OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 19 November 1991 *

Mr President,
Members of the Court,

1. Mr Egle is of German nationality and lives in Belgium. He holds a diploma awarded by the Constance Fachhochschule obtained in 1981 on completion of four years' study which included two semesters of practical experience ('Praxissemester'), and has applied for registration with the Architects' Association of the Province of Limbourg (Belgium), relying on Council Directive 85/384/EEC of 10 June 1985 on the mutual recognition of diplomas, certificates and other evidence of formal qualifications in architecture, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services ('the directive'). [1]

2. The Architects' Association of the Province of Limbourg rejected his application principally on the ground that his diploma did not fulfil the conditions laid down in the directive. The National Council of the Architects' Association, to which he appealed, took the view that his training should be regarded as satisfying those conditions and therefore ordered his name to be entered on the register of the Association. An appeal was lodged against that decision before the Belgian Cour de Cassation, which has referred the following question to the Court of Justice for a preliminary ruling:

'Must Article 4(1)(a) of Directive 85/384/EEC be interpreted in such a way that education and training which lasts for four years and which includes integrated practical semesters supervised by the Hochschule may be regarded as four years of full-time studies?'

3. Let us first consider the context of the directive. Its adoption represents the outcome of very lengthy negotiations, some 18 years having been necessary for its preparation. Unlike the directives covering, for example, the medical or paramedical professions, there are no provisions harmonizing training for architects or access to the exercise of their profession. The directive does not include a list of the qualifications which Member States must recognize, but requires mutual recognition of the diplomas, certificates and other evidence of formal qualifications which meet the conditions laid down in Articles 3 and 4. In that regard Article 3 provides that training in architecture must be provided through courses of studies at university level concerned principally with architecture, and that the studies must be balanced between the theoretical and practical aspects of architectural training and ensure the acquisition of the various abilities, knowledge, and skills listed in the directive (which names 11 areas which must be covered by the training). To those requirements concerning the content of the training, Article 4 of the directive adds conditions regarding its duration. Article 4(1) (first subparagraph) (a) requires the total length of the training to be a minimum

* Original language: French.
1 — OJ 1985 L 223, p. 15.

of either four years of full-time studies at a university or comparable educational establishment or at least six years of study at a university or comparable educational establishment of which at least three must be full-time. By way of exception to that provision, the second subparagraph of the same article provides that the training given over three years in the Fachhochschulen in the Federal Republic of Germany satisfies the requirements of the directive if it is supplemented by a four-year period of professional experience in that country.

4. Articles 7, 8 and 9 of the directive lay down a procedure to be followed culminating in publication in the *Official Journal of the European Communities* of the list of qualifications covered by the directive. Under that procedure each Member State must communicate as soon as possible — the initial communication having to be made within 12 months of notification of the directive — the list of diplomas, certificates and other evidence of formal qualifications which meet the criteria laid down in Articles 3 and 4, together with the establishments and authorities awarding them. Member States are also required to communicate in the same manner any amendments made as regards those qualifications, in particular those which no longer meet the requirements of the directive. The list and updating thereof are to be published in the Official Journal by the Commission after expiry of a three-month period following their communication. However, publication is to be deferred if the Commission or a Member State has doubts as to whether one of the qualifications meets the criteria of the directive and the Commission brings the matter before the Advisory Committee on Education and Training in the Field of Architecture within three months of communication. That Committee must deliver an opinion on the matter within three months and on the expiry of a fresh period of three months thereafter or on the expiry of the deadline for delivery thereof the diploma, certificate or other evidence of formal qualifications must be published unless the Member State which awards it amends the communication or the matter is brought before the Court of Justice by a Member State or the Commission under Articles 169 and 170 of the Treaty. It should be noted that any Member State, or the Commission, may at any time refer to the Advisory Committee if in doubt as to whether a diploma or other qualification in the list published in the Official Journal still meets the requirements of Articles 3 and 4 of the directive. The Commission shall withdraw a diploma from one of the lists published in the Official Journal in two cases: either in agreement with the Member State concerned or following a ruling by the Court of Justice.

5. Lastly, the directive includes provision for established rights. Article 10 states that Member States shall recognize the qualifications listed in Article 11 which are held by nationals of the Member States who already held them at the time of notification of the directive or who commenced their studies leading to the award of those qualifications during the third academic year at the latest following such notification. The qualifications referred to in Article 11 must be recognized even if they do not meet the requirements of Articles 3 and 4 of the directive. Article 11 of the directive refers in particular, in the case of Germany, to the diplomas awarded by the Fachhochschulen and provides that where the period of study is three years, a four-year period of professional experience in Germany is required.

6. As regards implementation of the directive the German authorities communicated a list of the qualifications which they considered to satisfy the requirements of the directive in accordance with Article 7. The list referred to 42 courses of training. It was stated that 18 of them were of four years' duration, including practical semsters.

7. That is the case in the Constance Fachhochschule. Communication of the list led a Member State to refer to the Advisory Committee on Education and Training in the Field of Architecture for an opinion regarding the four-year training course given by the Fachhochschule which included two practical semesters. The opinion issued by the Committee was to the effect that such courses could not be regarded as covered by the first subparagraph of Article 4(1) but fell under the exception contained in the second subparagraph. Consequently, a qualification obtained on completion of such a course could be recognized ony if the course was supplemented by four years' professional experience. The Advisory Committee did not consider that the Praxissemester had the same worth as a semester of full-time studies at an educational establishment.

8. Nevertheless, the German authorities did not amend the communication to the effect that four year courses, including those given by the Constance Fachhochschule, met the requirements of the directive and must be recognized by the other Member States on the basis of Article 4(1), first subparagraph, of the directive — that is to say, without the additional requirement of four years' professional experience. The German Government argued that practical semesters formed an integral part of the training, the content of which was determined by laws and regulations adopted by the public authorities. Moreover, the practical semesters were always incorporated into the theoretical studies and followed by a semester of theory culminating in the final examination, and practical semesters could not constitute the final semester.

9. The Commission published the list communicated by Germany with the following remark: 'These diplomas are to be recognized under the conditions provided for in Article 4(1) of Directive 85/384/EEC either under the first indent or the second indent depending on the duration of the training to which they relate'.[2] In its observations the Commission points out that it had not intended to follow the opinion of the Advisory Committee, merely referring to the duration of the training in order to distinguish between qualifications covered by the first or the second subparagraph of Article 4 respectively, without mentioning whether studies comprised a practical semester or not.

10. I would point out first of all that the Belgian court has not asked whether the provisions of the directive may be relied on by individuals. It appears that Mr Egle sought registration with the Architects' Association before the directive had been transposed into Belgian law but after the time-limit for doing so had expired. In that regard, by the way, the Commission appears to entertain some doubt as to whether the directive has been adequately transposed. I note that in any event the view that recognition of diplomas which satisfy the requirements of the directive, regardless of the existence of measures transposing it into national law, may be obtained exclusively on the basis of the directive has not been challenged by the Council of the Architects' Association.

2 — OJ 1988 C 270, p. 3, and OJ 1989 C 205, p. 51.

11. The observations which the latter has submitted to the Court and those submitted by the Italian Republic incline to the view, in essence, that the Court should rule that practical semesters cannot be taken into consideration when calculating the four years. For my part, I have been fully convinced by the examination of the opposite interpretation put forward by the Commission and the German Government.

12. It seems to me to be important in the first case to point out that the directive provides *expressis verbis* that training must be balanced between the theoretical and practical aspects. Thus there can be no doubt that the directive permits training to include a practical element and one might even consider such an element necessary in order for a course to satisfy the requirements of the directive.

13. However, are those requirements satisfied if two semesters are essentially devoted to practical study? The first objection that may be made in that regard may be disposed of without difficulty, I think. The requirement that studies be full-time, laid down in Article 4 of the directive, may be fulfilled as well by practical study as by theoretical study. The condition says nothing as to the content of the studies, but refers to the commitment of the student's time it requires. The concept of full-time studies is therefore contrasted not with that of practical study, but with that of part-time study.

14. Somewhat more delicate, by contrast, is the question of what criteria may be applied to enable practical studies to be distinguished from professional experience. It is clear that only the first may be taken into consideration as regards the duration of studies required by the directive. In that regard I consider that the Commission has made a convincing distinction: the professional experience is the first phase of pursuing the profession and is exercised under the supervision of a more experienced colleague. Practical studies, by contrast, represent training prior to obtaining the qualification for which they are a precondition.

15. I agree with the Commission that it is necessary in that context for practical semesters to be integrated in courses in the same way as the theoretical component and for them to be organized, supervised and assessed by the educational establishment. In other words, the student must not be placed in a position where he bears professional responsibility, even under tutelage, so to speak, but he must be in a position enabling him to acquire knowledge and skills. Two characteristics of the qualification at issue appear to me capable of satisfying those criteria. In the first place, the practical studies are closely supervised by the Hochschule, which chooses the firm of architects, determines whether the course content has been observed, requires a written report, ensures that the matter is supervised by a university lecturer and requires if necessary that all or part of an unsatisfactory semester be repeated. Secondly, the integration in the course of study of such semesters appears to be guaranteed inasmuch as they alternate with theoretical ones, and the training cannot end with a practical semester. In other words, the student is encouraged not to start using theoretical knowledge already acquired, but to coordinate academic learning with practical learning.

16. The wording of the directive supports the view that a qualification awarded by a Fachhochschule at the end of four years' training cannot be subject to the condition laid down in Article 4(1), second subparagraph. That imposes the supplementary requirement of four years' professional experience in the case of 'training *given over three years* in the Fachhochschulen'. In so far as the training given in those establishments may be of either three years' or four years' duration, the stipulation that professional experience is required where the qualification is given at the end of three years' study must logically lead us to conclude that recognition of a qualification delivered after four years' studies fulfils the conditions as to duration laid down in Article 4(1), first subparagraph.

17. The Commission and the German Government have also pointed out that Mr Egle is in fact entitled to rely on Articles 10 and 11 of the directive regarding established rights, rather than the provisions of Articles 3 and 4, since his diploma was awarded in 1981.

18. It is obviously not for this Court to determine whether Mr Egle's qualification must be recognized or, *a fortiori*, to decide under what provision of the directive it must be recognized. In fact the Belgian court points out expressly that Mr Egle is not relying on the principle of established rights to obtain recognition. However, I would point out that a qualification delivered by a Fachhochschule after four years' training which includes two practical semesters must be recognized pursuant to Article 11 of the directive under the principle of established rights, without requiring professional experience. That is a consequence of the wording of the directive which provides *expressis verbis* that that requirement applies where the training given by a Fachhochschule lasts less than four years but takes at least three years. It must be inferred from that, *a contrario*, that if training comprises four years' study the condition of professional experience is not required.

19. However, the fact that a qualification may be recognized under the directive's provisions regarding established rights in no way forms an obstacle to relying equally on the general provisions of the directive, provided that the qualification meets the criteria laid down in Articles 3 and 4.

20. In that regard, the Commission emphasizes that its communication including training of the kind at issue in the main proceedings applies only to qualifications awarded to those who commenced their studies during the 1988/89 academic year. Consequently, it concludes, one cannot consider that that communication may be relied on in order to establish that a qualification delivered in 1981 meets the qualitative requirements laid down in Article 3 of the directive.

21. For my part, I consider that in any event Mr Egle is fully entitled to seek to show that his qualification meets those criteria. Nevertheless, it must be admitted

that recognition of the diploma under the general scheme may prove to be more difficult than it would be on the basis of the provisions regarding established rights: that is because in the latter case it is only necessary to establish that the qualification is included in the list contained in Article 11 of the directive.

22. Consequently, I suggest that the Court rule as follows:

'Training or education comprising four years of full-time studies including two practical semesters meets the requirements set out in Article 4(1), first subparagraph, of Directive 85/384/EEC if those semesters are an integral part of the course and are organized, supervised and assessed by the educational establishment.'