In this respect, it must be observed in the first place that restrictions on the broadcasting of advertisements, such as a prohibition on advertising particular products or on certain days, a limitation of the duration or frequency of advertisements or restrictions designed to enable listeners or viewers not to confuse advertising with other parts of the programme, may be justified by overriding reasons relating to the general interest. Such restrictions may be imposed ***in order to protect consumers*** against excessive advertising or, as an objective of cultural policy, in order to maintain a certain level of programme quality.

Case C-288/89 Mediawet I [1991] ECR I-4007 §27

The general interest in the proper appreciation of the artistic and archaeological heritage of a country and ***in consumer protection can constitute an overriding reason justifying a restriction on the freedom to provide services***. However, the requirement in question contained in the Greek legislation goes beyond what is necessary to ensure the safeguarding of that interest inasmuch as it makes the activities of a tourist guide accompanying groups of tourists from another Member State subject to possession of a licence.

Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §21
See also: Case C-180/89 Tourist Guides Italy [1991] ECR I-709 §20
Case C-154/89 Tourist Guides France [1991] ECR I-659 §17

Moreover, the profitable operation of such group tours depends on the commercial reputation of the operator, who faces competitive pressure from other tour companies; the need to maintain that reputation and the competitive pressure themselves compel companies to be selective in employing tourist guides and exercise some control over the quality of their services. Depending on the specific expectations of the groups of tourists in question, that factor is likely to contribute to the proper appreciation of the artistic and archaeological heritage and the ***protection of consumers***, in the case of conducted tours of places other than museums or historical monuments which may be visited only with a professional guide.

Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §24
Case C-154/89 Tourist Guides France [1991] ECR I-659 §20

In the course of the proceedings before the Court, the German government and the governments intervening in its support have shown that considerable differences exist in the national rules currently in force concerning technical reserves and the assets which represent such reserves. In the absence of harmonization in that respect and of any rule requiring the supervisory authority of the Member State of establishment to supervise compliance with the rules in force in the State in which the service is provided, it must be recognised that the latter State is justified in requiring and supervising compliance with its own rules on technical reserves with regard to services provided within its territory, provided that such rules do not exceed ***what is necessary for the purpose of ensuring that policy-holders and insured persons are protected.***

Case C-205/84 Commission v Germany [1986] ECR 3755 §39

It must therefore be recognised that, in the present state of Community law, ***the considerations described above relating to the protection of policy-holders and insured persons*** justify the application by the Member State in which the service is provided of its own legislation concerning technical reserves and the conditions of insurance, provided that the requirements of that legislation do not exceed what is necessary to ensure the protection of policy-holders and insured persons. It therefore remains to consider whether it is necessary for such supervision to be effected under an authorization procedure and on the basis of a requirement that the insurance undertaking should have a permanent establishment in the State in which the service is provided.

Case C-205/84 Commission v Germany [1986] ECR 3755 §41

.../...

In its judgment delivered this day in case 205/84 *Commission v Federal Republic of Germany* (1986) ECR 3793, the Court held that ***in the insurance sector in general there were imperative reasons relating to the protection of the consumer*** both as a policy-holder and as an insured person which might justify restrictions on the freedom to provide services. The Court also recognised that in the present state of Community law, in particular with regard to the co-ordination of the relevant national rules, the protection of that interest was not necessarily guaranteed by the rules of the State of establishment. The Court concluded therefrom that, as regards the field of direct insurance in general, the requirement of a separate authorization granted by the authorities of the State in which the service was provided remained justified subject to certain conditions. On the other hand, the Court considered that the requirement of an establishment, which represented the very negation of the freedom to provide services, exceeded what was necessary to attain the objective pursued and that, accordingly, that requirement was contrary to Articles 59 and 60 of the Treaty.

Case C-252/83 Commission v Denmark [1986] ECR 3713 §20

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 v France [1986] ECR 1475 §10

4.2.2.7Protection of Workers

That finding is borne out by the case-file and the information provided in response to the written questions put by the Court, as well as by the arguments presented at the hearing. It appears that although the Luxembourg legislation differs from the Belgian legislation, in particular as regards the percentage of the premiums and the procedure for their payment, ***they both provide mechanisms intended, on the one hand, to protect workers*** in the construction industry against the risk of suspension of the work and, therefore, of loss of remuneration because of bad weather and, on the other hand, to reward their loyalty to the sector in question.

Case C-272/94 Guiot [1996] ECR I-1905 §20

Since social protection of workers constitutes the only consideration of public interest capable of justifying restrictions on the freedom to provide services such as those at issue, ***any technical differences in the operation of the two schemes cannot justify such a restriction.***

Case C-272/94 Guiot [1996] ECR I-1905 §21

The reply to the question put by the national court must therefore be that ***Articles 59 and 60 of the Treaty preclude a Member State from requiring an undertaking established in another Member State and temporarily carrying out works in the first-mentioned Member State to pay employer's contributions in respect of timbres-fidélité and timbres-intempéries*** with respect to workers assigned to carry out those works, ***where that undertaking is already liable for comparable contributions***, with respect to the same workers and for the same period of work, in the State where it is established.

Case C-272/94 Guiot [1996] ECR I-1905 §22
See also: Case C-288/89 Mediawet I [1991] ECR I-4007 §14 (at page 82)

In that connection, it should be observed first of all that the freedom to provide services laid down in Article 59 of the Treaty entails, according to Article 60 of the Treaty, that the person providing a service may, in order to do so, temporarily pursue his activity in the State where the service is provided "under the same conditions as are imposed by that State on its own nationals".

Case C-113/89 Rush Portuguesa [1990] ECR I-1417 §11

Articles 59 and 60 of the Treaty therefore preclude a Member State from prohibiting a person providing services established in another Member State from moving freely on its territory with all his staff and ***preclude that Member State from making the movement of staff in question subject to restrictions such as a condition as to engagement in situ or an obligation to obtain a work permit***. To impose such conditions on the person providing services established in another Member State discriminates against that person in relation to his competitors established in the host country who are able to use their own staff without restrictions, and moreover affects his ability to provide the service.

Case C-113/89 Rush Portuguesa [1990] ECR I-1417 §12

Finally, it should be stated, in response to the concern expressed in this connection by the French Government, ***that Community law does not preclude Member States from extending their legislation***, or collective labour agreements entered into by both sides of industry, ***to any person who is employed, even temporarily, within their territory***, no matter in which country the employer is established; ***nor does Community law prohibit Member States from enforcing those rules by appropriate means*** (judgment of 3 February 1982 in Joined Cases 62 and 63/81 *Seco SA and Another v EVI* ((1982)) ECR 223).

Case C-113/89 Rush Portuguesa [1990] ECR I-1417 §18

Furthermore, legislation which requires employers to pay in respect of their workers social security contributions not related to any social security benefit for those workers, who are moreover exempt from insurance in the Member State in which the service is provided and remain compulsorily affiliated, for the duration of the work carried out, to the social security scheme of the Member State in which their employer is established, may not reasonably be considered justified ***on account of the general interest in providing workers with social security.***

Cases C-62 and 63/81 Seco [1982] ECR 223 §10

It is well-established that Community law does not preclude Member States from applying their legislation, or collective labour agreements entered into by both sides of industry ***relating to minimum wages***, to any person who is employed, even temporarily, within their territory, no matter in which country the employer is established, just as Community law does not prohibit Member States from enforcing those rules by appropriate means. However, it is not possible to describe as an appropriate means any rule or practice which imposes a general requirement to pay social security contributions, or other such charges affecting the freedom to provide services, on all persons providing services who are established in other Member States and employ workers who are nationals of non-member countries, irrespective of whether those persons have complied with the legislation on minimum wages in the Member State in which the services are provided, because such a general measure is by its nature unlikely to make employers comply with that legislation or to be of any benefit whatsoever to the workers in question.

Cases C-62 and 63/81 Seco [1982] ECR 223 §14

It follows in particular that it is ***permissible*** for Member States, and amounts for them to a legitimate choice of policy pursued in the public interest, to subject the provision of manpower within their borders to a system of licensing in order to be able to refuse licences where ***there is a reason to fear that such activities may harm good relations on the labour market or that the interests of the workforce affected are not adequately safeguarded.*** In view of the differences there may be in conditions on the labour market between one Member State and another, on the one hand, and the diversity of the criteria which may be applied with regard to the pursuit of activities of that nature on the other hand, the Member State in which the services are to be supplied has unquestionably the right to require possession of a licence issued on the same conditions as in the case of its own nationals.

Case C-279/80 Webb [1981] ECR 3305 §19

4.2.2.8Protection of Creditors

Consequently, the fact, pointed out by the Commission, that a creditor or a non-professional adviser acting on his behalf can lodge an application for an attachment order does not preclude legislative provisions such as those at issue in the main proceedings from being regarded as ***justified in the general interest*** on the ground that they ***protect creditors*** or safeguard the sound administration of justice in relation to the provision of litigation services on a professional basis.

Case C-3/95 Reisebüro Broede [1996] ECR I-6511 §36

4.2.2.9Professional Ethics

Accordingly, the lawyer providing services and the local lawyer, ***both being subject to the ethical rules applicable in the host Member State***, must be regarded as being capable, in compliance with those ethical rules and in the exercise of their professional independence, of agreeing upon a form of co-operation appropriate to their client's instructions.

Case C-294/89 Commission v France [1991] ECR I-3591 §31
See also: Case C-288/89 Mediawet I [1991] ECR I-4007 §14 (at page 82)

The Court has nevertheless accepted, in particular in its judgments of 18 January 1979 (Joined Cases 110 and 111/78 *Ministère Public and Another v Van Wesemael and Others* [1979] ECR 35) and 17 December 1981 (Case 279/80 *Webb*, cited above) that regard being had to the particular nature of certain services, specific requirements imposed on the provider of the services cannot be considered to be incompatible with the Treaty where they have as their purpose the application of rules governing such activities. However, the freedom to provide services, as one of the fundamental principles of the Treaty, may be restricted only by provisions which are justified by the general good and which are applied to all persons or undertakings operating within the territory of the State in which the service is provided in so far as that interest is not safeguarded by the provisions to which the provider of a service is subject in the Member State of his establishment. 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.

Case C-205/84 Commission v Germany [1986] ECR 3755 §27
Case C-252/83 Commission v Denmark [1986] ECR 3713 §17

.../...

Similarly, as the Court held in its judgment 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 v Germany [1986] ECR 3755 §22

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 v France [1986] ECR 1475 §11

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 v France [1986] ECR 1475 §14

However, when the pursuit of the employment agency activity at issue is made subject in the State in which the service is provided to the issue of a licence and to supervision by the competent authorities, that State may not, without failing to fulfil the essential requirements of Article 59 of the Treaty, impose on the persons providing the service who are established in another Member State any obligation either to satisfy such requirements or to act through the holder of a licence, ***except where such requirement is objectively justified by the need to ensure observance of the professional rules of conduct*** and to ensure the said protection.

Cases 110 and 111/78 Van Wesemael [1979] ECR 35 §29

Although, in the light of the special nature of certain services, it cannot be denied that a Member State is entitled to adopt measures which are intended to prevent the freedom guaranteed by Article 59 being used by a person whose activities are entirely or chiefly directed towards his territory ***in order to avoid the professional rules which would apply to him if he resided in that State***, the requirement of residence in the territory of the State where the service is provided can only be allowed as an exception where the Member State is unable to apply other, less restrictive, measures to ensure respect for these rules.

Case C-39/75 Coenen [1975] ECR 1547 §9

On these grounds it must be concluded that the provisions of the EEC Treaty, in particular Articles 59, 60 and 65, must be interpreted as meaning that national legislation may not, by means of a requirement of residence in the territory, make it impossible for persons residing in another Member State to provide services ***when less restrictive measures enable the professional rules to which provision of the service is subject in that territory to be complied with.***

Case C-39/75 Coenen [1975] ECR 1547 §12

However, taking into account the particular nature of the services to be provided, specific requirements imposed on the person providing the service cannot be considered incompatible with the Treaty where they have as their purpose the application of professional rules justified by the general good - in particular rules relating to organisation, qualifications, ***professional ethics***, supervision and liability - which are binding upon any person established in the State in which the service is provided, where the person providing the service would escape from the ambit of those rules being established in another Member State.

Case C-33/74 Van Binsbergen [1974] ECR 1299 §12

In accordance with these principles, the requirement that persons whose functions are to assist the administration of justice must be permanently established for professional purposes within the jurisdiction of certain courts or tribunals cannot be considered incompatible with the provisions of Articles 59 and 60, where such requirement is objectively justified by the need to ensure observance of professional rules of conduct connected, in particular, with the administration of justice and with ***respect for professional ethics.***

Case C-33/74 Van Binsbergen [1974] ECR 1299 §14

These directives also have the task of resolving the specific problems resulting from the fact that where ***the person providing the service*** is not established, on a habitual basis, in the State where the service is performed he ***may not be fully subject to the professional rules of conduct in force in that State***.

Case C-33/74 Van Binsbergen [1974] ECR 1299 §22

4.2.2.10 Intellectual Property

Whilst Article 59 of the Treaty prohibits restrictions upon freedom to provide services, ***it does not thereby encompass limits upon the exercise of certain economic activities which have their origin in the application of national legislation for the protection of intellectual property, save where such application constitutes a means of arbitrary discrimination or a disguised restriction on trade between Member States.*** Such would be the case if that application enabled parties to an assignment of copyright to create artificial barriers to trade between Member States.

Case C-62/79 Coditel [1980] ECR 881 §15
See also Case C-288/89 Mediawet I [1991] ECR I-4007 §14 (at page 82)

The exclusive assignee of the performing right in a film for the whole of a Member State may therefore rely upon his right against cable television diffusion companies which have transmitted that film on their diffusion network having received it from a television broadcasting station established in another Member State, without thereby infringing Community law.

Case C-62/79 Coditel [1980] ECR 881 §17

Consequently the answer to the second question referred to the Court by the Cour d'Appel, Brussels, should be that the provisions of the Treaty relating to the freedom to provide services do not preclude an assignee of the performing right in a cinematographer film in a Member State from relying upon his right to prohibit the exhibition of that film in that State, without his authority, by means of cable diffusion if the film so exhibited is picked up and transmitted after being broadcast in another Member State by a third party with the consent of the original owner of the right.

Case C-62/79 Coditel [1980] ECR 881 §18

4.2.2.11 Cultural Policy

The Court has held in Case C-288/89 *Collectieve Antennevoorziening Gouda v Commissariaat voor de Media* [1991] ECR I-4007, paragraphs 22 and 23, Case C-353/89 *Commission v Netherlands* [1991] ECR I-4069, paragraphs 3, 29 and 30, and Case C-148/91 *Veronica Omroep Organisatie v Commissariaat voor de Media* [1993] ECR I-487, paragraph 9, that the Mediawet is intended to establish a pluralist and non-commercial radio and television broadcasting system and thus forms part of a cultural policy whose aim is to safeguard the freedom of expression in the audiovisual sector of the various components, in particular social, cultural, religious and philosophical ones, of the Netherlands.

Case C-23/93 TV10 [1994] ECR I-4795 §18

It also follows from those three judgments that ***such cultural policy objectives are objectives of general interest which a Member State may lawfully pursue*** by formulating the statutes of its own broadcasting bodies in an appropriate manner.

Case C-23/93 TV10 [1994] ECR I-4795 §19

The first and third ***cultural policy*** objectives adduced by the Belgian Government reveal that ***in reality the purpose*** of the measure complained of is to restrict genuine competition with the national broadcasting stations in order to maintain their advertising revenue. As regards the objective of preserving and developing the artistic heritage, suffice it to note, as does the Commission, that the measure complained of is in reality likely to reduce demand for television productions in Dutch.

Case C-211/91 Commission v Belgium [1992] ECR I-6757 §9

The Netherlands Government maintains that those restrictions are justified by imperatives relating to the ***cultural policy*** which it has implemented in the audio-visual sector. It explains that the aim of this policy is to safeguard the freedom of expression of the various - in particular social, cultural, religious and philosophical - components of the Netherlands in order that that freedom may be capable of being exercised in the press, on the radio or on television. It says that that objective may be jeopardised by the excessive influence of advertisers over the content of programmes.

Case C-288/89 Mediawet I [1991] ECR I-4007 §22

.../...

A cultural policy understood in that sense may indeed constitute an overriding requirement relating to the general interest which justifies a restriction on the freedom to provide services. The maintenance of the pluralism which that Dutch policy seeks to safeguard is connected with freedom of expression, as protected by Article 10 of the European Convention on Human Rights and Fundamental Freedoms, which is one of the fundamental rights guaranteed by the Community legal order (Case 4/73 *Nold v Commission* [1974] ECR 491, paragraph 13).

Case C-288/89 Mediawet I [1991] ECR I-4007 §23

However, it should be observed ***that there is no necessary connection between such a cultural policy and the conditions relating to the structure of foreign broadcasting bodies.*** In order to ensure pluralism in the audio-visual sector it is not indispensable for the national legislation to require broadcasting bodies established in other Member States to align themselves on the Dutch model should they intend to broadcast programmes containing advertisements intended for the Dutch public. ***In order to secure the pluralism which it wishes to maintain the Netherlands Government may very well confine itself to formulating the statutes of its own bodies in an appropriate manner.***

Case C-288/89 Mediawet I [1991] ECR I-4007 §24

Conditions affecting the structure of foreign broadcasting bodies cannot therefore be regarded as being objectively necessary in order to safeguard the general interest in maintaining a national radio and television system which secures pluralism.

Case C-288/89 Mediawet I [1991] ECR I-4007 §25

In this respect, it must be observed in the first place that restrictions on the broadcasting of advertisements, such as a prohibition on advertising particular products or on certain days, a limitation of the duration or frequency of advertisements or restrictions designed to enable listeners or viewers not to confuse advertising with other parts of the programme, may be justified by overriding reasons relating to the general interest. Such restrictions may be imposed in order to protect consumers against excessive advertising or, as an objective of cultural policy, in order to maintain a certain level of programme quality.

Case C-288/89 Mediawet I [1991] ECR I-4007 §27

Taking into account the particular nature of certain services to be provided, such as the placing of entertainers in employment, specific requirements imposed on persons providing services cannot be considered incompatible with the Treaty where they have as their purpose the application of professional rules, justified by the general good or by ***the need to ensure the protection of the entertainer***, which are binding upon any person established in the said State, in so far as the person providing the service is not subject to similar requirements in the Member State in which he is established.

Cases 110 and 111/78 Van Wesemael [1979] ECR 35 §28

4.2.2.12 Historic and Artistic Treasures

The general interest in consumer protection and in the conservation of the national historical and artistic heritage can constitute an overriding reason justifying a restriction on the freedom to provide services. However, the requirement in question contained in the Italian legislation goes beyond what is necessary to ensure the safeguarding of that interest inasmuch as it makes the activities of a tourist guide accompanying groups of tourists from another Member State subject to possession of a licence.

Case C-180/89 Tourist Guides Italy [1991] ECR I-709 §20
See also: Case C-288/89 Mediawet I [1991] ECR I-4007 §14 (at page 82)

4.2.2.12.1 Conservation

The first and third cultural policy objectives adduced by the Belgian Government reveal that in reality the purpose of the measure complained of is to restrict genuine competition with the national broadcasting stations in order to maintain their advertising revenue. As regards the objective of ***preserving*** and developing the artistic heritage, suffice it to note, as does the Commission, that the measure complained of is ***in reality*** likely to reduce demand for television productions in Dutch.

Case C-211/91 Commission v Belgium [1992] ECR I-6757 §9

4.2.2.12.2 Proper Appreciation

Moreover, the profitable operation of such group tours depends on the commercial reputation of the operator, who faces competitive pressure from other tour companies; the need to maintain that reputation and the competitive pressure themselves compel companies to be selective in employing tourist guides and exercise some control over the quality of their services. Depending on the specific expectations of the groups of tourists in question, that factor is likely to contribute to the ***proper appreciation of the artistic and archaeological heritage*** and the protection of consumers, in the case of conducted tours of places other than museums or historical monuments which may be visited only with a professional guide.

Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §24
See also: Case C-154/89 Tourist Guides France [1991] ECR I-659 §20

The general interest in the proper appreciation of places and things of historical interest and the widest possible dissemination of knowledge of the artistic and cultural heritage of a country can constitute an overriding reason justifying a restriction on the freedom to provide services. However, the requirement in question contained in the French legislation goes beyond what is necessary to ensure the safeguarding of that interest inasmuch as it makes the activities of a tourist guide accompanying groups of tourists from another Member State subject to possession of a licence.

Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §21
See also: Case C-154/89 Tourist Guides France [1991] ECR I-659 §17

It follows that in view of the scale of the restrictions it imposes, the legislation in issue is disproportionate in relation to the objective pursued, namely to ensure the ***proper appreciation of places and things of historical interest*** and the widest dissemination of knowledge of the artistic and cultural heritage of the Member State in which the tour is conducted.

Case C-154/89 Tourist Guides France [1991] ECR I-659 §21

4.2.2.12.3 Better Distribution of Knowledge

The general interest in the proper appreciation of places and things of historical interest and the ***widest possible dissemination of knowledge of the artistic and cultural heritage of a country*** can constitute an overriding reason justifying a restriction on the freedom to provide services. However, the requirement in question contained in the French legislation goes beyond what is necessary to ensure the safeguarding of that interest inasmuch as it makes the activities of a tourist guide accompanying groups of tourists from another Member State subject to possession of a licence.

Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §21
Case C-154/89 Tourist Guides France [1991] ECR I-659 §17

Moreover, the profitable operation of such group tours depends on the commercial reputation of the operator, who faces competitive pressure from other tour companies; the need to maintain that reputation and the competitive pressure themselves compel companies to be selective in employing tourist guides and exercise some control over the quality of their services. Depending on the specific expectations of the groups of tourists in question, that factor is likely to contribute to the proper appreciation of places and things of historical interest and to the ***widest possible dissemination of knowledge relating to the artistic and cultural heritage***, in the case of conducted tours of places other than museums or historical monuments which may be visited only with a professional guide.

Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §24
Case C-154/89 Tourist Guides France [1991] ECR I-659 §20

It follows that in view of the scale of the restrictions it imposes, the legislation in issue is disproportionate in relation to the objective pursued, namely to ensure the proper appreciation of places and things of historical interest and the ***widest dissemination of knowledge of the artistic and cultural*** heritage of the Member State in which the tour is conducted.

Case C-154/89 Tourist Guides France [1991] ECR I-659 §21

4.2.2.13 Maintaining the Good Reputation of the Financial Sector

Maintaining the good reputation of the national financial sector may therefore ***constitute an imperative reason of public interest capable of justifying restrictions on the freedom to provide financial services.***

Case C-384/93 Alpine Investments [1995] ECR I-1141 §44

Consequently, ***the prohibition of cold calling by the Member State from which the telephone call is made, with a view to protecting investor confidence in the financial markets of that State, cannot be considered to be inappropriate to achieve the objective of securing the integrity of those markets.***

Case C-384/93 Alpine Investments [1995] ECR I-1141 §49
(SEE ALSO §56)

4.2.2.14 Road Safety

Regulations of that kind may be justified, however, by the requirements of road safety, which constitute overriding reasons relating to the public interest, within the meaning of the judgment in *Gouda* (see Case C-288/89 [1991] ECR I-4007, paragraphs 13 and 14).

Case C-55/93 Van Schaik [1994] ECR I-4837 §19

It should also be noted that, ***as a result of the incomplete harmonization of the criteria for testing, although the directive requires***, in Article 5(3), ***that each Member State recognise test certificates issued in other Member States*** to vehicles registered on their territory ***as proof at least of compliance with its provisions, it does not, on the other hand, oblige each Member State - in view of the large number of verification processes and procedures - to recognise test certificates issued in other Member States in respect of vehicles registered on its own territory.***

Case C-55/93 Van Schaik [1994] ECR I-4837 §22

4.2.2.15 Preserving Diversity of Opinion

In *Commission v Netherlands*, cited above, paragraph 30, the Court held that ***the maintenance of the pluralism which the Netherlands broadcasting policy seeks to safeguard is intended to preserve the diversity of opinions, and hence freedom of expression, which is precisely what the European Convention on Human Rights is designed to protect.***

Case C-23/93 TV10 [1994] ECR I-4795 §25

4.2.2.16 Preserving the Financial Balance of the Social Security System

It must be recalled that aims of a purely economic nature cannot justify a barrier to the fundamental freedom to provide services (see, to that effect, Case C-398/95 *SETTG v Ypourgos Ergasias* [1997] ECR I-3091, paragraph 23). However, ***it cannot be excluded that the risk of seriously undermining the financial balance of the social security system may constitute an overriding reason in the general interest capable of justifying a barrier of that kind.***

Cases C-158/96 Kohll [1998] ECR I-1931 §41

4.2.3 Examples of Inadmissible Justifications

4.2.3.1 Economic Justifications

It must be recalled that aims of a purely economic nature cannot justify a barrier to the fundamental freedom to provide services (see, to that effect, Case C-398/95 *SETTG v Ypourgos Ergasias* [1997] ECR I-3091, paragraph 23). (...)

Cases C-158/96 Kohll [1998] ECR I-1931 §41

However ***maintaining industrial peace*** as a means of bringing a collective labour dispute to an end and thereby preventing any adverse effects on an economic sector, and consequently on the economy of the State, ***must be regarded as an economic aim which cannot constitute a reason relating to the general interest that justifies a restriction of a fundamental freedom guaranteed by the Treaty*** (see *Gouda and Others*, cited above, paragraph 11)

Case C- 398/95 SETTG [1997] ECR I-3091 §23

The answer to the second question must therefore be that ***such rules cannot be justified by reasons relating to the general interest in maintaining industrial peace as a means of bringing a collective labour dispute to an end and thereby preventing any adverse effects on the economic sector, and consequently on the economy of the State.***

Case C-398/95 SETTG [1997] ECR I-3091 §25

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 & Gustavsson [1995] ECR I-3955 §15

The first and third cultural policy objectives adduced by the Belgian Government reveal that ***in reality the purpose of the measure complained of is to restrict genuine competition*** with the national broadcasting stations in order to maintain their advertising revenue. As regards the objective of preserving and developing the artistic heritage, suffice it to note, as does the Commission, that the measure complained of is ***in reality likely to reduce demand*** for television productions in Dutch.

Case C-211/91 Commission v Belgium [1992] ECR I-6757 §9

As the Court held in its judgment 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 judgment (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 [1991] ECR I-4007 §11

Unlike the Kabelregeling, the provisions of the Mediawet at issue in this case no longer reserve to the STER all the revenue from advertising intended specifically for the Dutch public. However, by laying down rules on the broadcasting of such advertisements they ***restrict the competition*** to which the STER may be exposed in that market from foreign broadcasting bodies. Accordingly the result is that they protect the revenue of the STER - albeit to a lesser degree than the Kabelregeling - and therefore pursue the same objective as the previous legislation. As the Court held in the *Bond van Adverteerders* case (cited above), at paragraph 34, ***that objective cannot justify restrictions on the freedom to provide services.***

Case C-288/89 Mediawet I [1991] ECR I-4007 §29

The reply to the national court must therefore be that ***Community law does not prevent*** the granting of a television monopoly ***for considerations of a non-economic nature relating to the public interest.*** However, the manner in which such a monopoly is organized and exercised must not infringe the provisions of the Treaty on the free movement of goods and services or the rules on competition.

Case C-260/89 ERT [1991] ECR I-2925 §12

It must be pointed out that economic aims, such as that of securing for a national public foundation all the revenue from advertising intended especially for the public of the Member State in question, cannot constitute grounds of public policy within the meaning of Article 56 of the Treaty.

Case C-352/85 Bond van Adverteerders [1988] ECR 2085 §34

For the implementation of those provisions, Title II of the General Programme for the Abolition of Restrictions on Freedom to Provide Services (Official Journal, English Special Edition, Second Series IX, p.3), which was drawn up by the Council pursuant to Article 63 of the Treaty on 18 December 1961, envisages *inter alia* the repeal of provisions laid down by law, regulation or administrative action which in any Member State govern, ***for economic purposes***, the entry, exit and residence of nationals of Member State, where such provisions are not justified on grounds of public policy, public security or public health and are liable to hinder the provision of services by such persons.

Cases C-286/82 and 26/83 Luisi & Carbone [1984] ECR 377 §11

The answer to the questions submitted by the Cour de Cassation of the Grand Duchy of Luxembourg must therefore be that Community law precludes a Member State from requiring an employer who is established in another Member State and temporarily carrying out work in the first-named Member State, using workers who are nationals of non-member countries, to pay the employer's share of social security contributions in respect of those workers when that employer is already liable under the legislation of the State in which he is established for similar contributions in respect of the same workers and the same periods of employment and the contributions paid in the State in which the work is performed do not entitle those workers to any social security benefits. ***Nor would such a requirement be justified if it were intended to offset the economic advantages*** which the employer might have gained by not complying with the legislation on minimum wages in the State in which the work is performed.

Cases C-62 and 63/81 Seco [1982] ECR 223 §15

4.2.3.2Administrative Justifications

The Court has already stressed in its decisions, most recently in its judgment of 3 February 1983 (Case 29/82 *Van Luipen* [1983] ECR 151), ***that considerations of an administrative nature cannot justify derogation by a Member State from the rules of Community law.*** That principle applies with even greater force where the derogation in question amounts to preventing the exercise of one of the fundamental freedoms guaranteed by the Treaty. In this instance it is therefore not sufficient that the presence on the undertaking's premises of all the documents needed for supervision by the authorities of the State in which the service is provided may make it easier for those authorities to perform their task. It must also be shown that those authorities cannot, even under an authorization procedure, carry out their supervisory tasks effectively unless the undertaking has in the aforesaid State a permanent establishment at which all the necessary documents are kept.

Case C-205/84 Commission v Germany [1986] ECR 3755 §54

4.2.3.3Technical Differences between Mechanisms Intended to Protect the same Public Interest

That finding is borne out by the case-file and the information provided in response to the written questions put by the Court, as well as by the arguments presented at the hearing. It appears that although the Luxembourg legislation differs from the Belgian legislation, in particular as regards the percentage of the premiums and the procedure for their payment, ***they both provide mechanisms intended, on the one hand, to protect workers in the construction industry against the risk of suspension of the work*** and, therefore, of loss of remuneration because of bad weather and, on the other hand, to reward their loyalty to the sector in question.

Case C-272/94 Guiot [1996] ECR I-1905 §20

Since social protection of workers constitutes the only consideration of public interest capable of justifying restrictions on the freedom to provide services such as those at issue, any technical differences in the operation of the two schemes cannot justify such a restriction.

Case C-272/94 Guiot [1996] ECR I-1905 §21

4.3 ABSENCE OF PROTECTION OF GENERAL INTEREST IN THE STATE OF ESTABLISHMENT OF THE SERVICE PROVIDER

As the Advocate General has rightly observed in paragraph 30 of his Opinion, ***irrespective of the possibility of applying national rules of public policy*** governing the various aspects of the employment relationship to workers ***sent temporarily to France, the application of the Belgian system in any event excludes any substantial risk of workers being exploited or of competition between undertakings being distorted.***

Case C-43/93 Vander Elst [1994] ECR I-3803 §25

Having regard to the particular characteristics of certain provisions of services, specific requirements imposed on the provider, which result from the application of rules governing those types of activities, cannot be regarded as incompatible with the Treaty. However, as a fundamental principle of the Treaty, the freedom to provide services may be limited only by rules which are justified by imperative reasons relating to the public interest and which apply to all persons or undertakings pursuing an activity in the State of destination, in so far as ***that interest is not protected by the rules to which the person providing the services is subject in the Member State in which he is established.*** In particular, those requirements must be objectively necessary in order to ensure compliance with professional rules and to guarantee the protection of the recipient of services and they must not exceed what is necessary to attain those objectives (see, most recently, the judgments in Cases C-154/89 *Commission v France* [1991] ECR I-659, C-180/89 *Commission v Italy* [1991] ECR I-709 and C-198/89 *Commission v Greece* [1991] ECR I-727).

Case C-76/90 Säger [1991] ECR I-4221 §15

In the absence of harmonization of the rules applicable to services, or even of a system of equivalence, ***restrictions on the freedom guaranteed by the Treaty in this field may arise in the second place as a result of the application of national rules which affect any person established in the national territory to persons providing services established in the territory of another Member State who already have to satisfy the requirements of that State's legislation.***

Case C-288/89 Mediawet I [1991] ECR I-4007 §12

.../...

As the Court has consistently held (see, most recently, the judgments in *Commission v France*, cited above, paragraph 15; *Commission v Italy*, cited above, paragraph 18; and *Commission v Greece*, cited above, paragraph 19), ***such restrictions come within the scope of Article 59 if the application of the national legislation to foreign persons providing services is not justified by overriding reasons relating to the public interest or if the requirements embodied in that legislation are already satisfied by the rules imposed on those persons in the Member State in which they are established.***

Case C-288/89 Mediawet I [1991] ECR I-4007 §13

Accordingly, those requirements can be regarded as compatible with Articles 59 and 60 of the Treaty only if it is established that with regard to the activity in question there are overriding reasons relating to the public interest which justify restrictions on the freedom to provide services, ***that the public interest is not already protected by the rules of the State of establishment*** and that the same result cannot be obtained by less restrictive rules.

Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §19
See also: Case C-180/89 Tourist Guides Italy [1991] ECR I-709 §18
Case C-154/89 Tourist Guides France [1991] ECR I-659 §15

As regards the financial position of insurance undertakings, the two directives contain very detailed provisions on the free assets of the undertaking, in other words its own capital resources. Those provisions are intended to ensure that the undertaking is solvent and the directives require the supervisory authority of the Member State in which the head office is situated to verify the State of solvency of the undertaking 'with respect to its entire business'. That expression must be construed as also covering business conducted in the context of the provision of services. It follows that the State in which the service is provided is not entitled to carry out such verifications itself, but ***must accept a certificate of solvency drawn up by the supervisory authority of the Member State in whose territory the head office*** of the undertaking providing the service is situated. According to the German government, which has not been contradicted by the Commission, that is the case in the Federal Republic of Germany.

Case C-205/84 Commission v Germany [1986] ECR 3755 §37

It should however be emphasised that the authorization must be granted on request to any undertaking established in another Member State which meets the conditions laid down by the legislation of the State in which the service is provided, that ***those conditions may not duplicate equivalent statutory conditions which have already been satisfied in the State in which the undertaking is established and that the supervisory authority of the State in which the service is provided must take into account supervision and verifications which have already been carried out in the Member State of establishment.*** According to the German government, which has not been contradicted on that point by the Commission, the German authorization procedure conforms fully to those requirements.

Case C-205/84 Commission v Germany [1986] ECR 3755 §47

Such a measure would be excessive in relation to the aim pursued, however, if the requirements to which the issue of a licence is subject ***coincided with the proofs and guarantees required in the State of establishment.*** In order to maintain the principle of freedom to provide services the first requirement is that in considering applications for licences and in granting them the Member State in which the service is to be provided may not make any distinction based on the nationality of the provider of the services or the place of his establishment; ***the second requirement is that it must take into account the evidence and guarantees already furnished by the provider of the services for the pursuit of his activities in the Member State of his establishment.***

Case C-279/80 Webb [1981] ECR 3305 §20

Taking into account the particular nature of certain services to be provided, such as the placing of entertainers in employment, specific requirements imposed on persons providing services cannot be considered incompatible with the Treaty where they have as their purpose the application of professional rules, justified by the general good or by the need to ensure the protection of the entertainer, which are binding upon any person established in the said State, ***in so far as the person providing the service is not subject to similar requirements in the Member State in which he is established.***

Cases 110 and 111/78 Van Wesemael [1979] ECR 35 §28

Such a requirement is not objectively justified when the service is provided by an employment agency which comes under the public administration of a Member State or when the person providing the service is established in another Member State and in that State holds ***a licence issued under conditions comparable to those required*** by the State in which the service is provided and his activities are subject in the first State to ***proper supervision*** covering all employment agency activity whatever may be the Member State in which the service is provided.

Cases 110 and 111/78 Van Wesemael [1979] ECR 35 §30

For all these reasons, the answer should be that when the pursuit of the activity of fee-charging employment agencies for entertainers is made subject in the State in which the service is provided to the issue of a licence, that State may not impose on the persons providing the service who are established in another Member State any obligation either to satisfy that requirement or to act through a fee-charging employment agency which holds such a licence when the service is provided by an employment agency which comes under the public administration of a Member State or when the person providing the services holds in the Member State in which he is established ***a licence issued under conditions comparable to those required*** by the State in which the service is provided and his activities are subject in the first State to ***proper supervision*** covering all employment agency activity whatever may be the Member State in which the service is provided.

Cases 110 and 111/78 Van Wesemael [1979] ECR 35 §39

4.4 CONDITIONS OF JUSTIFIED RESTRICTIONS

4.4.1 Appropriateness of Measure

In this respect, the Court held in Case C-113/89 *Rush Portuguesa* ([1990] ECR I-1417, paragraph 18), that Community law does not preclude Member States from extending their legislation, or collective labour agreements entered into by both sides of industry, relating to minimum wages, to any person who is employed, even temporarily, within their territory, regardless of the country in which the employer is established; ***Community law also does not prohibit Member States from enforcing those rules by appropriate means.***

Case C-272/94 Guiot [1996] ECR I-1905 §12

In the circumstances, the questions to be considered are, first, whether the requirements imposed by the Belgian legislation have a restrictive effect on the freedom to provide services; second, if so, whether ***overriding requirements of the public interest in that area justify such restrictions on the freedom to provide services***; and third, if so, whether that interest is already protected by the rules of the State where the service provider is established and ***whether the same result can be achieved by less restrictive rules.***

Case C-272/94 Guiot [1996] ECR I-1905 §13

In those cases there was a direct link between the deductibility of the contributions and the tax on the sums payable by the insurers under death and old-age insurance policies, a link which had to be preserved in order to preserve the integrity of the relevant fiscal regime, whereas there is ***no direct link whatsoever in this case between the grant of the interest rate subsidy to borrowers on the one hand and its financing by means of the profit tax on financial establishments on the other.***

Case C-484/93 Svensson & Gustavsson [1995] ECR I-3955 §18

Consequently, ***the prohibition of cold calling by the Member State from which the telephone call is made, with a view to protecting investor confidence in the financial markets of that State, cannot be considered to be inappropriate to achieve the objective of securing the integrity of those markets.***

Case C-384/93 Alpine Investments [1995] ECR I-1141 §49
(SEE ALSO §56)

Workers employed by an undertaking established in one Member State who are temporarily sent to another Member State to provide services do not in any way seek access to the labour market in that second State, if they return to their country of origin or residence after completion of their work (see the judgment in Case C-113/89 *Rush Portuguesa v Office National d' Immigration* [1990] ECR I-1417). Those conditions were fulfilled in the present case.

Case C-43/93 Vander Elst [1994] ECR I-3803 §21

Lastly, as the Court has consistently held, the application of national provisions to providers of services established in other Member States ***must be such as to guarantee the achievement of the intended aim*** and must not go beyond that which is necessary in order to achieve that objective. In other words, it must not be possible to obtain the same result by less restrictive rules (see, most recently, Case C-154/89 *Commission v France*, cited above, paragraphs 14 and 15; Case C-180/89 *Commission v Italy*, cited above, paragraphs 17 and 18; Case C-198/89 *Commission v Greece*, cited above, paragraphs 18 and 19).

Case C-288/89 Mediawet I [1991] ECR I-4007 §15

Finally, it should be stated, in response to the concern expressed in this connection by the French Government, that Community law does not preclude Member States from extending their legislation, or collective labour agreements entered into by both sides of industry, to any person who is employed, even temporarily, within their territory, no matter in which country the employer is established; ***nor does Community law prohibit Member States from enforcing those rules by appropriate means*** (judgment of 3 February 1982 in Joined Cases 62 and 63/81 *Seco SA and Another v EVI* ((1982)) ECR 223).

Case C-113/89 Rush Portuguesa [1990] ECR I-1417 §18

It is well-established that Community law does not preclude Member States from applying their legislation, or collective labour agreements entered into by both sides of industry relating to minimum wages, to any person who is employed, even temporarily, within their territory, no matter in which country the employer is established, just as Community law does not prohibit Member States from enforcing those rules by appropriate means. However, it is not possible to describe as an appropriate means any rule or practice which imposes a general requirement to pay social security contributions, or other such charges affecting the freedom to provide services, on all persons providing services who are established in other Member States and employ workers who are nationals of non-member countries, irrespective of whether those persons have complied with the legislation on minimum wages in the Member State in which the services are provided, because such a general measure is by its nature ***unlikely to make employers comply with that legislation*** or to be of any benefit whatsoever to the workers in question.

Cases C-62 and 63/81 Seco [1982] ECR 223 §14

The answer must therefore be that national rules prohibiting the transmission by cable television of advertisements cannot be regarded as constituting either a disproportionate measure in relation to the objective to be achieved, ***in that the prohibition in question is relatively ineffective*** in view of the existence of natural reception zones, or discrimination which is prohibited by the Treaty in regard to foreign broadcasters, in that their geographical location allows them to broadcast their signals only in the natural reception zone.

Case C-52/79 Debauve [1980] ECR 833 §22

4.4.2 Necessity of Measure

The requirement that vehicles undergo a periodic test serves the interests of road safety. The effectiveness of those tests is assured, in particular, by various requirements relating to the solvency and professional competence of the authorized garages, and by supervision of the tests carried out, which can only be undertaken on Netherlands territory and by the Netherlands authorities.

Case C-55/93 Van Schaik [1994] ECR I-4837 §20

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

Having regard to the particular characteristics of certain provisions of services, specific requirements imposed on the provider, which result from the application of rules governing those types of activities, cannot be regarded as incompatible with the Treaty. However, as a fundamental principle of the Treaty, the freedom to provide services may be limited only by rules which are justified by imperative reasons relating to the public interest and which apply to all persons or undertakings pursuing an activity in the State of destination, in so far as that interest is not protected by the rules to which the person providing the services is subject in the Member State in which he is established. In particular, those requirements ***must be objectively necessary*** in order to ensure compliance with professional rules and to guarantee the protection of the recipient of services and they ***must not exceed what is necessary*** to attain those objectives (see, most recently, the judgments in Cases C-154/89 *Commission v France* [1991] ECR I-659, C-180/89 *Commission v Italy* [1991] ECR I-709 and C-198/89 *Commission v Greece* [1991] ECR I-727).

Case C-76/90 Säger [1991] ECR I-4221 §15

Lastly, as the Court has consistently held, the application of national provisions to providers of services established in other Member States must be such as to guarantee the achievement of the intended aim and ***must not go beyond that which is necessary*** in order to achieve that objective. In other words, it must not be possible to obtain the same result by less restrictive rules (see, most recently, Case C-154/89 *Commission v France*, cited above, paragraphs 14 and 15; Case C-180/89 *Commission v Italy*, cited above, paragraphs 17 and 18; Case C-198/89 *Commission v Greece*, cited above, paragraphs 18 and 19).

Case C-288/89 Mediawet I [1991] ECR I-4007 §15

However, in view of the specific requirements in relation to certain services, the fact that a Member State makes the provision thereof subject to conditions as to the qualifications of the person providing them, pursuant to rules governing such activities within its jurisdiction, cannot be considered incompatible with Articles 59 and 60 of the Treaty. Nevertheless, as one of the fundamental principles of the Treaty the freedom to provide services may be restricted only by rules which are justified in the general interest and are applied to all persons and undertakings operating in the territory of the State where the service is provided, in so far as that interest is not safeguarded by the rules to which the provider of such a service is subject in the Member State where he is established. 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 (see *inter alia* the judgment in Case 205/84 *Commission v Germany* [1986] ECR 3755, at paragraph 27).

Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §18
See also:Case C-180/89 Tourist Guides Italy [1991] ECR I-709 §17
Case C-154/89 Tourist Guides France [1991] ECR I-659 §14
Case C-205/84 Commission v Germany [1986] ECR 3755 §27
Case C-252/83 Commission v Denmark [1986] ECR 3713 §17

The general interest in consumer protection and in the conservation of the national historical and artistic heritage can constitute an overriding reason justifying a restriction on the freedom to provide services. However, the requirement in question contained in the Italian legislation ***goes beyond what is necessary*** to ensure the safeguarding of that interest inasmuch as it makes the activities of a tourist guide accompanying groups of tourists from another Member State subject to possession of a licence.

Case C-180/89 Tourist Guides Italy [1991] ECR I-709 §20

It therefore appears that in the field in question there are imperative reasons relating to the public interest which may justify restrictions on the freedom to provide services, provided however, that the rules of the State of establishment are not adequate in order to achieve the ***necessary*** level of protection and that the requirements of the State in which the service is provided do not ***exceed what is necessary*** in that respect.

Case C-205/84 Commission v Germany [1986] ECR 3755 §33

It follows from the foregoing that the requirement of authorization may be maintained only in so far as it is justified on the grounds relating to the protection of policy-holders and insured persons relied upon by the German government. It must also be recognised that those grounds are not equally important in every sector of insurance and that there may be cases where because of the nature of the risk insured and of the party seeking insurance, ***there is no need*** to protect the latter by the application of the mandatory rules of his national law.

Case C-205/84 Commission v Germany [1986] ECR 3755 §49

However, when the pursuit of the employment agency activity at issue is made subject in the State in which the service is provided to the issue of a licence and to supervision by the competent authorities, that State may not, without failing to fulfil the essential requirements of Article 59 of the Treaty, impose on the persons providing the service who are established in another Member State any obligation either to satisfy such requirements or to act through the holder of a licence, except where such requirement is ***objectively justified*** by the need to ensure observance of the professional rules of conduct and to ensure the said protection.

Cases 110 and 111/78 Van Wesemael [1979] ECR 35 §29

In accordance with these principles, the requirement that persons whose functions are to assist the administration of justice must be permanently established for professional purposes within the jurisdiction of certain courts or tribunals cannot be considered incompatible with the provisions of Articles 59 and 60, where such requirement is ***objectively justified*** by the need to ensure observance of professional rules of conduct connected, in particular, with the administration of justice and with respect for professional ethics.

Case C-33/74 Van Binsbergen [1974] ECR 1299 §14

4.4.3 Indispensability of Measure

Subject to the national court's determination of this issue, it must be noted that, as the Court has already pointed out, if the requirement of an authorization constitutes a restriction on the freedom to provide services, the requirement of a permanent establishment is the very negation of that freedom. It has the result of depriving Article 59 of the Treaty of all effectiveness, a provision whose very purpose is to abolish restrictions on the freedom to provide services of persons who are not established in the State in which the service is to be provided. ***If such a requirement is to be accepted, it must be shown that it constitutes a condition which is indispensable for attaining the objective pursued*** (see *Commission v Germany*, cited above, paragraph 52, and Case C-101/94 *Commission v Italy* [1996] ECR I-2691, paragraph 31).

Case C-222/95 Parodi [1997] ECR I-3899 §31
see also: Case C-101/94 Commission v Italy [1996] ECR I-2691 §31
Case C-204/90 Bachmann [1992] ECR I-249 §32
Case C-300/90 Commission v Belgium [1992] ECR I-305 §23
Case C-205/84 Commission v Germany [1986] ECR 3755 §52

In its judgment delivered this day in Case 205/84 *Commission v Federal Republic of Germany* [1986] ECR 3793, the Court held that in the insurance sector in general there were imperative reasons relating to the protection of the consumer both as a policy-holder and as an insured person which might justify restrictions on the freedom to provide services. The Court also recognised that in the present state of Community law, in particular with regard to the co-ordination of the relevant national rules, the protection of that interest was not necessarily guaranteed by the rules of the State of establishment. The Court concluded therefrom that, as regards the field of direct insurance in general, the requirement of a separate authorization granted by the authorities of the State in which the service was provided remained justified subject to certain conditions. On the other hand, the Court considered that the requirement of an establishment, which represented the very negation of the freedom to provide services, ***exceeded what was necessary to attain the objective pursued*** and that, accordingly, that requirement was contrary to Articles 59 and 60 of the Treaty.

Case C-252/83 Commission v Denmark [1986] ECR 3713 §20

4.4.4 Proportionality of Measure

In response to those arguments it must be recalled that the Court has held that, in order to establish whether a provision of Community law complies with the principle of proportionality, ***it must be ascertained whether the means which it employs are suitable for the purpose of achieving the desired objective and whether they do not go beyond what is necessary to achieve it*** (see, in particular, Case C-84/94 *United Kingdom v Council* [1996] ECR I-5755, paragraph 57).

Case C-233/94 Germany/Parliament & Council [1997] ECR I-2405 §54

It should next be stated that the public interest in the protection of the recipients of the services in question against such harm justifies a restriction of the freedom to provide services. However, such a provision goes beyond what is necessary to protect that interest if it makes the pursuit, by way of business, of an activity such as that at issue, subject to the possession by the persons providing the service of a professional qualification which is quite specific and ***disproportionate*** to the needs of the recipients.

Case C-76/90 Säger [1991] ECR I-4221 §17

It must therefore be stated that neither the nature of a service such as that at issue nor the consequences of a default on the part of the person providing the service justifies reserving the provision of that service to persons possessing a specific professional qualification, such as lawyers or patent agents. Such a restriction must be regarded as ***disproportionate*** to the objective pursued.

Case C-76/90 Säger [1991] ECR I-4221 §20

That does not mean that it would not be possible for the national legislatures to lay down a general framework for co-operation between the two lawyers. However, the resultant obligations must not be ***disproportionate*** in relation to the objectives of the duty to work in conjunction, as defined above.

Case C-294/89 Commission v France [1991] ECR I-3591 §32

It follows that in view of the scale of the restrictions it imposes, the legislation in issue is ***disproportionate*** in relation to the objective pursued, namely the conservation of the historical and artistic heritage of the Member State in which the tour is conducted and the protection of consumers.

Case C-180/89 Tourist Guides Italy [1991] ECR I-709 §24
See also: Case C-154/89 Tourist Guides France [1991] ECR I-659 §21

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 v France [1986] ECR 1475 §14

Such a measure would be excessive in relation to the aim pursued, however, if the requirements to which the issue of a licence is subject coincided with the proofs and guarantees required in the State of establishment. In order to maintain the principle of freedom to provide services the first requirement is that in considering applications for licences and in granting them the Member State in which the service is to be provided may not make any distinction based on the nationality of the provider of the services or the place of his establishment; the second requirement is that it must take into account the evidence and guarantees already furnished by the provider of the services for the pursuit of his activities in the Member State of his establishment.

Case C-279/80 Webb [1981] ECR 3305 §20

The answer must therefore be that national rules prohibiting the transmission by cable television of advertisements ***cannot be regarded as constituting either a disproportionate measure in relation to the objective to be achieved***, in that the prohibition in question is relatively ineffective in view of the existence of natural reception zones, or discrimination which is prohibited by the Treaty in regard to foreign broadcasters, in that their geographical location allows them to broadcast their signals only in the natural reception zone.

Case C-52/79 Debauve [1980] ECR 833 §22

4.4.5 Priority for Less Restrictive Measures

The answer to be given must therefore be that, on a proper construction of Article 59 of the Treaty, a Member State is not precluded from taking, on the basis of provisions of its domestic legislation, measures against an advertiser in relation to television advertising. However, it is for the national court to determine whether ***those provisions are necessary for meeting overriding requirements of general public importance*** or one of the aims mentioned in Article 56 of the EC Treaty, whether they are proportionate for that purpose ***and whether those aims could be met by measures less restrictive of intra-Community trade***.

Joined Cases C-34/95, 35/95 & 36/95 De Agostini [1997] ECR I-3843 §54

Whilst it is true that debt-collection agencies are not subject to legal regulation in France, ***the fact that one Member State imposes less strict rules than another Member State does not mean that the latter's rules are disproportionate and hence incompatible with Community law*** (Case C-348/93 *Alpine Investments v Minister van Financiën* [1995] ECR I-1141, paragraph 51).

Case C-3/95 Reisebüro Broede [1996] ECR I-6511 §42
See also: Case C-384/93 Alpine Investments [1995] ECR I-1141 §51

It follows that, as Community law stands at present, it is not possible to ensure the cohesion of such a tax system by means of ***measures which are less restrictive*** than those provided for by the rules in question, and that the consequences of any other measure ensuring the recovery by the Belgian State of the tax due under its legislation on sums payable by insurers pursuant to the contracts concluded with them would ultimately be similar to those resulting from the non-deductibility of contributions.

Case C-300/90 Commission v Belgium [1992] ECR I-305 §20
Case C-204/90 Bachmann [1992] ECR I-249 §27

Lastly, as the Court has consistently held, the application of national provisions to providers of services established in other Member States must be such as to guarantee the achievement of the intended aim and must not go beyond that which is necessary in order to achieve that objective. In other words, ***it must not be possible to obtain the same result by less restrictive rules*** (see, most recently, Case C-154/89 *Commission v France*, cited above, paragraphs 14 and 15; Case C-180/89 *Commission v Italy*, cited above, paragraphs 17 and 18; Case C-198/89 *Commission v Greece*, cited above, paragraphs 18 and 19).

Case C-288/89 Mediawet I [1991] ECR I-4007 §15
See also: Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §18-19
Case C-180/89 Tourist Guides Italy [1991] ECR I-709 §17-18
Case C-154/89 Tourist Guides France [1991] ECR I-659 §14-15

In the first place, as the Court stated in its judgment in *Klopp*, at paragraph 21, modern methods of transport and telecommunications enable lawyers to maintain the necessary contacts with clients and the judicial authorities. Furthermore, the expeditious conduct of the proceedings, in compliance with the principle that both sides must be given the opportunity to state their case, can be ensured by imposing on the lawyer providing services obligations ***which restrict the pursuit of his activities to a lesser extent***. That aim could therefore be achieved by requiring the lawyer providing services to have an address for service at the chambers of the lawyer in conjunction with whom he works, where notifications from the judicial authority in question could be duly served.

Case C-294/89 Commission v France [1991] ECR I-3591 §35

It follows that those requirements may be regarded as compatible with Articles 59 and 60 of the EEC Treaty only if it is established that in the field of activity concerned there are imperative reasons relating to the public interest which justify restrictions on the freedom to provide services, that the public interest is not already protected by the rules of the State of establishment and ***that the same result cannot be obtained by less restrictive rules.***

Case C-205/84 Commission v Germany [1986] ECR 3755 §29
Case C-252/83 Commission v Denmark [1986] ECR 3713 §19

Although, in the light of the special nature of certain services, it cannot be denied that a Member State is entitled to adopt measures which are intended to prevent the freedom guaranteed by Article 59 being used by a person whose activities are entirely or chiefly directed towards his territory in order to avoid the professional rules which would apply to him if he resided in that State, the requirement of residence in the territory of the State where the service is provided can only be allowed as an exception ***where the Member State is unable to apply other, less restrictive, measures to ensure respect for these rules***.

Case C-39/75 Coenen [1975] ECR 1547 §9

On these grounds it must be concluded that the provisions of the EEC Treaty, in particular Articles 59, 60 and 65, must be interpreted as meaning that national legislation may not, by means of a requirement of residence in the territory, make it impossible for persons residing in another Member State to provide services ***when less restrictive measures enable the professional rules to which provision of the service is subject in that territory to be complied with.***

Case C-39/75 Coenen [1975] ECR 1547 §12

In relation to a professional activity the exercise of which is similarly unrestricted within the territory of a particular Member State, the requirement of residence within that State constitutes a restriction which is incompatible with Articles 59 and 60 of the Treaty if the administration of justice can satisfactorily be ensured by measures which are ***less restrictive***, such as the choosing of an address for service.

Case C-33/74 Van Binsbergen [1974] ECR 1299 §16

5 SPECIFIC PROFESSIONS

5.1 TOURISM

It should be pointed out at the outset that the activities of a tourist guide may be subject to two distinct sets of rules. A tourist agency may itself employ guides but it may also engage self-employed tourist guides. ***In the latter case, the service is provided by the tourist guide to the tourist agency and constitutes an activity carried on for remuneration within the meaning of Article 60 of the Treaty*** (Case C-198/89 *Commission v Greece* [1991] ECR I-727, paragraphs 5 and 6)

Case C-398/95 SETTG [1997] ECR I-3091 §7

As a preliminary matter it should be pointed out that the activities of a tourist guide from a Member State other than Greece who accompanies tourists on an organized tour from that other Member State to Greece may be subject to two distinct sets of legal rules. A tour company established in another Member State may itself employ guides. In that case it is the tour company that provides the service to tourists through its own guides. A tour company may also engage self-employed tourist guides established in that other Member State. In that case, the service is provided by the guide to the tour company.

Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §5
See also: Case C-180/89 Tourist Guides Italy [1991] ECR I-709 §5
Case C-154/89 Tourist Guides France [1991] ECR I-659 §6

The two cases described above thus relate to the provision of services by the tour company to tourists and by the self-employed tourist guide to the tour company respectively. ***Such services, which are of limited duration and are not governed by the provisions on the free movement of goods, capitals and persons, constitute activities carried on for remuneration within the meaning of Article 60 of the EEC Treaty.***

Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §6
See also: Case C-180/89 Tourist Guides Italy [1991] ECR I-709 §6
Case C-154/89 Tourist Guides France [1991] ECR I-659 §7

The Greek Government stresses in that connection that ***the occupation of tourist guide must be distinguished from that of courier***. It is clear from the fourteenth recital in the preamble and Article 2(5) of Council Directive 75/368/EEC of 16 June 1975 on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of various activities (ex ISIC Division 01 to 85) and, in particular, transitional measures in respect of those activities (Official Journal 1975 L 167, p. 22) that only the occupation of courier has been the subject of Community harmonization. Accordingly, authorization to carry on the occupation of a courier in no way entails the right to act as a tourist guide.

Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §13
Case C-180/89 Tourist Guides Italy [1991] ECR I-709 §12

That argument cannot be upheld. It need merely be pointed out that the Commission in no way maintained that the two occupations were identical and that a courier might equally carry on that occupation or that of a tourist guide. In its application it refers only ***to the activities of a tourist guide carried on by a person travelling with a group of tourists***, and does not raise the issue whether that person is also acting as a courier.

Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §14
See also: Case C-180/89 Tourist Guides Italy [1991] ECR I-709 §13

The requirement imposed by the abovementioned provisions of Greek legislation amounts to such a restriction. By making the provision of services by tourist guides accompanying a group of tourists from another Member State subject to ***possession of a specific qualification***, that legislation ***prevents*** both tour companies from providing that service with their own staff and self-employed tourist guides from offering their services to those companies for organized tours. It also ***prevents*** tourists taking part in such organized tours from availing themselves at will of the services in question.

Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §17
See also: Case C-180/89 Tourist Guides Italy [1991] ECR I-709 §16
Case C-154/89 Tourist Guides France [1991] ECR I-659 §13

The service of accompanying tourists is performed under quite specific conditions. The independent or employed tourist guide travels with the tourists and accompanies them in a closed group; in that group they move temporarily from the Member State of establishment to the Member State to be visited.

Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §22
See also: Case C-180/89 Tourist Guides Italy [1991] ECR I-709 §21
Case C-154/89 Tourist Guides France [1991] ECR I-659 §18

In those circumstances ***a licence requirement imposed by the Member State of destination*** has the effect of reducing the number of tourist guides qualified to accompany tourists in a closed group, which may lead a tour operator to have recourse instead to local guides employed or established in the Member State in which the service is to be performed. However, that consequence may have the drawback that tourists who are the recipients of the services in question do not have a guide who is familiar with their language, their interests and their specific expectations.

Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §23
See also: Case C-180/89 Tourist Guides Italy [1991] ECR I-709 §22
Case C-154/89 Tourist Guides France [1991] ECR I-659 §19

Moreover, the profitable operation of such group tours depends on the commercial reputation of the operator, who faces competitive pressure from other tour companies; the need to maintain that reputation and ***the competitive pressure themselves compel companies to be selective in employing tourist guides and exercise some control over the quality of their services***. Depending on the specific expectations of the groups of tourists in question, that factor is likely to contribute to the proper appreciation of the artistic and archaeological heritage and the protection of consumers, in the case of conducted tours of places other than museums or historical monuments which may be visited only with a professional guide.

Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §24
See also: Case C-180/89 Tourist Guides Italy [1991] ECR I-709 §23
Case C-154/89 Tourist Guides France [1991] ECR I-659 §20

5.2 MEDICINE

It follows that ***doctors and dentists established in other Member States must be afforded all guarantees equivalent to those accorded to doctors and dentists established on national territory***, for the purposes of freedom to provide services.

Case C-158/96 Kohll [1998] ECR I-1931 §48

According to the first paragraph of that provision, services are to be considered to be "services" within the meaning of the Treaty where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement of goods, capital or persons. Indent (d) of the second paragraph of Article 60 ***expressly states that activities of the professions fall within the definition of services.***

Case C-159/90 Grogan [1991] ECR I-4685 §17

It must be held that ***termination of pregnancy***, as ***lawfully practised*** in several Member States, ***is a medical activity which is normally provided for remuneration and may be carried out as part of a professional activity***. In any event, the Court has already held in the judgment in *Luisi and Carbone* (Joined Cases 286/82 and 26/83 *Luisi and Carbone v. Ministero del Tesoro* (1984) ECR 377, paragraph 16) that medical activities fall within the scope of Article 60 of the Treaty.

Case C-159/90 Grogan [1991] ECR I-4685 §18

Consequently, the answer to the national court's first question must be that ***medical termination of pregnancy, performed in accordance with the law of the State in which it is carried out, constitutes a service within the meaning of Article 60 of the Treaty***.

Case C-159/90 Grogan [1991] ECR I-4685 §21

It must first be stated that both Directive 75/362/EEC of 16 June 1975, concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in medicine, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services (Official Journal 1975 L 167, p.1) and Directive 75/363/EEC also of 16 June 1975 concerning the co-ordination of provisions laid down by law, regulation or administrative action in respect of activities of doctors (Official Journal 1975 L 167, p. 14) relate only to the profession of "doctor". ***Moreover, there are no Community provisions governing the exercise of professions allied to medicine*** such as, in particular, osteopathy. It must also be noted that the abovementioned directives contain no Community definition of what activities are to be regarded as those of a doctor.

Case C-61/89 Bouchoucha [1990] ECR I-3551 §8

Secondly, it must be observed that in so far as ***there is no Community definition of medical acts, the definition of acts restricted to the medical profession is, in principle, a matter for the Member States***. It follows that in the absence of Community legislation on the professional practice of osteopathy each Member State is free to regulate the exercise of that activity within its territory, without discriminating between its own nationals and those of the other Member States.

Case C-61/89 Bouchoucha [1990] ECR I-3551 §12

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 v France [1986] 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 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 v France [1986] ECR 1475 §11

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 specialities, 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 recognised, 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 v France [1986] 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 v France [1986] ECR 1475 §14

The Commission is therefore correct to argue that the French legislation ***prohibiting*** any doctor or dentist established in another Member State from practising in France ***as a locum, as a principal in a practice or as an employee is contrary to the provisions of the Treaty on freedom of movement for persons***.

Case C-96/85 Commission v France [1986] ECR 1475 §15

The French government's argument that the freedom of doctors established in other Member States to provide services is recognised in France on the basis of Article 356-1 of the Code de la Sante Publique is not relevant. In both its reasoned opinion and its application to the Court the Commission merely contended that because of its generality the French system was contrary to the freedom to provide services inasmuch as it never permitted ***a doctor established in another Member State to act as locum for a doctor established in France***. The application of article 356-1 is subject to the requirements set out in the implementing decree, according to which a doctor established in another Member State can provide medical treatment to only a single patient for a period of not more than two days. Such a limited possibility of carrying out medical treatment does not allow that doctor to act as locum for a French colleague.

Case C-96/85 Commission v France [1986] ECR 1475 §16

With regard to the specific question raised by the Italian government as to whether the person affected may be so entitled even if he has not been ***enrolled on the relevant professional register***, it should be stated that the conformity of such requirement with Community law depends upon whether the fundamental principles of Community law and in particular the principle of non-discrimination are observed.

Case C-5/83 Rienks [1983] ECR 4233 §9

As the Court made clear in the aforementioned judgment, enrolment on a professional register cannot be refused on grounds which fail to take into account the validity of a professional qualification obtained in another Member State in so far as such a qualification is one which all the Member States and their professional organisations, acting as bodies entrusted with a public duty, are required to recognise under Community law. Thus legislation which provides for the bringing of criminal or administrative proceedings against a veterinary surgeon practising his profession without having been enrolled on the professional register, to the extent to which such enrolment has been refused in breach of Community law, is incompatible with Community law in so far as its result is to deprive of any effectiveness the provisions of the Treaty and of directive 78/1026, the second recital in the preamble to which states that it is to facilitate the 'effective' exercise of the right of establishment and freedom to provide services in respect of the activities of veterinary surgeons.

Case C-5/83 Rienks [1983] ECR 4233 §10

.../...

The reply to the first question referred to the Court by the Pretore di Lodi must therefore be that a Member State ***may not enforce a penal measure*** in respect of the improper practice of the profession of veterinary surgeon against a national of another Member State, who is entitled to practise as a veterinary surgeon in his own country, on the ground that he is not enrolled on the register of veterinary surgeons of the first Member State, where such enrolment is refused in breach of Community law.

Case C-5/83 Rienks [1983] ECR 4233 §11

5.3 INSURANCE

Since the provision of insurance constitutes a service within the meaning of Article 60 of the Treaty, it must next be borne in mind that, according to the case-law of the Court, Article 59 of the Treaty precludes the application of any national legislation which, without objective justification, impedes the provider of services from actually exercising the freedom to provide them (see, in particular, Case C-381/93 *Commission v France* [1994] ECR I- 5145, paragraph 16).

Case C-118/96 Safir [1998] ECR I-1897 §22

In those circumstances, ***legislation*** such as that in question in the main proceedings ***contains a number of elements liable to dissuade individuals from taking out capital life assurance with companies not established in Sweden and liable to dissuade insurance companies from offering their services on the Swedish market.***

Case C-118/96 Safir [1998] ECR I-1897 §30

It is to be noted that provisions such as those contained in the Belgian legislation at issue constitute a restriction on freedom to provide services. Provisions ***requiring an insurer to be established in a Member State*** as a condition of the eligibility of insured persons to benefit from certain tax deductions in that State operate to deter those seeking insurance from approaching insurers established in another Member State, and thus ***constitute a restriction of the latter's freedom to provide services.***

Case C-300/90 Commission v Belgium [1992] ECR I-305 §22
Case C-204/90 Bachmann [1992] ECR I-249 §31

However, as the Court has previously held (see the judgment in *Commission v Germany*, referred to above, paragraph 52), ***the requirement of an establishment is compatible*** with Article 59 of the Treaty where it constitutes a condition which is ***indispensable*** to the achievement of the public-interest objective pursued.

Case C-300/90 Commission v Belgium [1992] ECR I-305 §23
Case C-204/90 Bachmann [1992] ECR I-249 §32

Although the rules on ***movements of capital*** are therefore not of such a nature as to restrict the freedom to conclude insurance contracts in the context of the ***provision of services*** under Articles 59 and 60, it is, however, necessary to determine the scope of those Articles in relation to the provisions of the Treaty on the ***right of establishment.***

Case C-205/84 Commission v Germany [1986] ECR 3755 §20

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 v Germany [1986] ECR 3755 §21

Finally, it should be mentioned that since the scope of Articles 59 and 60 is defined by reference to the places of establishment or of residence of the provider of the services and of the person for whom they are intended, special problems may arise where ***the risk covered by the insurance contract is situated on the territory of a Member State other than that of the policy holder*** as the person for whom the services are intended. The Court does not propose in these proceedings to consider such problems, which were not the subject of argument before it. The following examination therefore concerns only insurance against risks situated in the Member State of the policy holder (hereinafter referred to as 'the State in which the service is provided').

Case C-205/84 Commission v Germany [1986] ECR 3755 §23

It must be stated that the requirements in question in these proceedings, namely that an insurer who is established in another Member State, authorized by the supervisory authority of that State and subject to the supervision of that authority, ***must have a permanent establishment within the territory of the State in which the service is provided and that he must obtain a separate authorization from the supervisory authority of that State, constitute restrictions on the freedom to provided services*** inasmuch as they increase the cost of such services in the State in which they are provided, in particular where the insurer conducts business in that State only occasionally.

Case C-205/84 Commission v Germany [1986] ECR 3755 §28

As the German government and the parties intervening in its support have maintained, without being contradicted by the Commission or the United Kingdom and Netherlands governments, ***the insurance sector is a particularly sensitive area from the point of view of the protection of the consumer*** both as a policy-holder and as an insured person. This is so in particular because of the specific nature of the service provided by the insurer, which is linked to future events, the occurrence of which, or at least the timing of which, is uncertain at the time when the contract is concluded. An insured person who does not obtain payment under a policy following an event giving rise to a claim may find himself in a very precarious position. Similarly, it is as a rule very difficult for a person seeking insurance to judge whether the likely future development of the insurer's financial position and the terms of the contract, usually imposed by the insurer, offer him sufficient guarantees that he will receive payment under the policy if a claimable event occurs.

Case C-205/84 Commission v Germany [1986] ECR 3755 §30

It must also be borne in mind, as the German government has pointed out, that in certain fields ***insurance has become a mass phenomenon.*** Contracts are concluded by such enormous numbers of policy holders that the protection of the interests of insured persons and injured third parties affects virtually the whole population.

Case C-205/84 Commission v Germany [1986] ECR 3755 §31

As regards the ***financial position of insurance undertakings***, the two directives contain very detailed provisions on the free assets of the undertaking, in other words its own capital resources. Those provisions are intended to ensure that the undertaking is solvent and the directives require the supervisory authority of the Member State in which the head office is situated to verify the State of solvency of the undertaking 'with respect to its entire business'. That expression must be construed as also covering business conducted in the context of the provision of services. It follows that the State in which the service is provided is not entitled to carry out such verifications itself, but ***must accept a certificate of solvency drawn up by the supervisory authority of the Member State in whose territory the head office of the undertaking providing the service is situated.*** According to the German government, which has not been contradicted by the Commission, that is the case in the Federal Republic of Germany.

Case C-205/84 Commission v Germany [1986] ECR 3755 §37

In the course of the proceedings before the Court, the German government and the governments intervening in its support have shown that ***considerable differences exist in the national rules currently in force concerning technical reserves and the assets which represent such reserves.*** In the absence of harmonization in that respect and of any rule requiring the supervisory authority of the Member State of establishment to supervise compliance with the rules in force in the State in which the service is provided, it must be recognised that the latter State is justified in requiring and supervising compliance with its own rules on technical reserves with regard to services provided within its territory, provided that such rules do not exceed what is necessary for the purpose of ensuring that policy-holders and insured persons are protected.

Case C-205/84 Commission v Germany [1986] ECR 3755 §39

In that respect it should be noted that in all the Member States the supervision of insurance undertakings is organized in the form of an ***authorization procedure*** and that the necessity of such a procedure is recognised in the two first coordination directives as regards the activities to which they refer. In each of those directives Article 6 thereof provides that each Member State must ***make the taking-up of the business*** of insurance in its territory subject to an official authorization. An undertaking which sets up branches and agencies in Member States other than that in which its head office is situated must therefore obtain an authorization from the supervisory authority of each of those States.

Case C-205/84 Commission v Germany [1986] ECR 3755 §44

In those circumstances the German government's argument to the effect that only the requirement of an authorization can provide an effective means of ensuring the supervision which, having regard to the foregoing considerations, is justified on grounds relating to the protection of the consumer both as a policy-holder and as an insured person, must be accepted. Since a system such as that proposed in the draft for a ***second directive, which entrusts the operation of the authorization procedure to the Member State in which the undertaking is established***, working in close cooperation with the State in which the service is provided, can be set up only by legislation, it must also be acknowledged that in the present state of Community law, it is for the State in which the service is provided to grant and withdraw that authorization.

Case C-205/84 Commission v Germany [1986] ECR 3755 §46

.../...

It should however be emphasised that the authorization must be granted on request to any undertaking established in another Member State which meets the conditions laid down by the legislation of the State in which the service is provided, ***that those conditions may not duplicate equivalent statutory conditions which have already been satisfied in the State in which the undertaking is established*** and that the supervisory authority of ***the State in which the service is provided must take into account supervision and verifications which have already been carried out in the Member State of establishment.*** According to the German government, which has not been contradicted on that point by the Commission, the German authorization procedure conforms fully to those requirements.

Case C-205/84 Commission v Germany [1986] ECR 3755 §47

It follows from the foregoing that the ***requirement of authorization*** may be maintained only in so far as it is justified on the grounds relating to the protection of policy-holders and insured persons relied upon by the German government. It must also be recognised that ***those grounds are not equally important in every sector of insurance and that there may be cases where because of the nature of the risk insured and of the party seeking insurance, there is no need to protect the latter by the application of the mandatory rules of his national law.***

Case C-205/84 Commission v Germany [1986] ECR 3755 §49

If the requirement of an authorization constitutes a restriction on the freedom to provide services, the requirement of a permanent establishment is the very negation of that freedom. It has the result of depriving Article 59 of the Treaty of all effectiveness, a provision whose very purpose is to abolish restrictions on the freedom to provide services of persons who are not established in the State in which the service is to be provided (see in particular the judgment of 3 December 1974, cited above, and the judgments of 26 November 1985 in Case 39/75 *Coenen v Sociaal-Economische Raad* [1975] ECR 1547, and 10 February 1982 in Case 76/81 *Transporoute v Minister for Public Works* [1982] ECR 417). If such a requirement is to be accepted, it must be shown that it constitutes a condition which is indispensable for attaining the objective pursued.

Case C-205/84 Commission v Germany [1986] ECR 3755 §52

That has not been shown to be the case. As has been stated above, Community law on insurance does not, as it stands at present, prohibit the State in which the service is provided from requiring that the ***assets representing the technical reserves*** covering business conducted on its territory be localised in that State. In that case ***the presence of such assets may be verified in situ, even if the undertaking does not have any permanent establishment in the State***. As regards the other conditions for the conduct of business which are subject to supervision, it appears to the Court that such supervision may be effected on the basis of copies of balance sheets, accounts and commercial documents, including the conditions of insurance and schemes of operation, sent from the State of establishment and duly certified by the authorities of that Member State. It is possible under an authorization procedure to subject the undertaking to such conditions of supervision by means of a provision in the certificate of authorization and to ensure compliance with those conditions, if necessary by withdrawing that certificate.

Case C-205/84 Commission v Germany [1986] ECR 3755 §55

As regards the Commission's first head of claim, it must therefore be concluded that the Federal Republic of Germany has failed to fulfil its obligations under Articles 59 and 60 of the Treaty by providing in the Versicherungsaufsichtsgesetz that where insurance undertakings in the Community wish to provide services in relation to direct insurance business, other than transport insurance, through salesmen, representatives, agents or other intermediaries, they must have an establishment in its territory, however, that failure does not extend to compulsory insurance and insurance for which the insurer either maintains ***a permanent presence*** equivalent to an agency or a branch or directs his business entirely or principally towards the territory of the Federal Republic of Germany.

Case C-205/84 Commission v Germany [1986] ECR 3755 §57

Consideration of the first head of claim has shown, in addition, that ***the requirement of authorization in the State in which the service is provided is not justified where the undertaking providing the services already satisfies equivalent conditions in the Member State in which the service is provided is not justified where the undertaking providing the services already satisfies equivalent conditions in the Member State in which it is established and where there exists a system of cooperation between the supervisory authorities of the Member States concerned ensuring effective supervision of compliance with such conditions also as regards the provision of services.*** According to the preamble to directive 78/473, the directive is intended to establish the minimum coordination necessary to facilitate the effective pursuit of Community co-insurance business and to organise special cooperation between the supervisory authorities of the Member States and between those authorities and the Commission which, for the provision of services in the insurance business in general, is provided for only in the proposal for a second directive.

Case C-205/84 Commission v Germany [1986] ECR 3755 §65

In its judgment delivered this day in case 205/84 *Commission v Federal Republic of Germany* (1986) ECR 3793, the Court held that in the insurance sector in general there were imperative reasons relating to the protection of the consumer both as a policy-holder and as an insured person which might justify restrictions on the freedom to provide services. The Court also recognised that in the present state of Community law, in particular with regard to the coordination of the relevant national rules, the protection of that interest was not necessarily guaranteed by the rules of the State of establishment. The Court concluded therefrom that, as regards the field of direct insurance in general, the requirement of a separate authorization granted by the authorities of the State in which the service was provided remained justified subject to certain conditions. On the other hand, the Court considered that the requirement of an establishment, which represented the very negation of the freedom to provide services, exceeded what was necessary to attain the objective pursued and that, accordingly, that requirement was contrary to Articles 59 and 60 of the Treaty.

Case C-252/83 Commission v Denmark [1986] ECR 3713 §20

With regard to the first complaint, it must be stated that ***no provision of Community law prevents a Member State from requiring insurance undertakings and their branches which are established on its territory to obtain an authorization not only in respect of business conducted on its territory but also for business conducted in other Member States in the context of the provision of services. On the contrary, such a requirement is consistent with the principles laid down in directive 73/239.*** Article 7(1) of that directive provides that an insurance undertaking may request and obtain an official authorization to carry on its business only in a part of the national territory. In that case, if it wishes to extend its business beyond such part, it is required under Article 6(2)(d) to request further authorization and, in accordance with Article 8(2), a new scheme of operations must be submitted with that request.

Case C-252/83 Commission v Denmark [1986] ECR 3713 §28

Those provisions, read in conjunction with the rules on the supervision of the financial position of the undertakings concerned and on the withdrawal of authorizations, show that the directive is based on the principle that ***the State of establishment is authorized to take into account all the business activities of undertakings constituted within its territory*** in order to be able to carry out an effective supervision of the conditions in which such activities are pursued. Moreover, Article 8(1) of the proposal for a second directive expressly provides that any undertaking wishing to extend its business by way of the exercise of freedom to provide services to the territory of another Member State must seek authorization for that purpose from the supervisory authority of the authorising Member State.

Case C-252/83 Commission v Denmark [1986] ECR 3713 §29

5.4 LAW

As the Court has repeatedly observed, ***the application of professional rules to lawyers, in particular those relating to organisation, qualifications, professional ethics, supervision and liability, ensures that the ultimate consumers of legal services and the sound administration of justice are provided with the necessary guarantees in relation to integrity and experience*** (see to that effect, the judgments in Case 292/86 *Gullung v Conseils de l'Ordre des Avocats du Barreau de Colmar et de Saverne* [1988] ECR 111 and *Van Binsbergen*, cited above).

Case C-3/95 Reisebüro Broede [1996] ECR I-6511 §38

According to the first paragraph of that provision, services are to be considered to be "services" within the meaning of the Treaty where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement of goods, capital or persons. Indent (d) of the second paragraph of Article 60 ***expressly states that activities of the professions fall within the definition of services.***

Case C-159/90 Grogan [1991] ECR I-4685 §17

The rule of territorial exclusivity laid down in the fourth paragraph of Article 126-3 of Decree No 72-468 is in fact part of national legislation ***normally relating to a permanent activity of lawyers established in the territory of the Member State concerned***, all of whom are entitled to plead before the Tribunal de Grande Instance within whose area of jurisdiction they are established. However, a lawyer providing services who is established in another Member State is not in a position where he can plead before a French Tribunal de Grande Instance.

Case C-294/89 Commission v France [1991] ECR I-3591 §27

In those circumstances, it must be stated that ***the rule of territorial exclusivity cannot be applied to activities of a temporary nature pursued by lawyers established in other Member States***, since the conditions of law and fact which apply to those lawyers are not in that respect comparable to those applicable to lawyers established on French territory.

Case C-294/89 Commission v France [1991] ECR I-3591 §28

.../...

In that judgment, the Court considered that the obligation which ***Member States may impose on a lawyer providing services to work in conjunction with a lawyer practising before the judicial authority in question*** was intended to provide the former with the support necessary to enable him to act within a judicial system different from that to which he was accustomed and to assure the judicial authority concerned that he actually had that support and was thus in a position fully to comply with the procedural and ethical rules that applied.

Case C-294/89 Commission v France [1991] ECR I-3591 §30

Accordingly, the lawyer providing services and the local lawyer, both being subject to the ethical rules applicable in the host Member State, must be regarded as being capable, in compliance with those ethical rules and in the exercise of their professional independence, of agreeing upon a form of co-operation appropriate to their client's instructions.

Case C-294/89 Commission v France [1991] ECR I-3591 §31

That does not mean that ***it would not be possible for the national legislatures to lay down a general framework for co-operation between the two lawyers***. However, the resultant obligations must not be disproportionate in relation to the objectives of the duty to work in conjunction, as defined above.

Case C-294/89 Commission v France [1991] ECR I-3591 §32

In the first place, as the Court stated in its judgment in *Klopp*, at paragraph 21, ***modern methods of transport and telecommunications enable lawyers to maintain the necessary contacts with clients and the judicial authorities.*** Furthermore, the expeditious conduct of the proceedings, in compliance with the principle that both sides must be given the opportunity to state their case, can be ensured by imposing on the lawyer providing services obligations which restrict the pursuit of his activities to a lesser extent. That aim could therefore be achieved by ***requiring the lawyer providing services to have an address for service at the chambers of the lawyer in conjunction with whom he works***, where notifications from the judicial authority in question could be duly served.

Case C-294/89 Commission v France [1991] ECR I-3591 §35

Professional activities involving contacts, even regular and organic, with the courts, including even compulsory co-operation 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

The exercise of these activities leaves the discretion of judicial authority and the free exercise of judicial power intact.

Case C-2/74 Reyners [1974] ECR 631 §53

5.5 MEDIA

Provisions such as those in the main proceedings, ***where they restrict the possibility for television broadcasters established in the broadcasting State to broadcast, for advertisers established in the receiving State, television advertising specifically directed at the public in the receiving State, involve a restriction on freedom to provide services.***

Joined Cases C-34/95, 35/95 & 36/95 De Agostini [1997] ECR I-3843 §50

The answer to be given must therefore be that, on a proper construction of Article 59 of the Treaty, ***a Member State is not precluded from taking, on the basis of provisions of its domestic legislation, measures against an advertiser in relation to television advertising.*** However, it is for the national court to determine whether those provisions are necessary for meeting overriding requirements of general public importance or one of the aims mentioned in Article 56 of the EC Treaty, whether they are proportionate for that purpose and whether those aims or overriding requirements could be met by measures less restrictive of intra-Community trade.

Joined Cases C-34/95, 35/95 & 36/95 De Agostini [1997] ECR I-3843 §54

It follows from the judgment in Case 262/81 *Coditel v Ciné-Vog Films* ([1982] ECR 3381, paragraph 11) that the ***exploitation of films*** in a cinema or on television implies that the author may make any public projection of the work subject to his authorization and that the commercial exploitation of films by such means, which involves the grant of performing licences, ***is an activity which comes under the freedom to provide services.***

Case C-17/92 Distribuidores Cinematográficos [1993] ECR I-2239 §10

However, the Decree-Law links the grant of licences for dubbing such films to the obligation to distribute a Spanish film. ***It thus accords preferential treatment to the producers of national films in comparison with producers established in other Member States***, since the former have a guarantee that their films will be distributed and that they will receive the corresponding receipts, whereas the latter are dependent solely on the choice of the Spanish distributors. That obligation ***therefore has the effect of protecting undertakings producing Spanish films and by the same token places undertakings of the same type established in other Member States at a disadvantage***. Since the producers of films from other Member States are thus deprived of the advantage granted to the producers of Spanish films, that restriction is of a ***discriminatory nature***.

Case C-17/92 Distribuidores Cinematográficos [1993] ECR I-2239 §15

In those circumstances, the link between the grant of licences for dubbing films from third countries and the distribution of national films pursues an ***objective of a purely economic nature which does not constitute a ground of public policy within the meaning of Article 56 of the Treaty.***

Case C-17/92 Distribuidores Cinematográficos [1993] ECR I-2239 §21

The Netherlands Government maintains that those restrictions are justified by imperatives relating to the cultural policy which it has implemented in the audio-visual sector. It explains that the aim of this policy is to safeguard the freedom of expression of the various - in particular social, cultural, religious and philosophical - components of the Netherlands in order that that freedom may be capable of being exercised in the press, on the radio or on television. It says that that objective may be jeopardised by the excessive influence of advertisers over the content of programmes.

Case C-288/89 Mediawet I [1991] ECR I-4007 §22

A cultural policy understood in that sense may indeed constitute an overriding requirement relating to the general interest which justifies a restriction on the freedom to provide services. The maintenance of the pluralism which that Dutch policy seeks to safeguard is connected with freedom of expression, as protected by Article 10 of the European Convention on Human Rights and Fundamental Freedoms, which is one of the fundamental rights guaranteed by the Community legal order (Case 4/73 *Nold v Commission* [1974] ECR 491, paragraph 13).

Case C-288/89 Mediawet I [1991] ECR I-4007 §23

However, it should be observed that there is no necessary connection between such a ***cultural policy*** and the conditions relating to the structure of foreign broadcasting bodies. In order to ***ensure pluralism in the audio-visual sector*** it is not indispensable for the national legislation to require broadcasting bodies established in other Member States to align themselves on the Dutch model should they intend to broadcast programmes containing advertisements intended for the Dutch public. In order to secure the pluralism which it wishes to maintain the Netherlands Government may very well confine itself to formulating the statutes of its own bodies in an appropriate manner.

Case C-288/89 Mediawet I [1991] ECR I-4007 §24

Conditions affecting the structure of foreign broadcasting bodies cannot therefore be regarded as being objectively necessary in order to safeguard the general interest in maintaining a national radio and television system which secures pluralism.

Case C-288/89 Mediawet I [1991] ECR I-4007 §25

In this respect, it must be observed in the first place that restrictions on the broadcasting of advertisements, such as a prohibition on advertising particular products or on certain days, a limitation of the duration or frequency of advertisements or restrictions designed to enable listeners or viewers not to confuse advertising with other parts of the programme, may be justified by overriding reasons relating to the general interest. Such restrictions may be imposed ***in order to protect consumers against excessive advertising or, as an objective of cultural policy, in order to maintain a certain level of programme quality.***

Case C-288/89 Mediawet I [1991] ECR I-4007 §27

Unlike the Kabelregeling, the provisions of the Mediawet at issue in this case no longer reserve to the STER all the revenue from advertising intended specifically for the Dutch public. However, by laying down rules on the broadcasting of such advertisements ***they restrict the competition*** to which the STER may be exposed in that market from foreign broadcasting bodies. Accordingly the result is that ***they protect the revenue*** of the STER - albeit to a lesser degree than the Kabelregeling - and therefore pursue the same objective as the previous legislation. As the Court held in the *Bond van Adverteerders* case (cited above), at paragraph 34, ***that objective cannot justify restrictions on the freedom to provide services.***

Case C-288/89 Mediawet I [1991] ECR I-4007 §29

.../...

The reply to the national court must therefore be that ***Community law does not prevent the granting of a television monopoly for considerations of a non-economic nature relating to the public interest.*** However, the manner in which such a monopoly is organized and exercised must not infringe the provisions of the Treaty on the free movement of goods and services or the rules on competition.

Case C-260/89 ERT [1991] ECR I-2925 §12

It should be observed ***in limine*** that it follows from the *Sacchi* judgment that ***television broadcasting falls within the rules of the Treaty relating to services and that since a television monopoly is a monopoly in the provision of services, it is not as such contrary to the principle of the free movement of goods.***

Case C-260/89 ERT [1991] ECR I-2925 §13

As has been indicated in paragraph 12 of this judgment, ***although the existence of a monopoly in the provision of services is not as such incompatible with Community law***, the possibility cannot be excluded that ***the monopoly may be organized in such a way as to infringe the rules relating to the freedom to provide services***. Such a case arises, in particular, where the monopoly leads to discrimination between national television broadcasts and those originating in other Member States, to the detriment of the latter.

Case C-260/89 ERT [1991] ECR I-2925 §20

It is apparent from the observations submitted to the Court that ***the sole objective of the rules in question was to avoid disturbances due to the restricted number of channels available.*** Such an objective cannot however constitute justification for those rules for the purposes of Article 56 of the Treaty, where the undertaking in question uses only a limited number of the available channels.

Case C-260/89 ERT [1991] ECR I-2925 §25

It must therefore be held that there is ***discrimination owing to the fact*** that the ***prohibition of advertising*** laid down in the Kabelregeling ***deprives*** broadcasters ***established in other Member States of any possibility of broadcasting on their stations advertisements intended especially for the public in*** the Netherlands whereas the Omroepwet permits the broadcasting of advertisements on national television stations for the benefit of all the Omroeporganisaties.

Case C-352/85 Bond van Adverteerders [1988] ECR 2085 §26

The answer must therefore be that Articles 59 an 60 of the Treaty do not preclude national rules prohibiting the transmission of advertisements by cable television - as they prohibit the broadcasting of advertisements by television - ***if those rules are applied without distinction*** as regards the origin, whether national or foreign, of those advertisements, the nationality of the person providing the service, or the place where he is established.

Case C-52/79 Debauve [1980] ECR 833 §16

The answer must therefore be that national rules prohibiting the transmission by cable television of advertisements cannot be regarded as constituting either a disproportionate measure in relation to the objective to be achieved, in that the prohibition in question is relatively ineffective in view of the existence of natural reception zones, or discrimination which is prohibited by the Treaty in regard to foreign broadcasters, in that their geographical location allows them to broadcast their signals only in the natural reception zone.

Case C-52/79 Debauve [1980] ECR 833 §22

These facts are important in two regards. On the one hand, they highlight the fact that the right of a copyright owner and his assigns to require fees for any ***showing of a film is part of the essential function of copyright in this type of literary and artistic work***. On the other hand, they demonstrate that the exploitation of copyright in films and the fees attaching thereto ***cannot be regulated without regard being had to the possibility of television broadcasts of those films***. The question whether an assignment of copyright limited to the territory of a Member State is capable of constituting a restriction on freedom to provide services must be examined in this context.

Case C-62/79 Coditel [1980] ECR 881 §14

The exclusive assignee of the performing right in a film for the whole of a Member State may therefore rely upon his right against cable television diffusion companies which have transmitted that film on their diffusion network having received it from a television broadcasting station established in another Member State, ***without thereby infringing Community law.***

Case C-62/79 Coditel [1980] ECR 881 §17

.../...

Consequently the answer to the second question referred to the Court by the Cour d'Appel, Brussels, should be that ***the provisions of the Treaty relating to the freedom to provide services do not preclude an assignee of the performing right in a cinematographic film in a Member State from relying upon his right to prohibit the exhibition of that film in that State, without his authority, by means of cable diffusion*** if the film so exhibited is picked up and transmitted after being broadcast in another Member State by a third party with the consent of the original owner of the right.

Case C-62/79 Coditel [1980] ECR 881 §18

In the absence of express provision to the contrary in the Treaty, ***a television signal must***, by reason of its nature, ***be regarded as provision of services***. Although it is not ruled out that services normally provided for remuneration may come under the provisions relating to free movement of goods, such is however the case, as appears from Article 60, only insofar as they are governed by such provisions.

Case C-155/73 Sacchi [1974] ECR 409 §6

On the other hand, trade in material, sound recordings, films, apparatus and other products used for the diffusion of television signals are subject to the rules relating to freedom of movement for ***goods***. As a result, although the existence of a monopoly with regard to television advertising is not in itself contrary to the principle of free movement of goods, such a monopoly would contravene this principle if it discriminated in favour of national material and products.

Case C-155/73 Sacchi [1974] ECR 409 §7

Article 37 concerns the adjustment of state monopolies of a commercial character. It follows both from the place of this provision in the chapter on the elimination of quantitative restrictions and from the use of the words 'imports' and 'exports' in the second indent of Article 37(1) and of the word 'products' in Article 37(3) and (4) that it refers to trade in goods and cannot relate to a monopoly in the provision of services. Thus ***televised commercial advertising, by reason of its character as a service, does not come under these provisions.***

Case C-155/73 Sacchi [1974] ECR 409 §10

However, for the performance of their tasks ***these establishments remain subject to the prohibitions against discrimination*** and, to the extent that this performance comprises activities of an economic nature, fall under the provisions referred to in Article 90 relating to public undertakings and undertakings to which Member States grant special or exclusive rights.

Case C-155/73 Sacchi [1974] ECR 409 §14

Such would certainly be the case with an undertaking possessing a monopoly of television advertising, if it imposed unfair charges or conditions on users of its services or if it discriminated between commercial operators or national products on the one hand, and those of other Member States on the other, as regards access to television advertising.

Case C-155/73 Sacchi [1974] ECR 409 §17

5.6 EMPLOYMENT AGENCIES

It should be stated that, since the concept of the provision of services as defined by Article 60 of the Treaty covers very different activities, the same conclusions are not necessarily appropriate in all cases. In particular, it must be acknowledged, as the French Government has argued, ***that an undertaking engaged in the making available of labour, although a supplier of services within the meaning of the Treaty, carries on activities which are specifically intended to enable workers to gain access to the labour market of the host Member State***. In such a case, Article 216 of the Act of Accession would preclude the making available of workers from Portugal by an undertaking providing services.

Case C-113/89 Rush Portuguesa [1990] ECR I-1417 §16

Where an undertaking ***hires out, for remuneration, staff*** who remain in the employ of that undertaking, no contract of employment being entered into with the user, its activities constitute an occupation which satisfies the conditions laid down in the first paragraph of Article 60. Accordingly they must be considered a "service" within the meaning of that provision.

Case C-279/80 Webb [1981] ECR 3305 §9

The French Government has sought to emphasise in this connection the special nature of the activity in question, which although covered by the expression "services" in Article 60 of the Treaty ought to receive special consideration inasmuch as it may be covered as well both by provisions concerning social policy and by those concerning the free movement of persons. Whilst employees of agencies for the supply of manpower may in certain circumstances be covered by the provisions of ***Articles 48 to 51*** of the Treaty and the Community regulations adopted in implementation thereof, ***that does not prevent undertakings of that nature which employ such workers from being undertakings engaged in the provision of services, which therefore come within the scope of the provisions of Article 59 et seq. of the Treaty.*** As the Court has already declared, in particular in its judgment of 3 December 1974 (Case 33/74 *Van Binsbergen* [1974] ECR 1299), the special nature of certain services does not remove them from the ambit of the rules on the freedom to supply services.

Case C-279/80 Webb [1981] ECR 3305 §10

Taking into account the particular nature of certain services to be provided, such as the ***placing of entertainers in employment***, specific requirements imposed on persons providing services cannot be considered incompatible with the Treaty where they have as their purpose the application of professional rules, justified by the general good or by the need to ensure the protection of the entertainer, which are binding upon any person established in the said State, ***in so far as the person providing the service is not subject to similar requirements in the Member State in which he is established.***

Cases 110 and 111/78 Van Wesemael [1979] ECR 35 §28

Such a requirement is not objectively justified when the service is provided by an employment agency which comes under the public administration of a Member State or when the person providing the service is established in another Member State and in that State holds ***a licence issued under conditions comparable to those required*** by the State in which the service is provided and his activities are subject in the first state to ***proper supervision*** covering all employment agency activity whatever may be the Member State in which the service is provided.

Cases 110 and 111/78 Van Wesemael [1979] ECR 35 §30

For all these reasons, the answer should be that when the pursuit of the activity of fee-charging employment agencies for entertainers is made subject in the State in which the service is provided to the issue of a licence, ***that State may not impose on the persons providing the service who are established in another Member State*** any obligation either to satisfy that requirement or to act through a fee-charging employment agency which holds such a licence when the service is provided by an employment agency which comes under the public administration of a Member State or when the person providing the services holds in the Member State in which he is established ***a licence issued under conditions comparable*** to those required by the State in which the service is provided and his activities are subject in the first State to ***proper supervision*** covering all employment agency activity whatever may be the Member State in which the service is provided.

Cases 110 and 111/78 Van Wesemael [1979] ECR 35 §39

5.7 LOTTERIES

The activity pursued by the defendants in the main proceeding appears, admittedly, to be limited to ***sending advertisements and application forms***, and possibly tickets, on behalf of a lottery operator, SKL. However, those activities ***are only specific steps in the organisation*** or operation of a lottery to which they relate. ***The importation and distribution of objects are not ends in themselves.*** Their sole purpose is to enable residents of the Member States where those objects are imported and distributed to participate in the lottery.

Case C-275/92 Schindler [1994] ECR I-1039 §22

Lottery activities are thus ***not activities relating to 'goods'***, falling, as such, under Article 30 of the Treaty.

Case C-275/92 Schindler [1994] ECR I-1039 §24

They are however to be regarded as 'services' within the meaning of the Treaty.

Case C-275/92 Schindler [1994] ECR I-1039 §25

Given ***the peculiar nature of lotteries***, which has been stressed by many Member States, those considerations are ***such as to justify restrictions, as regards Article 59 of the Treaty, which may go so far as to prohibit lotteries in a Member State.***

Case C-275/92 Schindler [1994] ECR I-1039 §59

First of all, it is not possible to disregard the ***moral, religious or cultural aspects*** of lotteries, like other types of gambling, in all the Member States. The general tendency of the Member States is to restrict, or even prohibit, the practice of gambling and to prevent it from being a source of private profit. Secondly, lotteries involve a ***high risk of crime or fraud***, given the size of the amounts which can be staked and of the winnings which they can hold out to the players, particularly when they are operated on a large scale. Thirdly, they are an incitement to spend which may have ***damaging individual and social consequences.*** A final ground which is not without relevance, although it cannot in itself be regarded as an objective justification, is that lotteries may ***make a significant contribution to the financing of benevolent or public interest activities such as social works, charitable works, sport or culture.***

Case C-275/92 Schindler [1994] ECR I-1039 §60

Those particular factors justify national authorities having a ***sufficient degree of latitude*** to determine what is required to protect the players and, more generally, in the light of the specific social and cultural features of each Member State, to maintain order in society, as regards the manner in which lotteries are operated, the size of the stakes, and the allocation of the profits they yield. In those circumstances, ***it is for them to assess*** not only whether it is necessary to restrict the activities of lotteries but also whether they should be prohibited, provided that those restrictions are not discriminatory.

Case C-275/92 Schindler [1994] ECR I-1039 §61

5.8 TRANSPORT

Finally, under Article 1(3) of Regulation No 4055/86, ***the provisions of Articles 55 to 58 and 62 of the Treaty are to apply to those types of maritime transport.***

Case C-381/93 Commission v France [1994] ECR I-5145 §12

Consequently, ***the provision of maritime transport services between Member States cannot be subject to stricter conditions than those to which analogous provisions of services at domestic level are subject.***

Case C-381/93 Commission v France [1994] ECR I-5145 §18

Where national legislation, though applicable without discrimination to all vessels whether used by national providers of services or by those from other Member States, operates a distinction according to whether those vessels are engaged in internal transport or in intra-Community transport, thus securing a special advantage for the domestic market and the internal transport services of the Member State in question, ***that legislation must be deemed to constitute a restriction on the freedom to provide maritime transport services*** contrary to Regulation No 4055/86.

Case C-381/93 Commission v France [1994] ECR I-5145 §21

However, Article 84 does not exclude the application of the Treaty to transport, and ***marine transport remains, on the same basis as the other modes of transport, subject to the general rules of the Treaty*** (see the judgment in Case 167/73 *Commission v France* [1974] ECR 359, paragraphs 31 and 32).

Case C-379/92 Peralta [1994] ECR I-3453 §14

Second, in a judgment delivered on 17 May 1994 in Case C-18/93 *Corsica Ferries v Corpo dei Piloti del Porto di Genova*, not yet published in the ECR, paragraph 30, ***the Court held that the freedom to provide maritime transport services between Member States may be relied on by an undertaking as against the State in which it is established, if the services are provided for persons established in another Member State.***

Case C-379/92 Peralta [1994] ECR I-3453 §40

6 TECHNICAL ASPECTS

6.1 ARTICLE 59

6.1.1 Interpretation of Article 59

As the Court held in its judgment of 13 December 1983 (Case 218/82 *Commission v Council* [1983] ECR 4063), when the wording of secondary Community law is open to more than one interpretation, ***preference should be given to the interpretation which renders the provision consistent with the Treaty rather than the interpretation which leads to its being incompatible with the Treaty.*** Consequently, the directive should not be construed in isolation and it is necessary to consider whether or not the requirements in question are contrary to the above mentioned provisions of the Treaty and to interpret the directive in the light of the conclusions reached in that respect.

Case C-205/84 Commission v Germany [1986] ECR 3755 §62
Case C-252/83 Commission v Denmark [1986] ECR 3713 §15

On these grounds it must be concluded that ***the provisions of the EEC Treaty, in particular Articles 59, 60 and 65, must be interpreted as meaning that national legislation may not***, by means of a requirement of residence in the territory, ***make it impossible for persons residing in another Member State to provide services*** when less restrictive measures enable the professional rules to which provision of the service is subject in that territory to be complied with.

Case C-39/75 Coenen [1975] ECR 1547 §12

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

6.1.2 Direct Applicability of Article 59

According to the well established case law of the Court, ***Articles 59 and 60 of the EEC Treaty became directly applicable on the expiry of the transitional period, and their applicability was not conditional on the harmonization or the co-ordination of the laws of the Member States.*** Those Articles require the removal not only of all discrimination against a provider of a service on the grounds of his nationality but also all restrictions on his freedom to provide services imposed by reason of the fact that he is established in a Member State other than that in which the service is to be provided.

Case C-205/84 Commission v Germany [1986] ECR 3755 §25
Case C-252/83 Commission v Denmark [1986] ECR 3713 §16

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 judgment 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 judgments of the Court, in particular its judgment 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 v Italy [1986] ECR 2945 §11

Furthermore, that argument is ill-founded. 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. As the Court has consistently held with regard to the implementation of directives by the Member States, 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 C-168/85 Commission v Italy [1986] ECR 2945 §13

The first paragraph of Article 59 of the Treaty requires restrictions on freedom to provide services within the Community to be progressively abolished during the transitional period in respect of nationals of Member States of the Community. As stated by the Court in its judgment of 18 January 1979 (Joined Cases 110 and 111/78 *Van Wesemael* [1979] ECR 35) that provision, interpreted in the light of Article 8(7) of the Treaty, imposes an obligation to obtain 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. It follows that the essential requirements of Article 59 of the Treaty became directly and unconditionally applicable on the expiry of that period.

Case C-279/80 Webb [1981] ECR 3305 §13
See also: Cases C-110 and 111/78 Van Wesemael [1979] ECR 35 §§25-26

As the Court has already ruled in its judgments of 4 December 1974 in Case 41/74 (*Van Duyn v Home Office* (1974) ECR 1337) and 3 December 1974 in Case 33/74 (*Van Binsbergen v Bestuur van de Bedrijfsvereniging voor de Metaalnijverheid* (1974) ECR 1299) respectively, Article 48 on the one hand and the ***first paragraph of Article 59 and the third paragraph of Article 60*** of the Treaty on the other - the last two provisions at least ***in so far as they seek to abolish any discrimination against a person providing a service by reason of his nationality or of the fact that he resides in a Member State other than that in which the service is to be provided - have a direct effect in the legal orders of the Member States and confer on individuals rights which national courts must protect.***

Case C-13/76 Donà [1976] ECR 1333 §20
Case C-33/74 Van Binsbergen [1974] ECR 1299 §27

The provisions of Article 59, the application of which was to be prepared by directives issued during the transitional period, therefore ***became unconditional on the expiry of that period***.

Case C-33/74 Van Binsbergen [1974] ECR 1299 §24

6.1.3 Obligation of Member States to Modify Laws Incompatible with the Right of Establishment

The following principles of the European Court of Justice were not decided in cases involving the freedom to provide services but they are none the less applicable mutatis mutandis.

Accordingly, when deciding an issue concerning a situation which lies outside the scope of Community law, the national court is not required, under Community law, either to interpret its legislation in a way conforming with Community law or disapply that legislation. ***Where a particular provision must be disapplied in a situation covered by Community law, but that same provision could remain applicable to a situation not so covered, it is for the competent body of the State concerned to remove that legal uncertainty in so far as it might affect rights deriving from Community rules.***

Case C-264/96 ICI [1998] ECR I-0000 §34

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 v France [1996] ECR I-1307 §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 v France [1996] ECR I-1307 §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 judgment 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 judgments of the Court, in particular its judgment 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 v 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 v Italy [1986] ECR 2945 §14

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

The following principles of the European Court of Justice were not decided in cases involving the freedom to provide services but they are none the less applicable mutatis mutandis.

6.1.4.1 Principle of the right to reparation (corollary of direct effect)

First of all, it should be noted that, as the Court has repeatedly held, ***the principle that the State is liable for loss and damage caused to individuals as a result of breaches of Community law for which the State can be held responsible is inherent in the system of the Treaty*** (judgments in *Frankovich and Others,* paragraph 35; Joined Cases C-46/93 and C-48/93 *Brasserie de Pêcheur and Factortame* [1996] ECR I-1029, paragraph 31; Case C-392/93 *the Queen v HM Treasury* ex parte *British Telecommunications* [1996] ECR I-1631, paragraph 38; Case C-5/94 *Hedley Lomas* [1996] ECR I-2553, paragraph 24; Joined Cases C-178/94, C-179/94, C-188/94 and C-190/94 *Dillenkofer and Others* [1996] ECR I-4845, paragraph 20).

Case C-66/95 Sutton [1997] ECR I-2163 §31
See also: Cases C-46/93 and 48/93 Factortame III [1996] ECR I-1029 §31

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 judgment 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 [1996] ECR I-1029 §20

It is all the more so in the event of infringement of a right directly conferred by a Community provision upon which individuals are entitled to rely before the national courts. In that event, ***the right to reparation is the necessary corollary of the direct effect of the Community provision whose breach caused the damage sustained.***

Cases C-46/93 and 48/93 Factortame III [1996] ECR I-1029 §22

In this case, it is undisputed that the Community provisions at issue, namely Article 30 of the Treaty in Case C-46/93 and ***Article 52*** in Case C-48/93, ***have direct effect in the sense that they confer on individuals rights upon which they are entitled to rely directly before the national courts. Breach of such provisions may give rise to reparation.***

Cases C-46/93 and 48/93 Factortame III [1996] ECR I-1029 §23

6.1.4.2The three pre-conditions for the right to redress (according to Community law)

According to the abovementioned case-law, ***a Member State's obligation to make reparation for the loss and damage so caused is subject to three conditions: 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 Treaty*** (judgments in *Brasserie de Pêcheur and Factortame*, paragraph 51; *British Telecommunications*, paragraph 39; *Hedley Lomas*, paragraph 25; *Dillenkofer and Others*, paragraph 21). ***Those conditions are to be applied to each type of situation*** (judgment in *Dillenkofer and Others*, paragraph 24).

Case C-66/95 Sutton [1997] ECR I-2163 §32
See also: Cases C-46/93 and 48/93 Factortame III [1996] ECR I-1029 §51

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 [1996] ECR I-1029 §33

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 [1996] ECR I-1029 §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 [1996] ECR I-1029 §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 [1996] ECR I-1029 §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 [1996] ECR I-1029 §79

6.1.4.2.1 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 [1996] ECR I-1029 §54

6.1.4.2.2 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 [1996] ECR I-1029 §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 [1996] ECR I-1029 §56

On any view, *a breach of Community law will clearly be sufficiently serious if it has persisted despite a judgment 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 [1996] ECR I-1029 §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 [1996] ECR I-1029 §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 judgment in Factortame II, cited above, the Court rejected that justification.

Cases C-46/93 and 48/93 Factortame III [1996] ECR I-1029 §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 [1996] ECR I-1029 §63

6.1.4.2.3 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 [1996] ECR I-1029 §65

6.1.4.3 Implementation of redress (according to national law)

Finally, since the judgment in *Frankovich and Others,* it has been settled case law that, while the right to reparation is founded directly on Community law ***where the three conditions set out above are fulfilled, the national law on liability provides the framework within which the State must make reparation for the consequences of the loss and damage caused, provided always that the conditions laid down by national law relating to reparation of loss and damage must not be less favourable than those relating to similar domestic claims and must not be so framed as to make it virtually impossible or excessively difficult to obtain reparation*** (paragraphs 41 to 43).

Case C-66/95 Sutton [1997] ECR I-2163 §33
see also: Cases C-46/93 and 48/93 Factortame III [1996] ECR I-1029 §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 [1996] ECR I-1029 §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 judgment of the Court finding the infringement in question.***

Cases C-46/93 and 48/93 Factortame III [1996] ECR I-1029 §96

6.2 RELATION TO OTHER PRIMARY LAW

6.2.1 Article 5 EC

The Court notes to begin with that ***Article 5 of the Treaty***, referred to in question 1, which provides that Member States must ensure fulfilment of their obligations arising out of the Treaty, ***is worded so generally that there can be no question of applying it autonomously when the situation concerned is governed by a specific provision of the Treaty*** (see the judgment in Joined Cases C-78/90 to C-83/90 *Compagnie Commerciale de l' Ouest and Others v Receveur Principal des Douanes de La Pallice Port* [1992] ECR I-1847, paragraph 19).

Case C-18/93 Corsica Ferries Italia [1994] ECR I-1783 §18

Secondly, by prohibiting "any discrimination on grounds of nationality" ***Article 6*** of the Treaty ***requires that persons in a situation governed by Community law be placed entirely on an equal footing with nationals of the Member State*** (Case 186/87 *Cowan* [1989] 195, paragraph 10).

Case C-274/96 Bickel & Franz [1998] ECR I-0000 §14

It must be borne in mind that ***Article 7 of the EEC Treaty (Article 6 of the EC Treaty), which lays down as a general principle a prohibition of discrimination on grounds of nationality, applies independently only to situations governed by Community law in regard to which the Treaty lays down no specific rules prohibiting discrimination*** (see the judgment in Case C-179/90 *Merci Convenzionali Porto di Genova v Siderurgica Gabrielli* [1991] ECR I-5889, paragraph 11). ***The question whether legislation*** of the kind in question in the main proceedings ***is compatible with the Treaty must therefore be examined with reference to the specific rules implementing that principle***.

Case C-379/92 Peralta [1994] ECR I-3453 §18

In the field of freedom to provide services, the principle of the prohibition of discrimination is given specific expression in Article 59 of the Treaty.

Case C-18/93 Corsica Ferries Italia [1994] ECR I-1783 §20

It follows that copyright and related rights, which by reason in particular of their effects on intra-Community trade in goods and services, fall within the scope of application of the Treaty, ***are necessarily subject to the general principle of non-discrimination laid down by the first paragraph of Article 7 of the Treaty, without there even being any need to connect them with the specific provisions of Articles 30, 36, 59 and 66 of the Treaty.***

Cases C-92 and 326/92 Collins [1993] ECR I-5145 §27

It is undisputed that ***Article 7 is not concerned with any disparities in treatment or the distortions which may result***, for the persons and undertakings subject to the jurisdiction of the Community, ***from divergences existing between the laws of the various Member States, so long as those laws affect all persons subject to them, in accordance with objective criteria and without regard to their nationality*** (judgment in Case 14/68 *Wilhelm v Bundeskartellamt* [1969] ECR 1, paragraph 13).

Cases C-92 and 326/92 Collins [1993] ECR I-5145 §30

By prohibiting "any discrimination on grounds of nationality" Article 7 of the Treaty requires that persons in a situation governed by Community law be placed on a completely equal footing with nationals of the Member State. In so far as this principle is applicable it therefore precludes a Member State from making the grant of a right to such a person subject to the condition that he reside on the territory of that State - ***that condition is not imposed on the State's own nationals.***

Case C-186/87 Cowan [1989] ECR 195 §10

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 [1989] ECR 195 §14

Article 7 of the Treaty provides that within the scope of application of the Treaty, any discrimination on grounds of nationality shall be prohibited. ***As regards employed persons and persons providing services, this rule has been implemented by Articles 48 to 51 and 59 to 66 of the Treaty respectively and by measures of the Community institutions adopted on the basis of those provisions.***

Case C-13/76 Donà [1976] ECR 1333 §6

6.2.3 Article 8a EC

Situations governed by Community law include those covered by the freedom to provide services, the right to which is laid down in Article 59 of the Treaty. The Court has consistently held that this right includes the freedom for the recipient of services to go to another Member State in order to receive a service there (Cowan, paragraph 15). Article 59 therefore covers all national of Member States who, independently of other freedoms guaranteed by the Treaty, visit another Member State where they intend or are likely to receive services. Such persons – and they include both Mr Bickel and Mr Franz – are free to visit and move around within the host State. Furthermore, ***pursuant to Article 8a of the Treaty, '[e]very citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect'.***

Case C-274/96 Bickel & Franz [1998] ECR I-0000 §15

Such a prohibition *is not analogous to the legislation concerning selling arrangements held in Keck and Mithouard to fall outside the scope of Article 30 of the Treaty.*

Case C-384/93 Alpine Investments [1995] ECR I-1141 §36

According to that judgment, the application to products from other Member States of national provisions restricting or prohibiting, within the Member State of importation, certain selling arrangements is not such as to hinder trade between Member States so long as, first, those provisions apply to all relevant traders operating within the national territory and, secondly, they affect in the same manner, in law and in fact, the marketing of domestic products and of those from other Member States. The reason is that *the application of such provisions is not such as to prevent access by the latter to the market of the Member State of importation or to impede such access more than it impedes access by domestic products*

Case C-384/93 Alpine Investments [1995] ECR I-1141 §37

A prohibition such as that at issue is imposed by the Member State in which the provider of services is established and affects not only offers made by him to addressees who are established in that State or move there in order to receive services but also offers made to potential recipients in another Member State. It therefore directly affects access to the market in services in the other Member States and is thus capable of hindering intra-Community trade in services.

Case C-384/93 Alpine Investments [1995] ECR I-1141 §38

The reply should accordingly be that *on a proper construction Article 30 of the Treaty does not apply where a Member State, by statute or by regulation, prohibits the broadcasting of televised advertisements for the distribution sector.*

Case C-412/93 Leclerc-Siplec [1995] ECR I-179 §24

With regard to the fact that the servicing of a vehicle in another Member State may involve a supply of goods (spare parts, oil etc.), *it should be noted that such a supply is not an end in itself, but is incidental to the provision of services. Consequently, it does not, as such, fall within the scope of Article 30 of the Treaty* (see, to that effect, the judgment in Case C-275/92 *Schindler* [1994] ECR I-1039).

Case C-55/93 Van Schaik [1994] ECR I-4837 §14

The situation in which students associations distributing the information at issue in the main proceedings are not in co-operation with the clinics whose addresses they publish can be distinguished from the situation which gave rise to the judgment in GB-INNO-BM (Case C-362/88 *GB-INNO-BM v Confédération du Commerce Luxembourgeois* [1990] I-667), in which the Court held that a prohibition on the distribution of advertising ***was capable of constituting a barrier to the free movement of goods and therefore had to be examined in the light of Articles 30, 31 and 36 of the EEC Treaty.***

Case C-159/90 Grogan [1991] ECR I-4685 §25

It should be observed ***in limine*** that it follows from the *Sacchi* judgment that television broadcasting falls within the rules of the Treaty relating to services and that since a television monopoly is ***a monopoly in the provision of services, it is not as such contrary to the principle of the free movement of goods.***

Case C-260/89 ERT [1991] ECR I-2925 §13

The two cases described above thus relate to the provision of services by the tour company to tourists and by the self-employed tourist guide to the tour company respectively. Such services, which are of limited duration ***and are not governed by the provisions on the free movement of goods***, capitals and persons, constitute activities carried on for remuneration within the meaning of Article 60 of the EEC Treaty.

Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §6
See also: Case C-180/89 Tourist Guides Italy [1991] ECR I-709 §6
Case C-154/89 Tourist Guides France [1991] ECR I-659 §7

According to the first paragraph of Article 59 of the EEC Treaty, the abolition of restrictions on the freedom to provide services within the community concerns all services provided by nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended. The first paragraph of Article 60 provides that services are to be considered to be 'services' within the meaning of the Treaty where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to ***freedom of movement for goods***, capital and persons.

Case C-205/84 Commission v Germany [1986] ECR 3755 §18

.../...

By virtue of Article 59 of the Treaty, restrictions on freedom to provide such services are to be abolished in respect of nationals of Member States who are established in a Member State other than that of the person for whom the service is intended. In order to enable services to be provided, the person providing the service may go to the Member State where the person for whom it is provided is established or else the latter may go to the State in which the person providing the service is established. Whilst the former case is expressly mentioned in the third paragraph of Article 60, which permits the person providing the service to pursue his activity temporarily in the Member State where the service is provided, the latter case is the necessary corollary thereof, which fulfils the objective of liberalising all gainful activity ***not covered by the free movement of goods***, persons and capital.

Cases C-286/82 & 26/83 Luisi & Carbone [1984] ECR 377 §10

In the absence of express provision to the contrary in the Treaty, a television signal must, by reason of its nature, be regarded as provision of services. Although it is not ruled out that services normally provided for remuneration may come under the provisions relating to ***free movement of goods***, such is however the case, as appears from Article 60, only insofar as they are governed by such provisions.

Case C-155/73 Sacchi [1974] ECR 409 §6

On the other hand, trade in material, sound recordings, films, apparatus and other products used for the diffusion of television signals ***are subject to the rules relating to freedom of movement for goods***. As a result, although the existence of a monopoly with regard to television advertising is not in itself contrary to the principle of free movement of goods, such a monopoly would contravene this principle if it discriminated in favour of national material and products.

Case C-155/73 Sacchi [1974] ECR 409 §7

6.2.5 Article 48 EC

It follows that ***Articles 48 and 59 of the Treaty are intended to facilitate the pursuit by Community nationals of occupational activities of all kinds throughout the Community, and preclude national legislation which might place Community nationals at a disadvantage when they wish to extend their activities beyond the territory of a single Member State*** (see the *Stanton* and *Wolf* judgments, cited above, paragraph 13 in each case).

Case C-106/91 Ramrath [1992] ECR I-3351 §28

The two cases described above thus relate to the provision of services by the tour company to tourists and by the self-employed tourist guide to the tour company respectively. Such services, which are of limited duration ***and are not governed by the provisions on the free movement of*** goods, capitals and ***persons***, constitute activities carried on for remuneration within the meaning of Article 60 of the EEC Treaty.

Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §6
See also: Case C-180/89 Tourist Guides Italy [1991] ECR I-709 §6
Case C-154/89 Tourist Guides France [1991] ECR I-659 §7

According to the first paragraph of Article 59 of the EEC Treaty, the abolition of restrictions on the freedom to provide services within the community concerns all services provided by nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended. The first paragraph of Article 60 provides that services are to be considered to be 'services' within the meaning of the Treaty where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and ***persons***.

Case C-205/84 Commission v Germany [1986] ECR 3755 §18

The Commission is therefore correct to argue that the French legislation prohibiting any doctor or dentist established in another Member State from practising in France ***as a locum, as a principal in a practice or as an employee is contrary to the provisions of the Treaty on freedom of movement for persons.***

Case C-96/85 Commission v France [1986] ECR 1475 §15

By virtue of Article 59 of the Treaty, restrictions on freedom to provide such services are to be abolished in respect of nationals of Member States who are established in a Member State other than that of the person for whom the service is intended. In order to enable services to be provided, the person providing the service may go to the Member State where the person for whom it is provided is established or else the latter may go to the State in which the person providing the service is established. Whilst the former case is expressly mentioned in the third paragraph of Article 60, which permits the person providing the service to pursue his activity temporarily in the Member State where the service is provided, the latter case is the necessary corollary thereof, which fulfils the objective of liberalising all gainful activity ***not covered by the free movement of goods***, persons and capital.

Cases C-286/82 & 26/83 Luisi & Carbone [1984] ECR 377 §10

The French Government has sought to emphasise in this connection the special nature of the activity in question, which although covered by the expression "services" in Article 60 of the Treaty ought to receive special consideration inasmuch as it may be covered as well both by provisions concerning social policy and by those concerning the free movement of persons. Whilst employees of agencies for the supply of manpower may in certain circumstances be covered by the provisions of ***Articles 48 to 51*** of the Treaty and the Community regulations adopted in implementation thereof, ***that does not prevent undertakings of that nature which employ such workers from being undertakings engaged in the provision of services, which therefore come within the scope of the provisions of Article 59 et seq. of the Treaty.*** As the Court has already declared, in particular in its judgment of 3 December 1974 (Case 33/74 *Van Binsbergen* [1974] ECR 1299), the special nature of certain services does not remove them from the ambit of the rules on the freedom to supply services.

Case C-279/80 Webb [1981] ECR 3305 §10

6.2.6 Article 52 EC

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*** (...)

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

A national of a Member State who 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 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 I-4165 §39
(SEE ALSO §27, 28, 37 and 38)

It is to be noted that provisions such as those contained in the Belgian legislation at issue constitute a restriction on freedom to provide services. ***Provisions requiring an insurer to be established in a Member State*** as a condition of the eligibility of insured persons to benefit from certain tax deductions in that State operate to deter those seeking insurance from approaching insurers established in another Member State, and thus constitute a restriction of the latter's freedom to provide services.

Case C-300/90 Commission v Belgium [1992] ECR I-305 §22
See also: Case C-204/90 Bachmann [1992] ECR I-249 §31

In particular, ***a Member State may not make the provision of services in its territory subject to compliance with all the conditions required for establishment and thereby deprive of all practical effectiveness the provisions of the Treaty whose object is, precisely, to guarantee the freedom to provide services.*** Such restriction is all the less permissible where, as in the main proceedings, and unlike the situation governed by the third paragraph of Article 60 of the Treaty, the service is supplied without its being necessary for the person providing it to visit the territory of the Member State where it is provided.

Case C-76/90 Säger [1991] ECR I-4221 §13

Articles 59 and 60 of the Treaty require not only the abolition of any discrimination against a person providing services on account of his nationality but also the abolition of any restriction on the freedom to provide services imposed on the ground that the person providing a service is established in a Member State other than the one in which the service is provided. In particular, the Member State cannot make the performance of the services in its territory subject to observance of ***all the conditions required for establishment***; were it to do so the provisions securing freedom to provide services would be deprived of all practical effect.

Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §16
See also: Case C-180/89 Tourist Guides Italy [1991] ECR I-709 §15
Case C-154/89 Tourist Guides France [1991] ECR I-659 §12

It is apparent from the judgment in *Knoors, supra,* that Article 52 of the EEC Treaty cannot be interpreted in such a way as to exclude from the benefit of Community law a given Member State' s own nationals where the latter, owing to the fact that they have lawfully resided in the territory of another Member State and have there acquired a vocational qualification which is recognised by the provisions of Community law are, with regard to their Member State of origin, in a situation which may be regarded as equivalent to that of any other person enjoying the rights and ***liberties guaranteed by the Treaty*** (paragraph 24).

Case C-61/89 Bouchoucha [1990] ECR I-3551 §13

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 v Germany [1986] ECR 3755 §21

Similarly, as the Court held in its judgment 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 v Germany [1986] ECR 3755 §22
See also: Case C-33/74 Van Binsbergen [1974] ECR 1299 §13

The principal aim of the third paragraph in Article 60 is to enable the provider of the service to pursue his activities in the Member State where the service is given without suffering discrimination in favour of the nationals of that State. However, it does not mean that all national legislation applicable to nationals of that State and usually applied to the permanent activities of undertakings established therein may be similarly applied in its entirety to the temporary activities of undertakings which are established in other Member States.

Case C-279/80 Webb [1981] ECR 3305 §16

6.2.7 Article 61 EC

It should be borne in mind first of all that, according to Article 61(1) of the Treaty, freedom to provide services ***in the field of transport is to be governed by the provisions of the Title relating to transport.*** As the Court stated in its judgment in Case 13/83 *Parliament v Council* [1985] ECR 1513, paragraph 62, application of the principles governing freedom to provide services, as established in particular by Articles 59 and 60 of the Treaty, must be achieved, according to the Treaty, by introducing a common transport policy.

Case C-17/90 Pinaud Wieger [1991] ECR I-5253 §7

6.2.8 Article 62 EC

Consequently, ***the reference made by the national court to Article 62***, to which Article 1(3) of the regulation refers, ***does not call for a specific response. Article 62, which is complimentary to Article 59, cannot prohibit restrictions which do not fall within the scope of Article 59*** (see the judgment in Case C-159/90 *Society for the Protection of Unborn Children Ireland v Grogan and Others* [1991] ECR I-4685, paragraph 29).

Case C-379/92 Peralta [1994] ECR I-3453 §54
see also: Case C-159/90 Grogan [1991] ECR I-4685 §29

6.2.9 Article 73B.2 EC (formerly Articles 67 and 106 EEC)

It must therefore be stated in reply to the national court that ***the provisions of the Treaty on*** the free movement of capital and ***the freedom to provide services must be interpreted as not precluding legislation of a Member State*** which prohibits a broadcasting organisation established in that State from investing in a broadcasting company established or to be established in another Member State and from providing that company with a bank guarantee or drawing up a business plan and giving legal advice to a television company to be set up in another Member State, where those activities are directed towards the establishment of a commercial television station whose broadcasts are intended to be received, in particular, in the territory of the first Member State and those prohibitions are necessary in order to ensure the pluralistic and non-commercial character of the audio-visual system introduced by that legislation.

Case C-148/91 Veronica [1993] ECR I-487 §15

Those Articles require the abolition of all restrictions on the free movement of the provision of services, as thus defined, subject nevertheless to the provisions of Article 61 and those of Articles 55 and 56 to which Article 66 refers, although those provisions are not at issue in these proceedings, the Italian government has made the observation that, according to Article 61(2), the liberalisation of insurance services connected with movements of capital must be effected in step with the progressive liberalisation of the movement of capital. In that respect it should however be pointed out that the first Council Directive ***for the implementation of Article 67 of the Treaty*** of 11 May 1960 (Official Journal, English Special Edition 1959 -1962, p.49) ***already provided that Member States were to grant all foreign exchange authorizations required for capital movements in respect of transfers in performance of insurance contracts as and when freedom of movement in respect of services was extended to those contracts in implementation of Article 59 et seq. of the Treaty***.

Case C-205/84 Commission v Germany [1986] ECR 3755 §19

Although ***the rules on movements of capital are therefore not of such a nature as to restrict the freedom to conclude insurance contracts in the context of the provision of services under Articles 59 and 60***, it is, however, necessary to determine the scope of those Articles in relation to the provisions of the Treaty on the right of establishment.

Case C-205/84 Commission v Germany [1986] ECR 3755 §20

By virtue of Article 59 of the Treaty, restrictions on freedom to provide such services are to be abolished in respect of nationals of Member States who are established in a Member State other than that of the person for whom the service is intended. In order to enable services to be provided, the person providing the service may go to the Member State where the person for whom it is provided is established or else the latter may go to the State in which the person providing the service is established. Whilst the former case is expressly mentioned in the third paragraph of Article 60, which permits the person providing the service to pursue his activity temporarily in the Member State where the service is provided, the latter case is the necessary corollary thereof, which fulfils the ***objective of liberalising all gainful activity not covered by the free movement*** of goods, persons and ***capital***.

Joined Cases C-286/82 & 26/83 Luisi & Carbone [1984] ECR 377 §10

By basing the General Programme for the Abolition of Restrictions on the Freedom to provide Services partly on Article 106 of the Treaty, its authors ***showed that they were aware of the effect of the liberalisation of services on the liberalisation of payments. In fact the first paragraph of that article provides that any payments connected with the movement of goods or services are to be liberalised to the extent to which the movement of goods and services has been liberalised between Member States.***

Joined Cases C-286/82 & 26/83 Luisi & Carbone [1984] ECR 377 §13

Among the restrictions on the freedom to provide services which must be abolished, the General Programme mentions, in section C of Title III, impediments to payments for services, particularly ***where***, according to section D of Title III and in conformity with Article 106(2), ***the provision of such services is limited only by restrictions in respect of the payments thereof. By virtue of section B of Title V of the General Programme, those restrictions were to be abolished before the end of the first stage of the transitional period, subject to a proviso permitting limits on "foreign currency allowances for tourists" to be retained during that period.*** Those provisions were implemented by Council Directive 63/340/EEC of 31 May 1963 on the abolition of all prohibitions on or obstacles to payments for services where the only restrictions on exchange of services are those governing such payments (Official Journal, English Special Edition 1963 - 1964, p.31). Article 3 of that directive also refers to foreign exchange allowances for tourists.

Joined Cases C-286/82 & 26/83 Luisi & Carbone [1984] ECR 377 §14

6.2.10 Articles 37 and 90 EC

As a preliminary point it should be noted that, as far as ***any impediment to the freedom to provide*** mooring ***services is concerned***, reference need merely be made to the Court's reasoning, earlier in this judgment, regarding the application of the derogation from the rules of the Treaty which is provided for in Article 90(2) of the Treaty, to conclude that such an impediment, ***if it exists, is not contrary to Article 59 of the Treaty since the conditions for application of Article 90(2) are satisfied.***

Case C-266/96 Corsica Ferries France [1998] ECR I-3949 §59

As regards Article 37 of the Treaty, the Court has already held in Case 155/73 *Sacchi* [1974] ECR 409 that ***it refers to trade in goods and cannot relate to a monopoly in the provision of services.***

Case C-17/94 Gervais [1995] ECR I-4353 §35

In this connection, it is sufficient to observe that it appears from the judgment in Case C-202/88 *France v Commission* [1991] ECR I-1223, at paragraph 22, that ***even though Article 90 of the Treaty presupposes the existence of undertakings which have certain special or exclusive rights, it does not follow that all the special or exclusive rights are necessarily compatible with the Treaty. Such compatibility must be assessed in the light of the different rules to which Article 90(1) refers.***

Case C-353/89 Mediawet II [1991] ECR I-4069 §34

It follows that, ***in order to establish whether a Member State may exclude the provision of certain services from free competition, it is a matter of determining whether the restrictions on the freedom to provide services thereby created can be justified on the grounds relating to the general interest set out above*** (paragraphs 17 and 18).

Case C-353/89 Mediawet II [1991] ECR I-4069 §35

Nevertheless, it follows from Article 90(1) and (2) of the Treaty that the manner in which the monopoly is organized or exercised may infringe the rules of the Treaty, in particular those relating to the free movement of goods, ***the freedom to provide services*** and the rules on competition.

Case C-260/89 ERT [1991] ECR I-2925 §11

The reply to the national court must therefore be that Community law does not prevent the granting of a television monopoly for considerations of a non-economic nature relating to the public interest. However, ***the manner in which such a monopoly is organized and exercised must not infringe the provisions of the Treaty on the free movement of goods and services*** or the rules on competition.

Case C-260/89 ERT [1991] ECR I-2925 §12

It should be observed *in limine* that it follows from the *Sacchi* judgment that television broadcasting falls within the rules of the Treaty relating to services and that since a television monopoly is ***a monopoly in the provision of services, it is not as such contrary to the principle of the free movement of goods.***

Case C-260/89 ERT [1991] ECR I-2925 §13

As has been indicated in paragraph 12 of this judgment, although the existence of a monopoly in the provision of services is not as such incompatible with Community law, ***the possibility cannot be excluded that the monopoly may be organized in such a way as to infringe the rules relating to the freedom to provide services.*** Such a case arises, in particular, ***where the monopoly leads to discrimination between national television broadcasts and those originating in other Member States, to the detriment of the latter.***

Case C-260/89 ERT [1991] ECR I-2925 §20

Accordingly the reply to the national court must be that ***Article 59 of the Treaty prohibits national rules which create a monopoly comprising exclusive rights*** to transmit the broadcasts of the holder of the monopoly and to retransmit broadcasts from other Member States, where such a monopoly gives rise to discriminatory effects to the detriment of broadcasts from other Member States, unless those rules are justified on the grounds indicated in Article 56 of the Treaty, to which Article 66 thereof refers.

Case C-260/89 ERT [1991] ECR I-2925 §26

Article 37 concerns the adjustment of state monopolies of a commercial character. It follows both from the place of this provision in the chapter on the elimination of quantitative restrictions and from the use of the words 'imports' and 'exports' in the second indent of Article 37(1) and of the word 'products' in Article 37(3) and (4) ***that it refers to trade in goods and cannot relate to a monopoly in the provision of services***. Thus televised commercial advertising, ***by reason of its character as a service, does not come under these provisions.***

Case C-155/73 Sacchi [1974] ECR 409 §10

However, ***for the performance of their tasks these establishments remain subject to the prohibitions against discrimination*** and, to the extent that this performance comprises activities of an economic nature, ***fall under the provisions referred to in Article 90 relating to public undertakings and undertakings to which Member States grant special or exclusive rights.***

Case C-155/73 Sacchi [1974] ECR 409 §14

Such would certainly be the case with an undertaking possessing a ***monopoly*** of television advertising, if it imposed unfair charges or conditions on users of its services or if it ***discriminated*** between commercial operators or national products on the one hand, and those of other Member States on the other, as regards access to television advertising.

Case C-155/73 Sacchi [1974] ECR 409 §17

6.2.11 Article 84 EC

However, ***Article 84 does not exclude the application of the Treaty to transport, and marine transport remains, on the same basis as the other modes of transport, subject to the general rules of the Treaty*** (see the judgment in Case 167/73 *Commission v France* [1974] ECR 359, paragraphs 31 and 32).

Case C-379/92 Peralta [1994] ECR I-3453 §14

6.3 RELATION TO SECONDARY LAW

6.3.1 Absence of a common policy

The reply to the second question submitted must therefore be that, with regard to the period preceding the entry into force of the second banking directive, ***Article 59 of the Treaty must be construed as precluding a Member State from requiring a credit institution already authorized in another Member State to obtain an authorization*** in order to be able to grant a mortgage loan to a person resident within its territory, unless that authorization

- is required of every person or company pursuing such an activity within the territory of the Member State of destination;
- is justified on grounds of public interest, such as consumer protection; and
- is objectively necessary to ensure compliance with the rules applicable in the sector under consideration and to protect the interests which those rules are intended to safeguard, and the same result cannot be achieved by less restrictive rules.

Case C-222/95 Parodi [1997] ECR I-3899 §32

In the absence of harmonization of the conditions of access to a particular profession, the Member States are entitled to specify the knowledge and qualifications needed in order to pursue it and to require the production of a diploma certifying that the holder has the relevant knowledge and qualifications (see the judgment in Case 222/86 *UNECTEF v Heylens* [1987] ECR 4097, paragraph 10, and in Case C-340/89 *Vlassopoulou v Ministerium für Justiz, Bundes-und Europaangelegenheiten Baden-Württemberg* [1991] ECR I-2357, paragraph 9).

Case C-104/91 Colegio Oficial de Agentes [1992] ECR I-3003 §7

In view of the complexity of the cabotage sector, considerable difficulties still stand in the way of the achievement of freedom to provide services in that sphere. This can be ***done in an orderly fashion only in the context of a common transport policy*** which takes into consideration the economic, social and ecological problems and ensures equality in the conditions of competition.

Case C-17/90 Pinaud Wieger [1991] ECR I-5253 §11

In those circumstances and having regard to the fact that, as stated in the order for reference, the national court must give judgment on the basis of the law as it stands at the time of its decision, the reply to the question referred to the Court for a preliminary ruling must be that, under Community law ***as it now stands***, Articles 59 and 60 of the EEC Treaty do not preclude an undertaking established in one Member State from being prohibited from appointing a carrier in another Member State to provide on its behalf internal transport services at the rates generally in force in the first Member State, using vehicles licensed in the second Member State for the carriage of goods.

Case C-17/90 Pinaud Wieger [1991] ECR I-5253 §14

In the absence of harmonization of the rules applicable to services, or even of a system of equivalence, restrictions on the freedom guaranteed by the Treaty in this field may arise in the second place as a result of the application of national rules which affect any person established in the national territory to persons providing services established in the territory of another Member State who already have to satisfy the requirements of that State' s legislation.

Case C-288/89 Mediawet I [1991] ECR I-4007 §12

Secondly, it must be observed that ***in so far as there is no Community definition*** of medical acts, the definition of acts restricted to the medical profession is, ***in principle, a matter for the Member States.*** It follows that in the absence of Community legislation on the professional practice of osteopathy each ***Member State is free to regulate*** the exercise of that activity within its territory, without discriminating between its own nationals and those of the other Member States.

Case C-61/89 Bouchoucha [1990] ECR I-3551 §12

According to the well established case law of the Court, Articles 59 and 60 of the EEC Treaty became directly applicable on the expiry of the transitional period, and ***their applicability was not conditional on the harmonization or the co-ordination of the laws of the Member States***. Those Articles require the removal not only of all discrimination against a provider of a service on the grounds of his nationality but also all restrictions on his freedom to provide services imposed by reason of the fact that he is established in a Member State other than that in which the service is to be provided.

Case C-205/84 Commission v Germany [1986] ECR 3755 §25

In the course of the proceedings before the Court, the German government and the governments intervening in its support have shown that ***considerable differences exist in the national rules currently in force concerning technical reserves and the assets which represent such reserves. In the absence of harmonization in that respect*** and of any rule requiring the supervisory authority of the Member State of establishment to supervise compliance with the rules in force in the State in which the service is provided, it must be recognised that the latter State is justified in requiring and supervising compliance with its own rules on technical reserves with regard to services provided within its territory, provided that such rules do not exceed what is necessary for the purpose of ensuring that policy-holders and insured persons are protected.

Case C-205/84 Commission v Germany [1986] ECR 3755 §39

It must therefore be recognised that, ***in the present state of Community law***, the considerations described above relating to the protection of policy-holders and insured persons justify the application by the Member State in which the service is provided of its own legislation concerning technical reserves and the conditions of insurance, provided that the requirements of that legislation do not exceed what is necessary to ensure the protection of policy-holders and insured persons. It therefore remains to consider whether it is necessary for such supervision to be effected under an authorization procedure and on the basis of a requirement that the insurance undertaking should have a permanent establishment in the State in which the service is provided.

Case C-205/84 Commission v Germany [1986] ECR 3755 §41

.../...

In those circumstances the German government's argument to the effect that only the requirement of an authorization can provide an effective means of ensuring the supervision which, having regard to the foregoing considerations, is justified on grounds relating to the protection of the consumer both as a policy-holder and as an insured person, must be accepted. Since a system such as that proposed in the draft for a second directive, which entrusts the operation of the authorization procedure to the Member State in which the undertaking is established, working in close co-operation with the State in which the service is provided, can be set up only by legislation, it must also be acknowledged that ***in the present state of Community law, it is for the State in which the service is provided*** to grant and withdraw that authorization.

Case C-205/84 Commission v Germany [1986] ECR 3755 §46

In its judgment delivered this day in case 205/84 *Commission v Federal Republic of Germany* (1986) ECR 3793, the Court held that in the insurance sector in general there were imperative reasons relating to the protection of the consumer both as a policy-holder and as an insured person which might justify restrictions on the freedom to provide services. The Court also recognised that ***in the present state of Community law***, in particular with regard to the co-ordination of the relevant national rules, ***the protection of that interest was not necessarily guaranteed*** by the rules of the State of establishment. The Court concluded therefrom that, as regards the field of direct insurance in general, the requirement of a separate authorization granted by the authorities of the State in which the service was provided remained justified subject to certain conditions. On the other hand, the Court considered that the requirement of an establishment, which represented the very negation of the freedom to provide services, exceeded what was necessary to attain the objective pursued and that, accordingly, that requirement was contrary to Articles 59 and 60 of the Treaty.

Case C-252/83 Commission v Denmark [1986] ECR 3713 §20

In the absence of any harmonization of the relevant rules, a prohibition of this type falls within the residual power of each Member State to regulate, restrict or even totally prohibit television advertising on its territory on grounds of general interest. The position is not altered by the fact that such restrictions or prohibitions extend to television advertising originating in other Member States in so far as they are actually applied on the same terms to national television organisations.

Case C-52/79 Debauve [1980] ECR 833 §15

6.3.2 During the transitional period

Within the scheme of the chapter relating to the provision of services, these directives are intended to accomplish different functions, the first being to abolish, ***during the transitional period, restrictions on freedom to provide services, the second being to introduce into the law of Member States a set of provisions intended to facilitate the effective exercise of this freedom, in particular by the mutual recognition of professional qualifications and the coordination of laws with regard to the pursuit of activities as self-employed persons***.

Case C-33/74 Van Binsbergen [1974] ECR 1299 §21

6.3.2.1 General programmes

An analysis of the abovementioned General Programmes for the abolition of restrictions on freedom of establishment and freedom to provide services reveals that the restrictions envisaged by those provisions are essentially measures ***discriminating, directly or indirectly***, between nationals of other Member States and nationals of the host country.

Joined Cases C-330 & 331/90 López Brea & Hidalgo Palacios[1992] ECR I-323 §13

For the implementation of those provisions, Title II of the General Programme for the Abolition of Restrictions on Freedom to Provide Services (Official Journal, English Special Edition, Second Series IX, p.3), which was drawn up by the Council pursuant to Article 63 of the Treaty on 18 December 1961, envisages *inter alia* the repeal of provisions laid down by law, regulation or administrative action which in any Member State govern, ***for economic purposes***, the entry, exit and residence of nationals of Member State, where such provisions are not justified on grounds of public policy, public security or public health and are liable to hinder the provision of services by such persons.

Joined Cases C-286/82 & 26/83 Luisi & Carbone [1984] ECR 377 §11

By basing the ***General Programme for the Abolition of Restrictions on the Freedom to provide Services*** partly on Article 106 of the Treaty, ***its authors showed that they were aware of the effect of the liberalisation of services on the liberalisation of payments.*** In fact the first paragraph of that article provides that any payments connected with the movement of goods or services are to be liberalised to the extent to which the movement of goods and services has been liberalised between Member States.

Joined Cases C-286/82 & 26/83 Luisi & Carbone [1984] ECR 377 §13

Among the restrictions on the freedom to provide services which must be abolished, ***the General Programme mentions***, in section C of Title III, impediments to payments for services, particularly where, according to section D of Title III and in conformity with Article 106(2), the provision of such services is limited only by restrictions in respect of the payments thereof. By virtue of section B of Title V of the General Programme, those restrictions were to be ***abolished before the end of the first stage of the transitional period, subject to a proviso*** permitting limits on "foreign currency allowances for tourists" ***to be retained during that period.*** Those provisions were implemented by Council Directive 63/340/EEC of 31 May 1963 on the abolition of all prohibitions on or obstacles to payments for services where the only restrictions on exchange of services are those governing such payments (Official Journal, English Special Edition 1963 - 1964, p.31). Article 3 of that directive also refers to foreign exchange allowances for tourists.

Joined Cases C-286/82 & 26/83 Luisi & Carbone [1984] ECR 377 §14

6.3.2.2Role of directives

Those Articles require the abolition of all restrictions on the free movement of the provision of services, as thus defined, subject nevertheless to the provisions of Article 61 and those of Articles 55 and 56 to which Article 66 refers, although those provisions are not at issue in these proceedings, the Italian government has made the observation that, according to Article 61(2), the liberalisation of insurance services connected with movements of capital must be effected in step with the progressive liberalisation of the movement of capital. In that respect it should however be pointed out that the first ***Council Directive for the implementation of Article 67 of the Treaty of 11 May 1960*** (Official Journal, English Special Edition 1959 -1962, p.49) already provided that Member States were to grant all foreign exchange authorizations required for capital movements in respect of transfers in performance of insurance contracts as and when freedom of movement in respect of services was extended to those contracts in implementation of Article 59 et seq. of the Treaty.

Case C-205/84 Commission v Germany [1986] ECR 3755 §19

In laying down that freedom to provide services shall be attained by the end of the transitional period, that provision, interpreted in the light of Article 8(7) of the Treaty, 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.

Joined Cases C-110 and 111/78 Van Wesemael [1979] ECR 35 §25

Therefore, as regards at least the specific requirement of nationality or of residence, Articles 59 and 60 impose a well-defined obligation, the fulfilment of which by the Member States cannot be delayed or jeopardised by the absence of provisions which were to be adopted in pursuance of powers conferred under ***Articles 63 and 66.***

Case C-33/74 Van Binsbergen [1974] ECR 1299 §26

6.3.3 After the transitional period

6.3.3.1 Role of directives

In that regard, it should be noted that, ***whilst those provisions, which have direct effect, prohibit imposing unjustified restrictions on the freedoms concerned, they are not sufficient in themselves to ensure elimination of all obstacles to free movement of*** persons, ***services*** and capital, ***and that directives provided for by the Treaty in this matter preserve an important scope in the field of measures intended to make easier the effective exercise of the rights arising out of those provisions*** (see, as far as freedom of establishment is concerned, Case 2/74 *Reyners* [1974] ECR 631, paragraphs 29, 30 and 31).

Case C-57/95 France v Commission [1997] ECR I-1627 §20

As regards the Commission's competence to adopt an act imposing on Member States obligations not provided for in the abovementioned Treaty provisions, it should be emphasized that no such power is provided for in the Treaty and that, in any event, ***only the Council is empowered, under Article 57(2) and Article 66 of the Treaty, to issue directives for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons.***

Case C-57/95 France v Commission [1997] ECR I-1627 §24

It should also be noted that, ***as a result of the incomplete harmonization of the criteria for testing, although the directive requires***, in Article 5(3), ***that each Member State recognise test certificates issued in other Member States to vehicles registered on their territory as proof at least of compliance with its provisions, it does not, on the other hand, oblige each Member State - in view of the large number of verification processes and procedures - to recognise test certificates issued in other Member States*** in respect of vehicles registered on its own territory.

Case C-55/93 Van Schaik [1994] ECR I-4837 §22

.../...

In order to rule on the compatibility of such a limit with the directive as a whole, the purpose and object of the directive must be borne in mind. ***The purpose*** of directive 71/305 ***is to ensure that the realisation within the community of freedom of establishment and freedom to provide services in regard to public works contracts involves, in addition to the elimination of restrictions, the co-ordination of national procedures for the award of public works contracts***. Such co-ordination "should take into account as far as possible the procedures and administrative practices in force in each Member State" (second recital in the preamble to the directive). Article 2 expressly provides that the authorities awarding contracts are to apply their national procedures adapted to the provisions of the directive.

Joined Cases C-27 to 29/86 CEI [1987] ECR 3347 §14

In that respect it is sufficient to point out that neither Article 3(c) nor Article 57(3) of the Treaty, to which the national court refers, requires the Member States to modify the provisions applicable within their territories to their own nationals regarding the exercise of the medical professions or the training for those professions. ***Such obligations could only arise from directives adopted by the Council to co-ordinate the relevant national rules***. No measure adopted by the Council for that purpose concerns the restriction of the number of students admitted to medical faculties.

Joined Cases C-98, 162 & 258/85 Bertini [1986] ECR 1885 §11

Faced with those conflicting views, the Court considers it necessary to recall the wording of the third paragraph of Article 189 of the Treaty, according to which ***a directive is binding, as to the result to be achieved upon each Member State to which it is addressed, but leaves to the national authorities the choice of form and methods.***

Case C-29/84 Commission v Germany [1985] ECR 1661 §22

It follows from that provision that the implementation of a directive does not necessarily require legislative action in each Member State. In particular the existence of general principles of constitutional or administrative law may render implementation by specific legislation superfluous, provided however that those principles guarantee that the national authorities will in fact apply the directive fully and that, where the directive is intended to create rights for individuals, the legal position arising from those principles is sufficiently precise and clear and the persons concerned are made fully aware of their rights and, where appropriate, afforded the possibility of relying on them before the national courts. That last condition is of particular importance where the directive in question is intended to accord rights to nationals of other Member States because those nationals are not normally aware of such principles.

Case C-29/84 Commission v Germany [1985] ECR 1661 §23

Moreover, the German government's argument is founded on the combined effect of the general principle of equal treatment, applicable solely to German nationals, and the Community principle of non-discrimination on grounds of nationality. As the Commission has pointed out, ***the direct effect of that Community principle may not be used in order to evade the obligation to implement a directive providing for specific measures to facilitate and secure the full application of that principle in the Member States.***

Case C-29/84 Commission v Germany [1985] ECR 1661 §29

On that point too the Court is unable to accept the German government's argument. In the circumstances described above the ***incorporation of the European agreement into national law cannot replace the proper implementation of the Community directive***. The existing federal legislation is not in conformity with that directive and it is clear from the argument before the Court that that lacuna has not been remedied by the administrative practice of the authorities of the Lander which have responsibility for approving the training programmes and examination criteria of nursing schools.

Case C-29/84 Commission v Germany [1985] ECR 1661 §38

Secondly it should be noted, as the Court has already recalled in its judgment of 22 September 1983 in case 271/82 (*Auer* (1983) ECR 2727), that the aforementioned provisions of directive 78/1026 ***impose clear, complete, precise and unconditional duties*** on the Member States ***which leave them no discretion. In those circumstances, according to the consistent case-law of the Court, an individual may, in proceedings before the national court, rely upon the provisions of a Community directive which has not been implemented by the Member State concerned or which has been implemented incompletely.***

Case C-5/83 Rienks [1983] ECR 4233 §8

6.3.3.2Sector-based directives

First of all it should be noted that ***Article 57(2) of the Treaty authorizes the Parliament and the Council to issue directives*** concerning the taking-up and pursuit of activities as self-employed persons, ***with a view to abolishing obstacles to*** the right of establishment and ***the freedom to provide services***. It was apparent that such an obstacle was to be found in the fundamental differences between the deposit-guarantee systems existing in the various Member States. Consequently, the laws on those systems were harmonized in order to facilitate the activity of credit institutions at Community level.

Case C-233/94 Germany/Parliament & Council [1997] ECR I-2405 §41

In those circumstances, ***the export prohibition cannot be considered to be contrary to Article 57(2) solely on the ground that there are situations which are not to the advantage of the branches of credit institutions authorized in one Member State.*** When harmonization takes place, traders established in one Member State may lose the advantage of national legislation which was particularly favourable to them.

Case C-233/94 Germany/Parliament & Council [1997] ECR I-2405 §42

Second ***it is true that the export prohibition is an exception to the minimum harmonization and mutual recognition which the Directive generally seeks to achieve.*** However, in view of the complexity of the matter and the differences between the legislation of the Member States, the Parliament and the Council were empowered to achieve the necessary harmonization progressively (see, to that effect, Case C-192/94 *Skavani and Chryssanthakapoulos* [1996] ECR I-929, paragraph 27).

Case C-233/94 Germany/Parliament & Council [1997] ECR I-2405 §43
(see also §44)

In that regard, it suffices to point out that, although consumer protection is one of the objectives of the Community, it is clearly not the sole objective. As has already been stated, ***the Directive aims to promote the*** right of establishment and ***freedom to provide services in the banking sector.*** Admittedly, there must be a high level of consumer protection concomitantly with those freedoms; however, no provision of the Treaty obliges the Community legislature to adopt the highest level of protection which can be found in a particular Member State. The reduction in the level of protection which may thereby result in certain cases through the application of the second paragraph of Article 4(1) of the Directive does not call into question the general result which the Directive seeks to achieve, namely a considerable improvement in the protection of depositors within the Community.

Case C-233/94 Germany/Parliament & Council [1997] ECR I-2405 §48

Where national legislation, though applicable without discrimination to all vessels whether used by national providers of services or by those from other Member States, operates a distinction according to whether those vessels are engaged in internal transport or in intra-Community transport, thus securing a special advantage for the domestic market and the internal transport services of the Member State in question, ***that legislation must be deemed to constitute a restriction on the freedom to provide maritime transport services*** contrary to Regulation No 4055/86.

Case C-381/93 Commission v France [1994] ECR I-5145 §21

It must first be stated that both Directive *75/362/EEC* of 16 June 1975, concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in medicine, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services (Official Journal 1975 L 167, p.1) and Directive *75/363/EEC* also of 16 June 1975 concerning the co-ordination of provisions laid down by law, regulation or administrative action in respect of activities of doctors (Official Journal 1975 L 167, p. 14) relate only to the profession of "doctor". Moreover, there are no Community provisions governing the exercise of professions allied to medicine such as, in particular, osteopathy. It must also be noted that the above-mentioned directives contain no Community definition of what activities are to be regarded as those of a doctor.

Case C-61/89 Bouchoucha [1990] ECR I-3551 §8

The directive ***therefore does not lay down a uniform and exhaustive body of Community rules.*** Within the framework of the common rules which it contains, ***the Member States remain free to maintain or adopt substantive and procedural rules in regard to public works contracts on condition that they comply with all the relevant provisions of Community law and, in particular, the prohibitions flowing from the principles laid down in the Treaty in regard to the right of establishment and the freedom to provide*** services.

Joined Cases C-27/86 to 29/86 CEI [1987] ECR 3347 §15

In those circumstances the German government's argument to the effect that only the requirement of an authorization can provide an effective means of ensuring the supervision which, having regard to the foregoing considerations, is justified on grounds relating to the protection of the consumer both as a policy-holder and as an insured person, must be accepted. Since a system such as that proposed in the draft for a ***second directive, which entrusts the operation of the authorization procedure to the Member State in which the undertaking is established***, working in close co-operation with the State in which the service is provided, can be set up only by legislation, it must also be acknowledged that in the present state of Community law, it is for the State in which the service is provided to grant and withdraw that authorization.

Case C-205/84 Commission v Germany [1986] ECR 3755 §46

.../...

As the Court held in its judgment of 13 December 1983 (Case 218/82 *Commission v Council* [1983] ECR 4063), when the wording of secondary Community law is open to more than one interpretation, preference should be given to the interpretation which renders the provision consistent with the Treaty rather than the interpretation which leads to its being incompatible with the Treaty. Consequently, ***the directive should not be construed in isolation and it is necessary to consider whether or not the requirements in question are contrary to the above mentioned provisions of the Treaty and to interpret the directive in the light of the conclusions reached in that respect.***

Case C-205/84 Commission v Germany [1986] ECR 3755 §62
See also: Case C-252/83 Commission v Denmark [1986] ECR 3713 §15

It should be noted that the result of that interpretation of ***Directive 71/305*** is in conformity with the scheme of the Treaty provisions concerning the provision of services. To make the provision of services in one Member State by a contractor established in another Member State conditional upon the possession of an establishment permit in the first State would be to deprive Article 59 of the Treaty of all effectiveness, the purpose of that Article being precisely to abolish restrictions on the freedom to provide services by persons who are not established in the State in which the service is to be provided.

Case C-76/81 Transporoute [1982] ECR 417 §14

Accordingly, the reply to the first question must be that Council ***Directive 71/305*** must be interpreted as precluding a Member State from requiring a tenderer established in another Member State to furnish proof by any means, for example by an establishment permit, other than those prescribed in Articles 23 to 26 of that directive, that he satisfies the criteria laid down in those provisions and relating to his good standing and qualifications.

Case C-76/81 Transporoute [1982] ECR 417 §15

6.4 RELATION TO NATIONAL LAW

6.4.1 General principles

Although the Court cannot substitute its assessment for that of a national court, which is the only forum competent to establish the facts of the case before it, it must be pointed out that ***the application of such a national rule must not prejudice the full effect and uniform application of Community law in the Member States*** (Case C-441/93 *Pafitis and Others*, cited above, paragraph 68). In particular, ***it is not open to national courts, when assessing to exercise of a right arising from a provision of Community law, to alter the scope of that provision or to compromise the objectives pursued by it.***

Case C-367/96 Kefalas [1998] ECR I-2843 §22

In the absence of harmonization of the conditions of access to a particular profession, the Member States are entitled to specify the knowledge and qualifications needed in order to pursue it and to require the production of a diploma certifying that the holder has the relevant knowledge and qualifications (see the judgment in Case 222/86 *UNECTEF v Heylens* [1987] ECR 4097, paragraph 10, and in Case C-340/89 *Vlassopoulou v Ministerium für Justiz, Bundes-und Europaangelegenheiten Baden-Württemberg* [1991] ECR I-2357, paragraph 9).

Case C-104/91 Colegio Oficial de Agentes [1992] ECR I-3003 §7

Secondly, it must be observed that ***in so far as there is no Community definition*** of medical acts, the definition of acts restricted to the medical profession is, in principle, ***a matter for the Member States***. It follows that in the absence of Community legislation on the professional practice of osteopathy each ***Member State is free to regulate*** the exercise of that activity within its territory, without discriminating between its own nationals and those of the other Member States.

Case C-61/89 Bouchoucha [1990] ECR I-3551 §12

In order to rule on the compatibility of such a limit with the directive as a whole, the purpose and object of the directive must be borne in mind. The purpose of directive 71/305 is to ensure that the realisation within the community of freedom of establishment and freedom to provide services in regard to public works contracts involves, in addition to the elimination of restrictions, the co-ordination of national procedures for the award of public works contracts. Such co-ordination "should take into account as far as possible the procedures and administrative practices in force in each Member State" (second recital in the preamble to the directive). Article 2 ***expressly provides that the authorities awarding contracts are to apply their national procedures*** adapted to the provisions of the directive.

Joined Cases C-27/86 to 29/86 CEI [1987] ECR 3347 §14

In the course of the proceedings before the Court, the German government and the governments intervening in its support have shown that considerable differences exist in the national rules currently in force concerning technical reserves and the assets which represent such reserves. In the absence of harmonization in that respect and of any rule requiring the supervisory authority of the Member State of establishment to supervise compliance with the rules in force in the State in which the service is provided, ***it must be recognised that the latter State is justified in requiring and supervising*** compliance with its own rules on technical reserves with regard to services provided within its territory, provided that such rules do not exceed what is necessary for the purpose of ensuring that policy-holders and insured persons are protected.

Case C-205/84 Commission v Germany [1986] ECR 3755 §39

With regard to the first complaint, it must be stated that ***no provision of Community law prevents a Member State from requiring insurance undertakings and their branches which are established on its territory to obtain an authorization not only in respect of business conducted on its territory but also for business conducted in other Member States in the context of the provision of services.*** On the contrary, such a requirement is consistent with the principles laid down in directive 73/239. Article 7(1) of that directive provides that an insurance undertaking may request and obtain an official authorization to carry on its business only in a part of the national territory. In that case, if it wishes to extend its business beyond such part, it is required under Article 6(2)(d) to request further authorization and, in accordance with Article 8(2), a new scheme of operations must be submitted with that request.

Case C-252/83 Commission v Denmark [1986] ECR 3713 §28

Furthermore, that argument is ill-founded. 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. As the Court has consistently held with regard to the implementation of directives by the Member States, 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 C-168/85 Commission v Italy [1986] ECR 2945 §13

In the absence of any directive issued under Article 57 for the purpose of harmonising the national provisions relating, in particular, to professions such as that of avocat, the practice of such professions ***remains governed by the law of the various Member States***.

Case C-2/74 Reyners [1974] ECR 631 §48

6.4.2 National criminal legislation

Although, generally speaking, criminal legislation and the rules of criminal procedure - such as the national rules in issue, which govern the language of the proceedings - are matters for which the Member States are responsible, the Court has consistently held 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*** (see, to that effect, *Cowan*, paragraph 19).

Case C-274/96 Bickel & Franz [1998] ECR I-0000 §17
see also: Case C-186/87 Cowan [1989] ECR 195 §19

The reply to the first question referred to the Court by the Pretore di Lodi must therefore be that a Member State ***may not enforce a penal measure*** in respect of the improper practice of the profession of veterinary surgeon against a national of another Member State, who is entitled to practise as a veterinary surgeon in his own country, on the ground that he is not enrolled on the register of veterinary surgeons of the first Member State, where such enrolment is refused ***in breach of Community law.***

Case C-5/83 Rienks [1983] ECR 4233 §11

In principle, criminal legislation and the rules of criminal procedure are matters for which the Member States are still responsible. However, it is clear from a consistent line of cases decided by the Court, that Community law also sets certain limits in that area as regards control measures which it permits the Member States to maintain in connection with the free movement of goods and persons. ***The administrative measures or penalties must not go beyond what is strictly necessary, the control procedures must not be conceived in such a way as to restrict the freedom required by the Treaty and they must not be accompanied by a penalty which is so disproportionate to the gravity of the infringement that it becomes an obstacle to the exercise of that freedom.***

Case C-203/80 Casati [1981] ECR 2595 §27

The reply to those questions should therefore be that with regard to capital movements and transfers of currency which the Member States are not obliged to liberalize under the rules of Community law, ***those rules do not restrict the Member States' power to adopt control measures and to enforce compliance therewith by means of criminal penalties.***

Case C-203/80 Casati [1981] ECR 2595 §29

6.5 RELATION TO FUNDAMENTAL RIGHTS AND TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS

According to settled case-law, ***where national legislation falls within the field of application of Community law, the Court, when requested to give a preliminary ruling, must provide the national court with all the elements of interpretation which are necessary in order to enable it to assess the compatibility of that legislation with the fundamental rights - as laid down in particular in the European Convention of Human Rights - the observance of which the Court ensures. However the court has no such jurisdiction with regard to national legislation lying outside the scope of Community law*** (see the judgment in Case C-159/90 *Society for the Protection of Unborn Children Ireland v Grogan and Others* [1991] ECR I-4685, paragraph 31).

Case C-177/94 Perfili [1996] ECR I-161 §20
See also: Case C-159/90 Grogan [1991] ECR I-4685 §31

It is settled law that fundamental rights, including those guaranteed by the European Convention on Human Rights, ***form an integral part of the general principles of law, the observance of which the Court ensures*** (see in particular Case C-260/89 *Elliniki Radiophonia Tileorasi* [1991] ECR I-2925, paragraph 41, and *Commission v Netherlands*, cited above).

Case C-23/93 TV10 [1994] ECR I-4795 §24

In *Commission v Netherlands*, cited above, paragraph 30, the Court held that ***the maintenance of the pluralism which the Netherlands broadcasting policy seeks to safeguard is intended to preserve the diversity of opinions, and hence freedom of expression, which is precisely what the European Convention on Human Rights is designed to protect.***

Case C-23/93 TV10 [1994] ECR I-4795 §25

The information to which the national court's questions refer is not distributed on behalf of an economic operator established in another Member State. On the contrary, the information ***constitutes a manifestation of freedom of expression and of the freedom to impart and receive information*** which is independent of the economic activity carried on by clinics established in another Member State.

Case C-159/90 Grogan [1991] ECR I-4685 §26

A cultural policy understood in that sense may indeed constitute an overriding requirement relating to the general interest which justifies a restriction on the freedom to provide services. The maintenance of the pluralism which that Dutch policy seeks to safeguard is connected with ***freedom of expression, as protected by Article 10 of the European Convention on Human Rights and Fundamental Freedoms***, which is one of the fundamental rights guaranteed by the Community legal order (Case 4/73 *Nold v Commission* [1974] ECR 491, paragraph 13).

Case C-288/89 Mediawet I [1991] ECR I-4007 §23

With regard to Article 10 of the European Convention on Human Rights, referred to in the ninth and tenth questions, it must first be pointed out that, ***as the Court has consistently held, fundamental rights form an integral part of the general principles of law, the observance of which it ensures. For that purpose the Court draws inspiration from the constitutional traditions common to the Member States and from the guidelines supplied by international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories*** (see, in particular, the judgment in Case C-4/73 *Nold v Commission* [1974] ECR 491, paragraph 13). The European Convention on Human Rights has special significance in that respect (see in particular Case C-222/84 *Johnston v Chief Constable of the Royal Ulster Constabulary* [1986] ECR 1651, paragraph 18). It follows that, as the Court held in its judgment in Case C-5/88 *Wachauf v Federal Republic of Germany* [1989] ECR 2609, paragraph 19, ***the Community cannot accept measures which are incompatible with observance of the human rights thus recognised and guaranteed.***

Case C-260/89 ERT [1991] ECR I-2925 §41

As the Court has held (see the judgment in Joined Cases C-60 and C-61/84 *Cinéthèque v Fédération Nationale des Cinémas Français* [1985] ECR 2605, paragraph 25, and the judgment in Case C-12/86 *Demirel v Stadt Schwäbisch Gmund* [1987] ECR 3719, paragraph 28), it has no power to examine the compatibility with the European Convention on Human Rights of national rules which do not fall within the scope of Community law. On the other hand, where such rules do fall within the scope of Community law, and reference is made to the Court for a preliminary ruling, it must provide all the criteria of interpretation needed by the national court to determine ***whether those rules are compatible with the fundamental rights the observance of which the Court ensures and which derive in particular from the European Convention on Human Rights.***

Case C-260/89 ERT [1991] ECR I-2925 §42

In particular, where a Member State relies on the combined provisions of Articles 56 and 66 in order to justify rules which are likely to obstruct the exercise of the freedom to provide services, such justification, provided for by Community law, ***must be interpreted in the light of the general principles of law and in particular of fundamental rights.*** Thus the national rules in question can fall under the exceptions provided for by the combined provisions of Articles 56 and 66 ***only if they are compatible with the fundamental rights*** the observance of which is ensured by the court.

Case C-260/89 ERT [1991] ECR I-2925 §43

It follows that in such a case it is for the national court, and if necessary, the Court of Justice to appraise the application of those provisions having regard to all the rules of Community law, ***including freedom of expression***, as embodied in Article 10 of the European Convention on Human Rights, as a general principle of law the observance of which is ensured by the Court.

Case C-260/89 ERT [1991] ECR I-2925 §44

The reply to the national court must therefore be that the limitations imposed on the power of the Member States to apply the provisions referred to in Articles 66 and 56 of the Treaty on grounds of public policy, public security and public health must be appraised in the light of the general principle of freedom of expression embodied in Article 10 of the European Convention on Human Rights.

Case C-260/89 ERT [1991] ECR I-2925 §45

7 EXTRA-COMMUNITY ASPECTS OF THE PROVISION OF SERVICES

7.1 EXTERNAL COMMUNITY COMPETENCE IN THE SERVICES SECTOR

Under Article I(2) of GATS, trade in services is defined, for the purposes of that agreement, as comprising four modes of supply of services: (1) cross-frontier supplies not involving any movement of persons; (2) consumption abroad, which entails the movement of the consumer into the territory of the WTO member country in which the supplier is established; (3) commercial presence, i.e. the presence of a subsidiary or branch in the territory of the WTO member country in which the service is to be rendered; (4) the presence of natural persons from a WTO member country, enabling a supplier from one member country to supply services within the territory of any other member country.

Opinion 1/94 [1994] ECR I-5267 §43

As regards cross-frontier supplies, the service is rendered by a supplier established in one country to a consumer residing in another. The supplier does not move to the consumer's country; nor, conversely, does the consumer move to the supplier's country. That situation is, therefore, not unlike trade in goods, which is unquestionably covered by the common commercial policy within the meaning of the Treaty. There is thus no particular reason why such a supply should not fall within the concept of the common commercial policy.

Opinion 1/94 [1994] ECR I-5267 §44

The same cannot be said of the other three modes of supply of services covered by GATS, namely, the consumption abroad, commercial presence and the presence of natural persons.

Opinion 1/94 [1994] ECR I-5267 §45

It follows that the modes of supply of services referred to by GATS as 'consumption abroad', 'commercial presence' and the 'presence of natural persons' are not covered by the common commercial policy.

Opinion 1/94 [1994] ECR I-5267 §47

Unlike the chapter on transport, the chapters on the right of establishment and on freedom to provide services do not contain any provision expressly extending the competence of the Community to 'relationships arising from international law'. As has rightly been observed by the Council and most of the Member States which have submitted observations, *the sole objective of those chapters is to secure the right of establishment and freedom to provide services for nationals of Member States.* They contain no provisions on the problem of the first establishment of nationals of non-member countries and the rules governing their access to self-employed activities. *One cannot therefore infer from those chapters that the Community has exclusive competence to conclude an agreement with non-member countries to liberalise first establishment and access to services markets, other than those which are the subject of cross-border supplies within the meaning of GATS, which are covered by Article 113* (see paragraph 42 above)

Opinion 1/94 [1994] ECR I-5267 §81

Whenever the Community has included in its internal legislative acts provisions relating to the treatment of nationals of non-member countries or expressly conferred on its institutions powers to negotiate with non-member countries, it acquires exclusive external competence in the spheres covered by those acts.

Opinion 1/94 [1994] ECR I-5267 §95

The same applies in any event, even in the absence of any express provision authorising its institutions to negotiate with non-member countries, where the Community has achieved complete harmonization of the rules governing access to a self-employed activity, because the common rules thus adopted could be affected within the meaning of the AETR judgment if the Member States retained freedom to negotiate with non-member countries.

Opinion 1/94 [1994] ECR I-5267 §96

That is not the case in all service sectors, however, as the Commission has itself acknowledged.

Opinion 1/94 [1994] ECR I-5267 §97

It follows that competence to conclude GATS is shared between the Community and the Member States.

Opinion 1/94 [1994] ECR I-5267 §98

7.2 THE PRESENCE OF THIRD-COUNTRY NATIONALS IN THE FREE PROVISION OF SERVICES

Workers employed by an undertaking established in one Member State who are temporarily sent to another Member State to provide services do not in any way seek access to the labour market in that second State, if they return to their country of origin or residence after completion of their work (see the judgment in Case C-113/89 *Rush Portuguesa v Office National d' Immigration* [1990] ECR I-1417). Those conditions were fulfilled in the present case.

Case C-43/93 Vander Elst [1994] ECR I-3803 §21

The answer to the questions referred to the Court must therefore be that ***Articles 59 and 60*** of the Treaty ***are to be interpreted as precluding a Member State from requiring undertakings which are established in another Member State and enter the first Member State in order to provide services, and which lawfully and habitually employ nationals of non-member countries, to obtain work permits for those workers from a national immigration authority and to pay the attendant costs, with the imposition of an administrative fine as the penalty for infringement.***

Case C-43/93 Vander Elst [1994] ECR I-3803 §26

That argument cannot be accepted. A ***Member State's power to control the employment of nationals from a non-member country may not be used in order to impose a discriminatory burden on an undertaking from another Member State*** enjoying the freedom under Articles 59 and 60 of the Treaty to provide services.

Joined Cases C-62 & 63/81 Seco [1982] ECR 223 §12

It is well-established that Community law does not preclude Member States from applying their legislation, or collective labour agreements entered into by both sides of industry relating to minimum wages, to any person who is employed, even temporarily, within their territory, no matter in which country the employer is established, just as Community law does not prohibit Member States from enforcing those rules by appropriate means. However, it is not possible to describe as an appropriate means any rule or practice which imposes a general requirement to pay social security contributions, or other such charges affecting the freedom to provide services, on ***all persons providing services who are established in other Member States and employ workers who are nationals of non-member countries***, irrespective of whether those persons have complied with the legislation on minimum wages in the Member State in which the services are provided, because such a general measure is by its nature unlikely to make employers comply with that legislation or to be of any benefit whatsoever to the workers in question.

Joined Cases C-62 & 63/81 Seco [1982] ECR 223 §14

The answer to the questions submitted by the Cour de Cassation of the Grand Duchy of Luxembourg must therefore be that Community law precludes a Member State from requiring an employer who is established in another Member State and temporarily carrying out work in the first-named Member State, ***using workers who are nationals of non-member countries***, to pay the employer's share of social security contributions in respect of those workers when that employer is already liable under the legislation of the State in which he is established for similar contributions in respect of the same workers and the same periods of employment and the contributions paid in the State in which the work is performed do not entitle those workers to any social security benefits. Nor would such a requirement be justified if it were intended to offset the economic advantages which the employer might have gained by not complying with the legislation on minimum wages in the State in which the work is performed.

Joined Cases C-62 & 63/81 Seco [1982] ECR 223 §15

7.3 SERVICES TO THIRD-COUNTRY NATIONALS IN THE EC

Consequently, ***the provisions of Article 59 must apply in all cases where a person providing services offers those services in a Member State other than that in which he is established, wherever the recipients of those services may be established.***

Case C-198/89 Tourist Guides Greece [1991] ECR I-727 §10
See also: **Case C-180/89 Tourist Guides Italy [1991] ECR I-709 §9**
Case C-154/89 Tourist Guides France [1991] ECR I-659 §10