OPINION OF ADVOCATE GENERAL
LÉGER
delivered on 30 June 2005 [1]

1. When the competent authorities of a Member State receive an application from the holder of a diploma awarded in another Member State for authorisation to pursue a profession where the taking-up of that profession is subject to possession of a diploma, can those authorities restrict the scope of the authorisation they issue to the professional activities that are covered by the applicant's diploma in accordance with the regulations in force in the Member State of origin, and exclude the other activities comprising the profession in accordance with the regulations applicable in the host Member State? Should the reply to that question be in the affirmative, is the latter State free to preclude such a possibility?

2. Those are essentially the questions raised by the Tribunal Supremo (Supreme Court, Spain) in the context of a dispute between the competent Spanish authorities and an Italian national holding an Italian diploma in hydraulic engineering, who wishes to pursue the profession of civil engineer in Spain.

3. The Court is asked in this case to define the scope of the principle of the recognition of diplomas, as established in Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration [2] (hereinafter 'the Directive').

I — Legal background

A — *Community legislation*

4. The work of the Community legislature on the recognition of diplomas is marked by two different approaches, the one sectoral and the other general.

1 — Original language: French.

2 — OJ 1989 L 19, p. 16.

5. The sectoral approach, which was initially preferred, seeks, profession by profession, on the one hand to coordinate or approximate the conditions governing professional education and training (such as duration and content) and, on the other, to establish between the Member States a principle of automatic recognition of the diplomas contained in a list (set out in the relevant directive or established by the Member States in accordance with a method laid down in the directive in question). A number of directives were adopted to that effect between 1975 and 1985, covering six professions in the health sector and activities relating to architecture.

6. In view of the inherent length and complexity of this legislative method, a more general and flexible approach was preferred, in order to provide a more rapid response to the expectations of nationals of the Member States who wish to pursue a profession, in a self-employed capacity or as an employed person, in a Member State other than the one in which they were awarded their professional qualification.

7. This was the approach governing the adoption of Directive 89/48. The Directive applies to professions which are not the subject of a separate directive (establishing arrangements for the mutual recognition of diplomas for a specific profession) [3] and which are regulated in the host Member State (that is to say professions, the taking-up or pursuit of which, in a self-employed or employed capacity, is subject in that Member State to possession of a higher-education diploma), [4] provided that the diploma awarded in the Member State of origin shows that the holder has completed a course of study of at least three years' duration or other equivalent education and training. [5]

8. As the fifth recital in the preamble to the Directive indicates, Member States, in order to guarantee the quality of services provided in their territory, reserve the option of fixing the minimum level of qualifications required to pursue professions for which no such

3 — See the second paragraph of Article 2 of the Directive.

4 — The first paragraph of Article 2 of the Directive provides that it shall apply to any national of a Member State ('Community national' for short) wishing to pursue a regulated profession in a host Member State in a self-employed capacity or as an employed person. Article 1(c) of the Directive states that a regulated profession is to be understood as meaning 'the regulated professional activity or range of activities which constitute this profession in a Member State'. Article 1(d) defines a regulated professional activity as 'a professional activity, in so far as the *taking-up* or *pursuit* of such activity or one of its modes of pursuit in a Member State is subject, directly or indirectly by virtue of laws regulations or administrative provisions, to the possession of a diploma'. It adds that pursuit of an activity under a professional title constitutes a mode of pursuit of a regulated professional activity, in so far as the use of such a title is reserved to the holders of a certain diploma. A distinction must therefore be drawn between the taking-up of a professional activity and the pursuit of that activity. A professional activity is said to be regulated in respect of *taking up* where pursuit of the activity in general, irrespective of the mode of pursuit (for example, under a given professional title or formal qualification) is subject to the possession of a diploma. A professional activity is said to be regulated in respect of *pursuit* where pursuit of the activity in certain particular modes (such as the use of a specific professional title or formal qualification) after taking it up, is subject to possession of a diploma. On the significance of this distinction, see Pertek, J., 'Reconnaissance des diplômes organisée par des directives', Éditions du Juris-Classeur, 1998, fascicule 720, points 40 to 69 and 144 to 149.

5 — See Article 1(a) of the Directive, in conjunction with the third recital in the preamble.

requirement has been laid down in a specific directive. [6] However, according to the same recital those States may not require a national of a Member State to obtain those qualifications, which in general they determine only by reference to diplomas issued under their own national education systems, where the person concerned has already acquired all or part of those qualifications in another Member State and, as a result, any host Member State in which a profession is regulated is required to take account of qualifications acquired in another Member State and to determine whether those qualifications correspond to the qualifications which the Member State concerned requires.

9. The scope of that obligation is defined in Article 3 of the Directive as follows:

'Where, in a host Member State, the taking-up or pursuit of a regulated profession is subject to possession of a diploma, the competent authority may not, on the grounds of inadequate qualifications, refuse to authorise a national of a Member State to take up or pursue that profession on the same conditions as apply to its own nationals:

(a) if the applicant holds the diploma required in another Member State for the taking-up or pursuit of the profession in question in its territory, such diploma having been awarded in a Member State; or

(b) if the applicant has pursued the profession in question full-time for two years during the previous 10 years in another Member State which does not regulate that profession ... and possesses evidence of one or more formal qualifications:

— which have been awarded by a competent authority in a Member State ...,

— which show that the holder has successfully completed a post-secondary course of at least three years' duration, or of an equivalent duration part-time, at a university or establishment of higher education or another establishment of similar level ..., and

— which have prepared the holder for the pursuit of his profession'.

6 — Similarly, the 10th recital in the preamble to the Directive specifies that it 'is intended neither to amend the rules, including those relating to professional ethics, applicable to any person pursuing a profession in the territory of a Member State nor to exclude migrants from the application of those rules; [it] is confined to laying down appropriate arrangements to ensure that migrants comply with the professional rules of the host Member State'.

10. In establishing this principle on the mutual recognition of diplomas, the Directive strengthens the right of a Community national to use his professional skills in any Member State and, consequently, supplements and reinforces his right to acquire such skills wherever he wishes. [7]

11. That principle being established, Article 4(1) of the Directive specifies that '[n]otwithstanding Article 3, the host Member State may also require the applicant:

(a) to provide evidence of professional experience, where the duration of the education and training adduced in support of his application, as laid down in Article 3(a) and (b), is at least one year less than that required in the host Member State ...

...

(b) to complete an adaptation period [8] not exceeding three years or take an aptitude test: [9]

— where the matters covered by the education and training he has received as laid down in Article 3(a) and (b), differ substantially from those covered by the diploma required in the host Member State, or

— where, in the case referred to in Article 3(a), the profession regulated in the host Member State comprises one or more regulated professional activities which are not in the profession pursued by the applicant in the Member State from which he originates or comes, and that difference corresponds to specific education and training required in the host Member State and covers matters which differ substantially from those covered by the evidence of formal qualifications adduced by the applicant ...'

7 — See 13th recital in the preamble.

8 — Article 1(f) of the Directive defines the adaptation period as the pursuit of a regulated profession in the host Member State under the responsibility of a qualified member of that profession, such period of supervised practice possibly being accompanied by further training.

9 — Article 1(g) of the Directive defines the aptitude test as a test limited to the professional knowledge of the applicant, made by the competent authorities of the host Member State with the aim of assessing the ability of the applicant to pursue a regulated profession in that Member State. In order to permit this test to be carried out, the competent authorities must draw up a list of subjects which, on the basis of a comparison of the education and training required in the Member State and that received by the applicant, are not covered by the diploma or other evidence of formal qualifications possessed by the applicant. The aptitude test shall cover subjects to be selected from those on the list, knowledge of which is essential in order to be able to exercise the profession in the host Member State.

12. The second subparagraph of Article 4 (1)(b) of the Directive lays down the rule that '[s]hould the host Member State make use of this possibility, it must give the applicant the right to choose between an adaptation period and an aptitude test'. The ninth recital in the preamble to the Directive emphasises the value of these measures: '... the effect of both [the adaptation period and the aptitude test] will be to improve the existing situation with regard to the mutual recognition of diplomas between Member States and therefore to facilitate the free movement of persons within the Community; ... their function is to assess the ability of the migrant, who is a person who has already received his professional training in another Member State, to adapt to this new professional environment'.

13. Article 7 of the Directive defines the scope of the rights conferred on the applicant by the host Member State as a result of the recognition of his qualifications. Paragraphs 1 and 2 of that article require the competent authorities of host Member States to recognise the right of nationals of Member States who fulfil the conditions for the taking-up and pursuit of a regulated profession in their territory to use the professional title of the host Member State corresponding to that profession and the right to use their lawful academic title and, where appropriate, the abbreviation thereof deriving from their Member State of origin, in the language of that State. In that case, it is specified that the host Member State may require this title to be followed by the name and location of the establishment or examining board which awarded it.

14. Similar provisions are laid down in Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48. [10] Directive 92/51 applies, subject to the existence of a separate directive, to professions, the taking-up or pursuit of which is subject in the host Member State to possession of a higher-education diploma, provided that the holder of the diploma awarded in the Member State of origin has completed a post-secondary course of study of one to three years' duration or other equivalent education and training.

B — *National legislation*

15. The order for reference shows that the Directive was transposed in Spain by Royal Decree No 1665/1991 of 25 October 1991. [11]

16. To be precise, Article 4(1) of that Decree transposes Article 3(a) of the Directive as follows: 'For the purpose of taking up the activities of a regulated profession, a diploma obtained in another Member State shall be recognised in Spain, and shall have the same

10 — OJ 1992 L 209, p. 25.

11 — BOE No 280 of 22 November 1991, p. 37916.

effect as the equivalent Spanish diploma, where such diploma authorises the holder to pursue the same profession in the Member State concerned.'

17. In addition, Article 5(b) of the Decree provides, in accordance with Article 4(1)(b) of the Directive, that the applicant shall have the right to choose either to take an aptitude test or to complete an adaptation period in cases in which the matters covered by the education and training received by him differ substantially from those covered by the Spanish diploma required, or where the corresponding profession in Spain comprises one or more professional activities which are not in that profession in the Member State of origin and that difference corresponds to specific education and training required under the applicable Spanish provisions and covers matters which differ substantially from those covered by the qualifications adduced by the applicant. [12]

18. It is also apparent from the order for reference that the profession of civil engineer is regulated in Spain inasmuch as the taking-up or pursuit of the profession is subject to possession of a diploma in civil engineering. [13] The post-secondary education and training required for the award of that diploma is of six years' duration. [14]

19. In Spain, the profession covers a wide range of activities, including the design and construction of hydraulic installations, land, sea and inland waterway transport infrastructures, conservation of beaches, environmental protection, and town and country planning, including town planning. [15]

II — Facts and procedure

20. On 27 June 1996, Mr Guiliano Mauro Imo, an Italian national, applied to the competent Spanish authority (i.e. the Ministry of Development) for recognition of his Italian diploma in hydraulic engineering, in

12 — See order for reference (French version, pp. 8 and 9, English version, pp. 7 and 8) and observations submitted by the Spanish Government, p. 3.

13 — See order for reference (French version, pp. 8 and 10, English version, pp. 7 and 9). The referring court does not explain exactly how the profession of civil engineer is regulated in Spain. However, as the *taking-up* of that profession is apparently subject to the possession of a diploma in civil engineering, I assume that the *pursuit* of that profession under the professional title of civil engineer is likewise subject to possession of such a diploma. Indeed, regulation of the taking-up of a profession is generally associated with regulation of the pursuit of that profession. See Pertek, J., op. cit., point 53.

14 — See order for reference (French version, p. 2, English version, p. 2).

15 — Ibid. (French version, p. 8, English version, pp. 7 and 8).

order to take up the profession of civil engineer in Spain.[16]

21. In the course of its examination of this application, the Ministry of Development consulted other ministries (the Ministry of the Environment and the Ministry of Education and Culture) and also the Colegio de Ingenieros de Caminos, Canales y Puertos (Association of Civil Engineers, hereinafter referred to as the 'Colegio').

22. After comparing the education and training which the applicant received in Italy to obtain his diploma in hydraulic engineering, with the education and training in coastal engineering given in Spain to candidates for the diploma in civil engineering, the Ministry of the Environment (or, to be precise, the Department of Coastlines) found that there were certain differences between the two types of education and training. It therefore concluded that, before his diploma could be recognised in Spain, the applicant would first have to complete an adaptation period or take an aptitude test.

23. Similarly, the Colegio considered that there were significant gaps in the applicant's academic training (notably in relation to environmental, sanitation and bridge engineering) which, combined with his lack of professional experience, would make it inappropriate to recognise his diploma.

24. The Ministry of Education and Culture did not reply to the request for consultation that had been addressed to it. However, according to the order for reference, in other cases similar to the case at issue in the main proceedings, that ministry had taken the view that possession of the Italian diploma in hydraulic engineering was sufficient to entitle the holder to take up the profession of civil engineer in Spain, and that there was no need to require him to complete an adaptation period or pass an aptitude test first.[17]

25. Finally, by order of 4 November 1996, the Ministry of Development recognised the applicant's diploma and granted him permission to take up the profession of civil engineer in Spain.

16 — The referring court states that the person concerned applied to 'pursue' the profession of civil engineer in Spain. However, it seems that his primary intention was to take up the profession in question in that Member State, within the meaning of the Directive, rather than to pursue it in a specific form after he had taken it up (for example, by using the professional title of civil engineer). For the purposes of examining this case, I therefore assume that the main proceedings are concerned with the taking-up of the profession in question, within the meaning of the Directive, rather than the pursuit of that profession. That is the sense in which I shall understand the factual and procedural data set out in the order for reference and the questions for preliminary ruling appended to that order.

17 — See order for reference (French version, p. 4, English version, p. 4).

26. The Colegio brought an action for the annulment of that order before the Audiencia Nacional (National High Court) responsible for contentious administrative proceedings. In support of its application, it claimed, on the one hand, that the education and training which Mr Imo had received in Italy was not equivalent to the education and training required in Spain to take up the profession of civil engineer and, on the other, that the profession of civil engineer in the latter Member State comprises activities which are not included in the profession of hydraulic engineer in the former Member State.

27. The action was dismissed in a judgment delivered on 1 April 1998, on the ground, first, that the Italian diploma in hydraulic engineering qualifies the holder to take up in Italy the profession which corresponds to that of civil engineer in Spain and, second, that the education and training received by the holder of such a diploma includes the core subjects required in the latter Member State in regard to the profession of civil engineer.

28. The Colegio brought an appeal against that judgment before the Tribunal Supremo (Supreme Court). In support of its appeal, it again maintains, on the one hand, that the profession of civil engineer (in Spain) is different from that of hydraulic engineer (in Italy) and, on the other, that that difference in activities results in a significant difference in education and training. There are, it says, gaps in the education and training which the person concerned received in Italy, even in relation to coastal engineering, the only one of the many core subjects in the Spanish civil engineering course that he had studied. Thus, according to the Colegio, the matters covered in the Spanish course differ substantially from those covered by Mr Imo in the course he followed in Italy.

29. That being so, while the Colegio objects to the proposal that the person concerned be permitted to take up all the activities relating to the profession of civil engineer, it does not object to his being permitted to take up only that part of those activities, in the field of hydraulic engineering, which corresponds to the activities covered by his diploma.

III — The questions referred by the national court

30. In the light of the arguments advanced by the parties in the main proceedings, the Tribunal Supremo decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

'(1) Can Article 3(a), in conjunction with Article 4(1), of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on com-

pletion of professional education and training of at least three years' duration be construed in such a way as to permit restricted recognition by a host Member State of the professional qualifications of an applicant who possesses the diploma of Ingegnere civile idraulico [civil engineer specialising in hydraulics] (awarded in Italy) and who wishes to pursue that profession in another Member State whose legislation regulates the profession of Ingeniero de Caminos, Canales y Puertos [civil engineer]? The question is based on the assumption that, in the host Member State, the latter profession includes activities that do not always correspond to the applicant's diploma and that the education and training attested by that diploma does not include certain core subjects which are generally required in order to obtain the qualification of Ingeniero de Caminos, Canales y Puertos (civil engineer) in the host Member State.

(2) Should the reply to the first question be in the affirmative, is it compatible with Articles 39 and 43 EC to restrict the right of applicants who seek to pursue their professions, in a self-employed or employed capacity, in a Member State other than the one in which they were awarded their professional qualification, in such a way that the host Member State is entitled to exclude, under its national legislation, restricted recognition of professional qualifications where such a decision, which in principle implements Article 4 of Directive 89/48/EEC, entails the imposition of certain additional, disproportionate requirements as regards pursuit of the profession?'

31. The referring court took care to explain that the expression 'restricted recognition of professional qualifications' (employed in both questions) is understood to mean that which authorises an applicant to work as an engineer only in the equivalent sector (hydraulics) of the more general profession of Ingeniero de Caminos, Canales y Puertos (civil engineer) regulated in the host Member State, without requiring him to fulfil the additional requirements laid down in the first subparagraph of Article 4(1)(b) of the Directive. [18]

32. The Tribunal Supremo also took care to point out that the case in the main proceedings is precisely within the scope of the illustrative case referred to in the second indent of the first subparagraph of Article 4(1)(b) of the Directive. [19]

18 — See order for reference (French version, p. 14, English version, pp. 12 and 13).

19 — Ibid. (French version, pp. 10 and 11, English version, pp. 9 and 10).

IV — Analysis

33. I shall examine the first question first and the second question, if necessary, after that.

A — *The first question*

34. By its first question, the referring court seeks, essentially, to ascertain whether the combined provisions of Article 3(a) and the second indent of the first subparagraph of Article 4(1)(b) of the Directive preclude the competent authorities of a Member State, when they receive an application from the holder of a diploma awarded in another Member State for permission to take up a profession, the taking-up or pursuit of which is subject in that host Member State to possession of a diploma, from partly admitting such an application, if the person concerned agrees, by waiving the obligation to complete an adaptation period or take an aptitude test and restricting the scope of the permission they grant accordingly to cover only those activities of that profession which the applicant's diploma entitles him to take up in accordance with the regulations in force in the Member State in which it was awarded, and to exclude the other activities covered by that profession in accordance with the regulations applicable in the said host Member State.

35. I note, first of all, that it is common ground in the context of the main proceedings that the system for the recognition of diplomas is the system established by the Directive. There is no separate directive on the profession of engineer. [20] I also assume that the Directive alone is applicable, not Directive 92/51, inasmuch as the diploma for which recognition is sought is apparently awarded on completion of a course of study exceeding three years. [21]

36. I also assume that, in Italy, the profession of hydraulic engineer is a regulated profession within the meaning of the Directive and that Article 3(a) and the second indent of the first subparagraph of Article 4(1)(b) thereof are consequently applicable in the context of the main proceedings. [22]

37. These points being established, I shall examine the first question, considering the wording of those provisions of the Directive,

20 — It seems that the idea of adopting a separate directive on the profession of engineer was mooted as early as 1969 but came to nothing. See, in this connection, Hamelin, R., 'La proposition de directive relative au titre d'ingénieur', *L'enseignement supérieur et la dimension européenne*, Economica, 1989, pp. 31 to 41.

21 — According to the information given by the Colegio before the referring court, the education and training in engineering adduced by the applicant is of five years' duration (see order for reference (French version, p. 1, English version, p. 2)). See also, to the same effect, Hamelin, R., op. cit., p. 33.

22 — Otherwise, I should point out that Article 3(b) (not Article 3(a)) and Article 4(1)(a) or the first or third indent of the first subparagraph of Article 4(1)(b) of the Directive would apply (the third indent essentially reproducing the second).

the general system of the Directive, and the aim pursued by the Directive, in that order.

1. The wording of Article 3(a) and the second indent of the first subparagraph of Article 4(1)(b) of the Directive

38. I note that Article 3(a) of the Directive provides that '[w]here, in a host Member State, the taking-up or pursuit of *a regulated profession* is subject to possession of a diploma, the competent authority may not, on the grounds of inadequate qualifications, refuse to authorise a national of a Member State to take up or pursue that profession on the same conditions as apply to its own nationals ... if the applicant holds the diploma required in another Member State for the taking-up or pursuit of *the profession in question* in its territory, such diploma having been awarded in a Member State ...'. [23]

39. I also note that the second indent of Article 4(1)(b) of the first subparagraph of the Directive provides that '[n]otwithstanding Article 3, the host Member State may also require the applicant ... to complete an adaptation period not exceeding three years or take an aptitude test ... *where, in the case referred to in Article 3(a), the profession regulated in the host Member State comprises one or more regulated professional activities which are not in the profession regulated in the Member State from which the applicant originates or comes* and that difference corresponds to specific education and training required in the host Member State and covers matters which differ substantially from those covered by the evidence of formal qualifications adduced by the applicant ...'. [24]

40. It follows from these provisions, taken together, that the illustrative case referred to in Article 3(a) (and mentioned in the second indent of the first subparagraph of Article 4(1)(b)) of the Directive is not restricted to cases where the profession regulated in the host Member State and that regulated in the Member State of origin are strictly identical in the sense that their respective ranges of activities coincide completely. Thus the expression 'the profession in question', employed in Article 3, covers not only cases where the two professions are identical but also cases where they are merely similar. [25]

41. Thus, in my view, Article 3(a) of the Directive merely precludes the competent authorities of the host Member State from refusing to authorise a Community national

23 — My emphasis.

24 — Idem.

25 — See, to this effect, *Le Petit Robert — Dictionnaire de la langue française*, Dictionnaires Le Robert, Paris, 1999, where the indefinite adjective 'même' ('same', rendered as 'in question' in the English version of Artice 3(a) of the Directive) is defined as denoting absolute identity or mere similarity.

to take up or pursue a regulated profession solely on the ground that he does not possess the requisite national diploma, when he has been awarded in another Member State the diploma which is required there to take up a profession identical or similar to the one he intends to take up in the host Member State or to pursue a profession identical or similar to the one he wishes to pursue in that State. That prohibition is subject to the condition that the host Member State may in certain circumstances require the person concerned to complete an adaptation period or take an aptitude test in accordance with Article 4(1)(b) of the Directive, to assess the applicant's ability to take up or pursue the profession in question in the host Member State.

42. Thus, for example, the competent authorities of a host Member State may not refuse to authorise a Community national who holds a diploma in engineering or accountancy to take up the professions of engineer or accountant solely on the ground that the diploma in question was awarded in another Member State, when that diploma entitles him to take up the profession of engineer or accountant in that State, subject to the condition that the said authorities may require the person concerned to complete an adaptation period or take an aptitude test where the profession of engineer or accountant, as regulated in the host Member State, covers a wider range of activities than that covered by the profession in the Member State of origin and that difference in activities results in a substantial difference in education and training.

43. On the other hand, there is nothing in the wording of Article 3(a) or the second indent of the first subparagraph of Article 4(1)(b) of the Directive to prevent the said authorities from refusing, for example, to authorise a Community national who holds a diploma in accountancy awarded in another Member State to take up the profession of engineer, since the two professions are not at all comparable in terms of activities and there is consequently no reason to impose an adaptation period or an aptitude test. In fact, these professions are so different that the transition from one to the other would require the person concerned to undertake another course of education and training, completely different from the course he had taken before.

44. Nor, in my view, does the wording of the provisions in question preclude the competent authorities of the host Member State from authorising a Community national, if he agrees, to take up only part of the range of activities covered by the regulated profession which he wishes to take up in that Member State (such as the profession of engineer in Spain), where that part corresponds to the professional activities which the person concerned is entitled to take up in the Member State of origin by virtue of his

diploma (such as the activities corresponding to the Italian diploma in hydraulic engineering), without being required to complete an adaptation period or take an aptitude test.

45. Such a decision on authorisation is not tantamount to refusing to authorise a Community national to take up any of the activities covered by a regulated profession in the host Member State (such as the profession of civil engineer in Spain) solely on the ground that the person concerned does not possess the requisite national diploma (such as the Spanish diploma in civil engineering), where he has been awarded in another Member State the diploma required in that State to take up a similar profession (such as the profession of hydraulic engineer). It follows that the said decision is not contrary to the wording of Article 3(a) of the Directive.

46. That conclusion is still correct, even if the decision in question is tantamount to refusing to authorise the person concerned to take up some of the activities covered by the regulated profession in the host Member State, namely the activities which he is not entitled to take up in the Member State of origin by virtue of his diploma (such as the civil engineering activities which are not in the special field of hydraulic engineering).

47. To assume that the prohibition contained in Article 3(a) of the Directive applies equally to any refusal to authorise the taking-up of all or some of the activities covered by a regulated profession in the host Member State would be tantamount to conferring on that article a much wider scope than the Community legislature probably intended. Had that been its intention (an assumption which I do not accept), it would most probably have taken care to say so explicitly (in Article 3 or in one of the recitals in the preamble to the Directive), since that article is the keystone of the general system for the recognition of diplomas established by the Directive. However, there is no such explicit statement on this point.

48. Admittedly, the prohibition contained in Article 3 of the Directive applies specifically to refusal to authorise the taking-up of a regulated profession in the host Member State 'on the same conditions as apply to its own nationals'. That expression could be taken to mean that the competent authorities of that State have no alternative but to authorise the taking-up of the profession in question in its entirety, that is to say all the activities covered by that profession in the said State, with the result that there would be no possibility of authorising or refusing to authorise the partial taking-up of such a profession, that is to say restricting such a decision to some of the said activities.

49. However, in my view, it would be unreasonable to draw such a conclusion. The expression merely makes it clear, with regard to the taking-up of a regulated

profession, that the competent authorities of the host Member State may not discriminate in any way against a national of a Member State by refusing to authorise him to take up a certain profession solely on the ground that he does not possess the requisite national diploma, when he has been awarded in another Member State the diploma which is required there to take up an identical or similar profession.

50. The expression in question merely reflects the principle of mutual confidence between the Member States underlying the system for the recognition of diplomas established by the Directive, according to which 'a diploma is not recognised on the basis of the intrinsic value of the education and training to which it attests, but because it gives the right to take up a regulated profession in the Member State where it was awarded ...'. [26]

51. Thus, the fifth recital in the preamble to the Directive states, to the same effect and in the same terms as Article 3 of the Directive, that Member States 'may not ... require a national of a Member State to obtain those qualifications which in general they determine only by reference to diplomas issued under their own national education systems, where the person concerned has already acquired all or part of those qualifications in another Member State [and], as a result, any host Member State in which a profession is regulated is required to take account of qualifications acquired in another Member State and to determine whether those qualifications correspond to the qualifications which the Member State concerned requires'.

52. In so doing, the Directive is merely drawing the necessary conclusions from the case-law of the Court on the mutual recognition of professional qualifications, the principles of which were set out in the judgment in *Vlassopoulou*. [27]

53. I therefore conclude that the wording of Article 3(a) does not preclude the competent authorities of the host Member State from delivering a decision granting partial authorisation to take up a regulated profession in its territory, that is to say authorisation restricted to the professional activities which the person concerned is entitled to take up in the Member State in which he was awarded his diploma.

26 — Case C-102/02 *Beuttenmüller* [2004] ECR I-5405, paragraph 52.

27 — Case C-340/89 [1991] ECR I-2357, paragraph 16. See also, to the same effect, Case C-234/97 *Fernández de Bobadilla* [1999] ECR I-4773, paragraphs 29 to 31, Case C-238/98 *Hocsman* [2000] ECR I-6623, paragraphs 21 to 24, Case C-31/00 *Dreessen* [2002] ECR I-663, paragraph 31, and Case C-232/99 *Commission* v *Spain* [2002] ECR I-4235, paragraph 21. According to that case-law, it follows from Article 43 EC that the authorities of a Member State, when considering a request by a national of another Member State for authorisation to exercise a regulated profession, must take into consideration the professional qualification of the person concerned by making a comparison between the qualifications certified by his diplomas, certificates and other formal qualifications and by his relevant professional experience and the professional qualifications required by the national rules for the exercise of the profession in question.

54. In my view, this analysis is not inconsistent with the wording of the second indent of the first subparagraph of Article 4(1)(b) of the Directive which, I note, expressly mentions the case referred to in 'Article 3(a)', that is to say the case referred to in Article 3(a) of the said Directive.

55. I note that those provisions of Article 4 merely entitle the host Member State to make the grant of authorisation to take up (or pursue) activities covered by a regulated profession subject to completion by the applicant of an adaptation period or an aptitude test, where the education and training he has acquired to obtain the diploma awarded by another Member State differ substantially from the education and training required in the said host Member State and accordingly result in a difference between the range of activities covered by the similar profession which the person concerned is entitled to take up in the Member State where he was awarded his diploma, on the one hand, and the range of activities covered by the profession which he wishes to take up in the host Member State, on the other.

56. The imposition of such requirements on the applicant is merely an option, not an obligation which the host Member State is automatically required to impose, and the wording of Article 4 of the Directive therefore does not preclude the competent authorities of that State from waiving such requirements in certain circumstances.

57. Moreover, the sole aim of these optional requirements is to assess the applicant's ability to adapt to the new professional environment in which he wishes to take up his profession, where the education and training he followed to obtain his diploma did not prepare him for that environment. [28] It follows that those requirements would not be justified in cases where the person concerned is authorised to take up, in the host Member State, only the activities which are covered by the profession which his diploma entitles him to take up in the Member State of origin, for which, it is to be presumed, the education and training he followed to obtain his diploma have already prepared him.

58. Moreover, Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained [29] establishes the principle that any lawyer is entitled to pursue on a permanent basis, in a host Member State under his home-country professional title, the same professional activities as a lawyer practising under the relevant professional title used in that State, unless that State excludes lawyers who have obtained their professional title in another Member

28 — I note that this function of the adaptation period or aptitude test is defined in the ninth recital in the preamble to the Directive and in Article 1(f) and (g) of the Directive.

29 — OJ 1998 L 77, p. 36.

State from taking up certain activities which are covered by the profession of lawyer in the territory of the host Member State but which, in other Member States, are reserved for professions other than that of lawyer. [30]

59. Thus, under Directive 98/5 a Member State may refuse to authorise a Community national who has obtained his qualifications in another Member State to take up certain activities covered by the profession of lawyer in the host Member State, where that category of activities is not within the range of activities covered by that profession in another Member State. This situation may be compared to the situation referred to in the second indent of the first subparagraph of Article 4(1)(b) of the Directive.

60. However, Directive 98/5 does not seek to replace the Directive (with regard to the profession of lawyer) but to complement it by recognising the right of lawyers who have obtained their professional qualification in another Member State and who do not wish to take the aptitude test specified in Article 4 of the Directive, to achieve integration into that profession in the host Member State after a certain period of professional practice in that State under their home-country professional titles. [31]

30 — See Article 2, in conjunction with Article 5(1) and (2). The activities in question consist of preparing deeds for obtaining title to administer estates of deceased persons and for creating or transferring interests in land.

31 — This follows from the second, third and fifth recitals in the preamble to Directive 98/5.

61. This brief survey of Directive 98/5 confirms me in my view that neither the wording of Article 3(a) nor that of the second indent of the first subparagraph of Article 4(1)(b) of the Directive preclude the competent authorities of the host Member State from authorising a Community national, if he agrees, to take up only part of the range of activities covered by a regulated profession in that Member State, where that part corresponds to the professional activities which the person concerned is entitled to take up in the Member State of origin by virtue of his diploma, without being required to complete an adaptation period or take an aptitude test.

62. In my view, that interpretation is not called into question by the general system of the Directive.

2. The general system of the Directive

63. In my view, no other provision of the Directive precludes the competent authorities of the host Member State, if the applicant agrees, from granting him such partial authorisation to take up a regulated profession in its territory and waiving the obligation to complete an adaptation period or take an aptitude test.

64. Admittedly, as we know, Article 7(1) of the Directive requires the competent authorities of host Member States to recognise the right of nationals of Member States who fulfil the conditions for the taking-up and pursuit of a regulated profession in their territory to use the *professional title of the host Member State* corresponding to that profession.

65. Those provisions express the concern of the Community legislature to make it easier, in the host Member State, for nationals of other Member States who obtained their diplomas in those States to be treated in the same way as nationals of the host Member State who acquired their professional qualifications in that State. That concern is bound up with the objective pursued by the Directive which, as we shall see, is to make it easier for European citizens to practise a profession, the taking-up or pursuit of which depends in the host Member State on the acquisition of post-secondary education and training.

66. That being so, while the competent authorities of the host Member State are required, by virtue of those provisions, to recognise the right of those nationals to use the professional title corresponding to the regulated profession in question in the territory of that State, they are in my view only required to do so if the persons concerned fulfil all the conditions for the taking-up and pursuit of that profession applicable in that State.

67. I infer from this that Article 7(1) of the Directive does not preclude the competent authorities of the host Member State, in cases where the persons concerned do not fulfil all the conditions for taking up the regulated profession in question in that State (in particular, the requirement to complete an adaptation period or take an aptitude test), from authorising those persons, if they wish, to take up only part of the activities covered by that profession (those which they are entitled to take up in their Member State of origin), not all those activities, or from authorising them accordingly to use the professional title corresponding to that profession in order, in particular, to avoid any confusion in the minds of consumers who might make use of their services in the territory of the said host Member State.

68. This is particularly so since, even in cases where nationals of Member States fulfil all the conditions for the taking-up and pursuit of a regulated profession in the territory of the host Member State (after completing an adaptation period or taking an aptitude test, for example), the persons concerned are not necessarily required to practise that profession under the corresponding title in the host Member State when they fulfil all the conditions for the taking-up and pursuit of all the activities covered by that profession under that professional title. This follows from Article 7(2) of the Directive.

69. The Community legislature took care to require the competent authorities of the host Member State to recognise the right of nationals of Member States who fulfil all the conditions for the taking-up and pursuit of a regulated profession in their territory to use *their lawful academic title* (as distinct from their professional title) and, where appropriate the abbreviation thereof *deriving from their Member State of origin*, in the language of that State. The prospect of these nationals being treated in the same way as nationals of the host Member State is even less automatic in that Article 7(2) of the Directive also provides that 'the host Member State may require this title to be followed by the name and location of the establishment or examining board which awarded it'.

70. It follows that the general system of the Directive does not preclude the competent authorities of the host Member State from granting an applicant, if he agrees, partial authorisation to take up the activities covered by a regulated profession in that State, with the result that the applicant will not be treated in exactly the same way as the holder of a diploma awarded in that State for taking up that profession.

71. That conclusion applies *a fortiori*, as we shall now see, to the examination of the objective pursued by the Directive.

3. The purpose of the Directive

72. As the Court has repeatedly emphasised, it is clear from Article 57(1) of the EC Treaty (now, after amendment, Article 47(1) EC) that the purpose of the directives, such as the Directive, adopted on the basis of that article, is to make it easier for persons to take up and pursue activities as self-employed persons by establishing rules and common criteria leading to the most extensive mutual recognition possible of diplomas, certificates and other evidence of formal qualifications. [32] This applies equally to the taking-up and pursuit as an employed person of the activities covered by the Directive.

73. I note, in this connection, that the third recital in the preamble to the Directive emphasises that 'in order to provide a rapid response to the expectations of nationals of Community countries who hold higher-education diplomas awarded on completion of professional education and training issued in a Member State other than that in which they wish to pursue their profession, another method of recognition of such diplomas [other than the method of the sectoral directives so far adopted] should also be put in place such as to enable those concerned to pursue all those professional activities which in a host Member State are dependent on the completion of post-

32 — See, in particular, *Hocsman*, paragraph 32, *Dreessen*, paragraph 26, and *Commission* v *Spain*, paragraph 19.

secondary education and training, provided they hold such a diploma preparing them for those activities awarded on completion of a course of studies lasting at least three years and issued in another Member State'.

74. In so doing, as the 13th recital in the preamble points out, the system established by the Directive, 'by strengthening the right of a Community national to use his professional skills in any Member State, supplements and reinforces his right to acquire such skills wherever he wishes'.

75. It follows that, far from precluding a mechanism such as authorisation to take up some of the activities covered by a regulated profession in the host Member State (without the person concerned being required to complete an adaptation period or take an aptitude test where that State imposes such a requirement), on the contrary, the aim of making it easier for persons to take up and pursue activities in a self-employed or employed capacity, pursued by the Directive, supports the case for admitting such a mechanism.

76. An adaptation period may last up to three years, under the terms of the first subparagraph of Article 4(1)(b) of the Directive. To dispense with such a period clearly represents a significant, even decisive, saving of time for a national of a Member State who wishes to take up a regulated profession in the host Member State, especially if he only wishes to take up the activities of that profession which he is already entitled to take up or which he has already taken up in the Member State in which he obtained his diploma. Such a requirement may seriously discourage the person concerned from opting for an adaptation period or completing it, especially as his efforts may come to nothing.

77. This also applies to the aptitude test since, although it is defined in Article 1(g) of the Directive and constitutes in principle another compensatory measure, which the person concerned has the right to choose, it is generally admitted that this requirement is such as to strongly dissuade him from contemplating the step of professional migration to a Member State other than the one in which he obtained his diploma, especially if it is a matter of pursuing in that other State exactly the same activities as he had been pursuing up to that time. [33]

33 — See, to that effect, the report of 15 February 1996 by the Commission of the European Communities to the European Parliament and the Council on the state of application of the general system for the recognition of higher education diplomas, made in accordance with Article 13 of Directive 89/48/EEC (COM(1996) 46 final, pp. 14, 15 and 21). See also, Parkins, N., 'Directive 89/48/CEE: progrès sur la voie de la mise en œuvre', *Reconnaissance générale des diplômes et libre circulation des professionnels*, Institut Européen d'Administration Publique, 1992, pp. 47 and 48.

78. In the light of all these developments, I consider that the reply to the first question should be that the combined provisions of Article 3(a) and the second indent of the first subparagraph of Article 4(1)(b) of the Directive do not preclude the competent authorities of a Member State, when they receive an application from the holder of a diploma awarded in another Member State for permission to take up a profession, the taking-up or pursuit of which is subject in that host Member State to possession of a diploma, from partly admitting such an application, if the person concerned agrees, by waiving the obligation to complete an adaptation period or take an aptitude test and restricting the scope of the permission they grant accordingly to cover only those activities of that profession which the applicant's diploma entitles him to take up in accordance with the regulations in force in the Member State in which it was awarded, and to exclude the other activities covered by that profession in accordance with the regulations applicable in the said host Member State.

B — *The second question*

79. By its second question, the referring court seeks, essentially, to ascertain whether Articles 39 and 43 EC are to be interpreted as meaning that a host Member State may not, in those circumstances, preclude its competent authorities from granting permission to take up part of the activities covered by a regulated profession in its territory, such as the profession of civil engineer, on the ground that, according to the definition of that profession adopted by the said host Member State in its national regulations, the activities covered by that profession are inseparable, with the result that authorisation to take up the profession would necessarily have to extend to all the activities it covers.

80. In my view, a number of factors suggest that the reply to that question should be in the affirmative.

81. Admittedly, the second paragraph of Article 43 EC provides that freedom of establishment is to be exercised under the conditions which the legislation of the country of establishment lays down for its own nationals. It follows that, where the taking-up or pursuit of a specific activity is subject to such conditions in the host Member State, a national of another Member State intending to pursue that activity must in principle comply with those conditions. [34]

34 — See, in particular, Case C-55/94 *Gebhard* [1995] ECR I-4165, paragraphs 33 to 36, and Case C-108/96 *Mac Quen and Others* [2001] ECR I-837, paragraph 25.

82. That being so, while it is true that, in the absence of harmonisation of the conditions for taking up the activities of engineer at issue in the main proceedings, the Member States alone remain, in principle, competent to define such conditions, in accordance with settled case-law they must none the less, when exercising their powers in this area, respect the basic freedoms guaranteed by the Treaty, such as those enshrined in Articles 39 and 43 EC. [35]

83. According to the Court's case-law, however, national measures liable to hinder or make less attractive the exercise of fundamental freedoms guaranteed by the Treaty, such as those enshrined in Articles 39 and 43 EC, can be justified only if they fulfil four conditions: they must be applied in a non-discriminatory manner; they must be justified by overriding reasons based on the general interest; they must be suitable for securing the attainment of the objective which they pursue; and they must not go beyond what is necessary in order to attain that objective. [36]

84. Where a regulation of a host Member State, in defining the scope of the activities covered by a regulated profession in its territory, has the effect of precluding the competent authorities of that State from granting permission to take up part of the activities covered by that profession, it is clear that that regulation (such as the regulation at issue in the main proceedings) is liable to hinder or make less attractive the exercise of freedom of movement and freedom of establishment.

85. While it is true that that regulation applies without distinction to nationals of the host Member State and to those of other Member States, I find it difficult to see how it can be justified by overriding reasons based on a general interest, such as the protection of consumers.

86. I am not convinced that, as the national regulation at issue in the main proceedings provides, all the activities covered by the profession of civil engineer form an inseparable whole, with the result that it is impossible to separate the activity of hydraulic engineer from the other activities covered by the said profession.

35 — See, in particular, Joined Cases C-193/97 and C-194/97 *De Castro Freitas and Escallier* [1998] ECR I-6747, paragraph 23, Case C-58/98 *Corsten* [2000] ECR I-7919, paragraph 31, and *Mac Quen and Others*, paragraph 24.

36 — See, in particular, on the free movement of persons, Case C-19/92 *Kraus* [1993] ECR I-1663, paragraph 32, and, on freedom of establishment, *Gebhard*, paragraph 37, Case C-212/97 *Centros* [1999] ECR I-1459, paragraph 34, *Mac Quen and Others*, paragraph 26, and Case C-243/01 *Gambelli and Others* [2003] ECR I-13031, paragraph 64.

87. In principle, there is no *objective* reason, for example, why the design and construction of hydraulic installations should not be separated from the design and construction of inland transport infrastructures. That is clear from the situation in Italy, since the specific activities covered by the profession of hydraulic engineer are separated in that Member State from the other activities which are covered by the profession of civil engineer in Spain. Thus, permission to take up part of the profession of civil engineer, as regulated in Spain, does not appear to diminish in any way the ability of a person who holds a diploma in hydraulic engineering awarded in another Member State to perform in the host Member State the activities which his diploma entitles him to take up in the Member State of origin.

88. It is consequently doubtful whether the Spanish regulation at issue meets an *objective* need to protect consumers.

89. Moreover, even supposing that this national regulation reflects a concern to protect consumers inasmuch as it precludes the possibility of their being misled as to the extent of the professional qualifications of the person concerned, any such risk could be reduced by allowing the host Member State to require him, for example, to use his professional title or academic title deriving from his Member State of origin, in the language of that State where appropriate, and not to use the professional title of the host Member State.[37] Any such measure would be less restrictive, with regard to the free movement of persons and freedom of establishment, than to preclude any decision granting the right to take up part of the regulated profession concerned.

90. I therefore take the view that the reply to the second question should be that Articles 39 and 43 EC are to be interpreted as meaning that a host Member State may not, in those circumstances, preclude its competent authorities from granting permission to take up part of the activities covered by a regulated profession in its territory, such as the profession of civil engineer, solely on the ground that, according to the definition of that profession adopted by the said host Member State in its national regulations, the activities covered by that profession are inseparable, with the result that authorisation to take up the profession would necessarily have to extend to all the activities it covers.

37 — See points 66 and 67 of this Opinion.

V — Conclusion

91. In the light of the foregoing considerations, I propose that the Court give the following answer to the questions referred by the Tribunal Supremo:

(1) The combined provisions of Article 3(a) and the first subparagraph of the second indent of Article 4(1)(b) of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration do not preclude the competent authorities of a Member State, when they receive an application from the holder of a diploma awarded in another Member State for permission to take up a profession, the taking-up or pursuit of which is subject in that host Member State to possession of a diploma, from partly admitting such an application, if the person concerned agrees, by waiving the obligation to complete an adaptation period or take an aptitude test and restricting the scope of the permission they grant accordingly to cover only those activities of that profession which the applicant's diploma entitles him to take up in accordance with the regulations in force in the Member State in which it was awarded, and to exclude the other activities covered by that profession in accordance with the regulations applicable in the said host Member State.

(2) Articles 39 and 43 EC are to be interpreted as meaning that a host Member State may not, in those circumstances, preclude its competent authorities from granting permission to take up part of the activities covered by a regulated profession in its territory, such as the profession of civil engineer, solely on the ground that, according to the definition of that profession adopted by the said State in its national legislation, the activities covered by that profession are inseparable, with the result that authorisation to take up the profession would necessarily have to extend to all the activities it covers.