OPINION OF ADVOCATE GENERAL DARMON
delivered on 29 June 1994 *

Mr President,
Members of the Court,

1. This is the third time [1] that the Court has had to interpret 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 [2] (hereinafter 'the directive').

2. The directive contains two groups of provisions relating to 'diplomas, certificates and other evidence of formal qualifications enabling the holder to take up activities in the field of architecture'. The first group — in Chapter II — deals with the general scheme for activities in the profession. The second group — in Chapter III — regulates the transitional arrangements.

3. With respect to the general scheme, the directive does not list the diplomas which the Member States are to recognize. It merely defines the criteria as to content (Article 3) and length (Article 4) of the education and training which those diplomas must satisfy for recognition in Member States other than that in which they are awarded. Each State must communicate and update the list of diplomas which it considers meet those criteria, together with the establishments and authorities awarding them; lists and updates must be published by the Commission in the *Official Journal of the European Communities* and may, after the advisory committee has been consulted, be challenged before the Court of Justice.

4. The *open* system of the general scheme contrasts with a *closed* system of transitional arrangements for entry to activities in the field of architecture 'by virtue of established rights or existing national provisions'.

5. The directive was intended to take account here of the situation of Community nationals who had obtained or were about to obtain qualifications, 'even if those qualifications do not fulfil the minimum requirements' — in other words, all the criteria —

* Original language: French.

1 — Judgments in Case C-310/90 *Nationale Raad van de Orde van Architecten* v *Egle* [1992] ECR I-177 and Case C-166/91 *Bauer* v *Conseil National de l'Ordre des Architectes* [1992] ECR I-2797.

2 — OJ 1985 L 223, p. 15.

'laid down in Chapter II'. [3] There then follows, in Article 11, a list of those diplomas; the list is exhaustive and binding on each Member State, which 'shall recognize' [4] the diplomas on the list, any procedure for challenging them being excluded. As the Court held in the *Bauer* judgment, [5]

'The Member States are thus obliged to recognize those diplomas, without checking whether they meet the criteria laid down in Chapter II of the directive'. [6]

6. Because they set up a transitional system based on established rights, because they impose on the Member States, without any possibility of challenge, an obligation to recognize in their territory various diplomas awarded by other Member States even if they do not fulfil the minimum requirements, and because those diplomas are listed exhaustively, the provisions of Chapter III must be interpreted restrictively.

7. But that is not all. The diplomas listed in Article 11 are national qualifications. In respect of them, that article — unlike Articles 3 and 4 — does not create any Community concepts. It merely gives Community effect to national concepts.

8. That restricts the Court's power of interpretation even further. It must be borne in mind that the directive is the outcome of a long drafting process which is said to have lasted for 18 years. It may be presumed that that process involved detailed tight negotiations between Community institutions and Member States.

9. There can therefore be no question of adding, under the pretext of interpretation which moreover relates to a concept of national law, to the lists of national diplomas adopted by the Community legislature. Any other approach would amount to usurping the place of the legislature.

10. Those are the principles which should in my opinion be followed by the Court in the interpretation of the provisions of Chapter III and hence of Articles 13 to 15 of the directive. I have felt obliged to dwell on this point because those provisions provide the yardstick against which to measure the position of the plaintiff in the main proceedings, Mr Nicolas Dreessen.

11. Mr Dreessen, of Belgian nationality and residing in Belgium, was awarded on 16 February 1966, in Germany, a construction engineer's diploma in general building construction ('Ingenieur für Hochbau, Abteilung allgemeiner Hochbau') by the Aachen State Civil Engineering College (Staatliche Ingenieurschule für Bauwesen Aachen).

3 — Article 10.
4 — Ibid.
5 — Cited in note 1 above.
6 — Paragraph 9.

12. From August 1966 to December 1991 he worked as an employee in various architects' offices, and on 12 December 1991, after the insolvency of his last employer, he applied for his name to be placed on the register of the Architects' Association of the Province of Liège. His application was refused on 29 April 1993 by the National Council of the Architects' Association on the ground that his diploma was not equivalent to one of those referred to in the directive.

13. Mr Dreessen appealed against that decision to the French Language Appeals Committee of the Architects' Association, which asks the Court to interpret 'the expression "Architektur/Hochbau" department' in Article 11 of the directive 'and for a ruling on whether a diploma awarded in 1966 by the "Allgemeiner Hochbau" department of the "Staatliche Ingenieurschule für Bauwesen Aachen" must be treated as equivalent to a diploma awarded by the "Architektur" department for the purposes' of that article.

14. The significance of the question put to the Court is clearly apparent; a finding that Mr Dreessen's diploma is included in the list in Article 11 would oblige Belgium to recognize it.

15. I note to begin with that it is not for the Court give a direct answer to the second part of the question. It is in fact for the national tribunal to give that answer, in the light of the Court's interpretation of the relevant rule of Community law.

16. The wording of the question indicates that the Appeals Committee seeks to know whether Mr Dreessen's diploma can be regarded as one of those referred to in the third or fourth indent of Article 11(a).

17. As far as the third indent is concerned, I shall be brief. In his observations Mr Dreessen merely states that the Ingenieurschule which awarded him his diploma had become a Fachhochschule within the meaning of the directive. If that were accepted, it would nevertheless still be the case that in order to be recognized in Belgium, the diploma would have to have been awarded by the department of architecture, and Mr Dreessen does not claim that it was.

18. It is in fact the fourth indent of Article 11(a) of the directive which is at the heart of the issue.

19. That provision requires the Member States to recognize 'the diplomas (Prüfungszeugnisse) awarded before 1 January 1973 by the departments of architecture of "Ingenieurschulen"...'.

20. Mr Dreessen's diploma was awarded before 1 January 1973. It was awarded by an Ingenieurschule. The fact remains that it was awarded not by the 'Architektur' department, but by the 'Allgemeiner Hochbau' department.

21. To be sure, Mr Dreessen has produced certificates from the Architects' Association of North Rhine-Westphalia and the Ministry of Science and Research of North Rhine-Westphalia which state that his diploma fulfils the conditions in the fourth indent of Article 11(a). But those authorities cannot — any more than the Court can — add to the provisions of the directive, without taking the place of the Community legislature.

22. Consequently, if a diploma awarded before 1 January 1973 by an Ingenieurschule was not awarded by a department of architecture, its holder cannot claim the benefit of the fourth indent of Article 11(a) on that basis.

23. It was argued that before 1973 the Ingenieurschulen did not have departments of architecture and that, to make that provision meaningful, diplomas such as that awarded to Mr Dreessen should be taken into account under that head.

24. That argument fails to convince. Admittedly, every rule of Community law must have a meaning, but once again it is necessary to distinguish in Chapter III between what belongs to the Community sphere — such as the requirement in Article 10 that 'each Member State shall recognize ...' and the exhaustive nature of the list in Article 11 — and what depends on categories of national law, as is the case with the diplomas referred to in that provision.

25. Whether or not there were departments of architecture in the Ingenieurschulen before 1973 is no doubt of essential importance for the outcome of the main proceedings, but irrelevant from the point of view of the Court's function. If that designation was incorrect or incomplete, it was for the Member State in question, that is, the Federal Republic of Germany, to seek and obtain an amendment to the directive in order to correct that error or omission.

26. The Commission's representative stated at the hearing that no attempt had been made to do that. The Court cannot, by adopting a broad interpretation of a restrictive provision or even by analysing a concept of national law, take the place of the Community legislature or the Member State in question.

27. Mr Dreessen relied before the Appeals Committee on another provision of the directive, Article 12, which states that:

'Without prejudice to Article 10, each Member State shall recognize, by giving them as regards the taking up and pursuit under the professional title of architect of the activities referred in Article 1, the same effect within its territory as the diplomas, certificates and other evidence of formal architectural qualifications which it issues:

— certificates issued to nationals of Member States by Member States in which there are *regulations* at the time of notification of this Directive governing the taking up and pursuit of the activities referred to in Article 1 under the professional title of architect, stating that the holder has received authorization to bear the professional title of architect before the implementation of this Directive and has effectively exercised the activities in question under *such regulations* for at least three consecutive years during the five years preceding the issue of the certificate;

— ...'. [7]

28. The national tribunal observed that, according to his submissions, Mr Dreessen had pursued his professional activities since obtaining his diploma in Belgium exclusively, and considered that he could not rely on Article 12. It therefore did not ask the Court for an interpretation of that provision.

29. In his observations Mr Dreessen returns to that provision, and asks the Court for a ruling on it in order to provide the national tribunal with a proper answer.

30. Like the national tribunal, I consider that Article 12 is of no relevance in a situation such as the present one.

31. While that provision requires each Member State to give effect to a certificate issued to a Community national by another Member State relating to the exercise by that national of activities as an architect for a specified length of time, such a certificate — as is shown by the reference to '*such* regulations' [8] — can relate only to activities exercised in the territory of the State issuing the certificate.

7 — My emphasis.

8 — My emphasis.

32. Consequently, a Community national who has exercised his professional activities in one Member State exclusively cannot rely on any certificate which may have been issued by another Member State relating to such activities.

33. I therefore propose that the Court rule as follows:

Article 11 of 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 can be relied on only by Community nationals who hold the diplomas, certificates and other evidence of formal qualifications expressly and exhaustively listed in that provision. It follows that, for a Member State to be obliged to recognize it, a diploma awarded before 1 January 1973 by an Ingenieurschule must have been awarded by a department of architecture.