JUDGMENT OF THE COURT (First Chamber)

7 October 2004 *

In Case C-255/01,

Reference for a preliminary ruling under Article 234 EC

from the Simvoulio tis Epikratias (Greece), made by decision of 12 June 2001, received at the Court on 3 July 2001, in the proceedings:

Panagiotis Markopoulos and Others

v

Ypourgos Anaptyxis,

Soma Orkoton Elegkton,

* Language of the case: Greek.

interveners:

Georgios Samothrakis and Others,

and

Christos Panagiotidis,

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, R. Silva de Lapuerta, K. Lenaerts, S. von Bahr and K. Schiemann (Rapporteur), Judges,

Advocate General: A. Tizzano,
Registrar: M.-F. Contet, Principal Administrator,

having regard to the written procedure and further to the hearing on 11 February 2004,

after considering the observations submitted on behalf of:

— M. Markopoulos and Others, by N. Alivizatos, E. Kiousopoulou, G. Dellis et K. Giannakopoulos, Dikigoroi,

— the Soma Orkoton Elegkton, by A. Kalogeras, Dikigoros,

— G. Samothrakis and Others, by C. Politis and N. Skandamis, Dikigoroi,

— C. Panagiotidis, by M. Bachas, Dikigoros,

— the Greek Government, by E.-M. Mamouna and S. Spyropoulos, acting as Agents,

— the Spanish Government, by S. Ortiz Vaamonde and M. Muñoz Pérez, acting as Agents,

— the Commission of the European Communities, by M. Patakia et C. Schmidt, acting as Agents,

after hearing the Advocate General's Opinion at the sitting of 1 April 2004,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 11 and 15 of Eighth Council Directive 84/253/EEC of 10 April 1984 based on Article 54(3)(g) of the Treaty on the approval of persons responsible for carrying out the

statutory audits of accounting documents (OJ 1984 L 126, p. 20, 'the Eighth Directive').

2 The reference was made in proceedings brought by Panagiotis Markopoulos and Others against Ypourgos Anaptyxis (Minister for Development) and Soma Orkoton Elegkton ('the Institute of Certified Auditors'), in which G. Samothrakis and Others and P. Panagiotidis have intervened, concerning that Institute's decision to admit to its rolls 60 candidates, including the interveners in the main proceedings, without requiring them to sit an examination of professional competence as provided for by Article 4 of the Eighth Directive.

3 The national court requests the Court, principally, to explain the extent of the power provided for by Article 15 of the Eighth Directive for a Member State to approve certain classes of persons to carry out the auditing of accounting documents without having had to pass an examination of professional competence. In addition, the national court asks whether, so far as persons who have already been approved in another Member State are concerned, exemption from the examination might, in any case, be justified on the basis of Article 11 of the Eighth Directive.

Legal background

The relevant provisions of Community law

4 The first, second, third and fourth recitals in the preamble to the Eighth Directive state:

'... [U]nder Directive 78/660/EEC, the annual accounts of certain types of company must be audited by one or more persons entitled to carry out such audits ...;

... [T]he aforementioned Directive has been supplemented by Directive 83/349/EEC ... on consolidated accounts;

... [T]he qualifications of persons entitled to carry out the statutory audits of accounting documents should be harmonised; whereas it should be ensured that such persons are independent and of good repute;

... [T]he high level of theoretical knowledge required for the statutory auditing of accounting documents and the ability to apply that knowledge in practice must be ensured by means of an examination of professional competence'.

5 According to the sixth recital in the preamble to the Eighth Directive:

'...Whereas the Member States should ... be authorised to adopt transitional provisions for the benefit of professional persons'.

6 The ninth recital in the preamble to that Directive states:

'... a Member State will be able to approve persons who have obtained qualifications outside that State which are equivalent to those required by this Directive'.

7 Taking account of Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (OJ 1978 L 222, p. 11) and of Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts (OJ 1983 L 193, p. 1), cited in the first and second recitals, respectively, in the preamble to the Eighth Directive, Article 1(1) of the latter directive provides:

'The coordination measures prescribed in this Directive shall apply to the laws, regulations and administrative provisions of the Member States concerning persons responsible for:

(a) carrying out statutory audits of the annual accounts of companies and firms and verifying that the annual reports are consistent with those annual accounts in so far as such audits and such verification are required by Community law;

(b) carrying out statutory audits of the consolidated accounts of bodies of undertakings and verifying that the consolidated annual reports are consistent with those consolidated accounts in so far as such audits and such verification are required by Community law.'

8 Article 2 of the Eighth Directive reserves the statutory auditing of the documents referred to in Article 1(1) of that directive to persons approved for that purpose. Under Article 4, such approval may, as a general rule, be given only to a natural person who has 'attained university entrance level, then completed a course of theoretical instruction, undergone practical training and passed an examination of

professional competence of university, final examination level organised or recognised by the State'.

9 Article 11(1) of the Eighth Directive provides however:

'The authorities of a Member State may approve persons who have obtained all or part of their qualifications in another State provided they fulfil the following two conditions:

(a) the competent authorities must consider their qualifications equivalent to those required under the law of that Member State in accordance with this Directive; and

(b) they must have furnished proof of the legal knowledge required in that Member State for purposes of the statutory auditing of the documents referred to in Article 1(1). The authorities of that Member State need not, however, require such proof where they consider legal knowledge obtained in another State sufficient.'

10 Articles 12 to 19 of the Eighth Directive concern transitional rules. According to Article 15:

'Until one year after the application of the provisions referred to in Article 30(2), those professional persons who have not been approved by individual acts of the

competent authorities but who are nevertheless qualified in a Member State to carry out statutory audits of the documents referred to in Article 1(1) and have in fact carried on such activities until that date may be approved by that Member State in accordance with this Directive.'

11 Article 19 of the Eighth Directive provides:

'None of the professional persons referred to in Articles 15 and 16 or of those persons referred to in Article 18 may be approved by way of derogation from Article 4 unless the competent authorities consider that they are fit to carry out statutory audits of the documents referred to in Article 1(1) and have qualifications equivalent to those of persons approved under Article 4.'

12 According to Article 30(1) and (2) of the Eighth Directive:

'Member States shall bring into force before 1 January 1988 the laws, regulations and administrative provisions necessary for them to comply with this Directive. They shall forthwith inform the Commission thereof.

Member States may provide that the provisions referred to in paragraph 1 shall not apply until 1 January 1990.'

The relevant provisions of national law

13 As the national court explains, before the Eighth Directive was adopted the carrying out of statutory audits of accounting documents in Greece was reserved, in respect of certain categories of audits, to certified accountants. The latter had to be entered on the rolls of the Soma Orkoton Logiston ('the Institute of Certified Accountants'). Article 10(6) of Legislative Decree No 3329/55 (FEK 230A) provided that, in order for candidates' knowledge to be assessed, the Supervisory Board of the Institute of Certified Accountants could require the candidates to sit an examination of such knowledge. In this respect, Article 2 of Royal Decree No 737/61 (FEK 186A) laid down the general requirement that all candidates should first sit an examination.

14 By virtue of Article 2 of Legislative Decree No 3329/55, those certified accountants were given exclusive competence, including at the beginning the carrying out of audits of a public nature, which competence was subsequently gradually extended to the auditing of various public undertakings formed as public limited companies and various classes of public limited companies with private share capital. Under Article 3 of Legislative Decree No 3329/55, those certified accountants also had 'optional' competence, in that they could be chosen to carry out the auditing of all kinds of commercial partnerships or companies and of all the legal persons provided for by the Civil Code.

15 In addition, there were accountants who could carry out only those activities that were not reserved to certified accountants and who did not have first to pass a competition or examination. That class of professional persons, 'ordinary accountants', included not only Greek nationals carrying out such activities but also persons approved for that purpose in other States.

16 The order for reference makes it clear that the national rules were amended on several occasions in order to transpose the Eighth Directive into domestic law.

17 First, Legislative Decree No 3329/55 was amended by Presidential Decree No 15/89 adapting the legislation on certified accountants to the provisions of the Eighth Directive (FEK 5A of 5 January 1989). On this point, while essentially maintaining the structure of the Institute of Certified Accountants, Article 10 of Legislative Decree No 3329/55, as amended, laid down specific provisions concerning the requirement of first passing an examination in order to be admitted to the Institute, with the aim of making the national rules comply with the Eighth Directive. Article 10(9) of Legislative Decree No 3329/55, as amended, also provided that it was possible for persons professionally approved by the authorities of another Member State to be designated certified accountants, on condition that their qualifications were deemed to be equivalent to those of persons designated as or promoted to the rank of certified accountants under the provisions referred to in subparagraph (1) of that article and that they had already passed the examination.

18 Presidential Decree No 15/89 laid down, in the way of transitional provisions, Article 6(3) and (4), by virtue of which professional persons who could show that they had carried out statutory audits in Greece of the annual financial accounts of companies or of the consolidated financial accounts of groups of undertakings could, until 1 January 1990, be designated as certified accountants without having to sit an examination, on condition that they held a university diploma and that they were judged to be fit to carry out the statutory auditing of accounting documents.

19 Second, Law No 1969/91 (FEK 167A of 30 October 1991) and Presidential Decree No 226/92 (FEK 120A of 14 July 1992) produced the cumulative effect of replacing the Institute of Certified Accountants by the Institute of Certified Auditors. Defining the conditions for access to that new Institute, Article 10 of Presidential Decree No 226/92 provided that such access was conditional upon having passed an

examination of professional competence, regulated in detail by Article 11 of Presidential Decree No 226/92. However, Article 24(4) of that decree provided that certified accountants who were already members of the Institute of Certified Accountants were to be enrolled as of right in the new Institute of Certified Auditors.

20 Article 24(2) of Presidential Decree No 226/92 laid down the following transitional provisions:

'(2) The following persons shall also be entered on the roll of certified auditors, on their application submitted within six months from publication of this presidential decree and after passing an examination in accordance with the provisions of the next paragraph:

(a) holders of a degree from an economics, business or industrial faculty in Greece or an equivalent foreign degree who have Greek nationality or are of Greek descent and have 15 years' auditing experience in the field of finance, accountancy and law in Greece;

(b) Greek nationals and nationals of other Member States of the European Communities who (i) are approved to exercise the profession of certified accountant or certified auditor in another Member State of the European Communities and are recognised as certified accountants or certified auditors in a country of the European Communities ... and (ii) have 10 years' experience of auditing work, of which at least three years in Greece.'

21 Third, the requirement laid down in Article 24(2) of Presidential Decree No 226/92 that candidates should first sit an examination was abolished by Article 2(7) of Presidential Decree No 121/93 (FEK 53A of 12 April 1993), by virtue of which persons covered by Article 24(2)(a) and (b) of Presidential Decree No 226/92 were to lodge the worksheets of the audits carried out during their career for the purposes of examination and assessment by a competent committee.

22 Fourth, Article 18(3) of Law No 2231/94 (FEK 139A of 31 August 1994) provided that:

'Persons already entered on the rolls of the Institute of Certified Auditors referred to in Article 13 of Presidential Decree No 226/92 who were not on 30 April 1993 members of the Institute of Certified Accountants shall be required to sit the examination of professional competence provided for by Articles 10 and 11 of Presidential Decree No 226/92 before being designated to a grade. Those examinations shall be organised by the Supervisory Board, which shall also appoint the examination committees. Persons unsuccessful in the examination or failing to take part in it shall be struck off the rolls'.

23 Finally, that last provision, which restored the obligation for those seeking approval as certified auditors on the basis of the transitional provisions of Article 24(2) of Presidential Decree No 226/92 to sit an examination of professional competence, was repealed by Article 3(2) of Law No 2257/94 (FEK 197A of 23 November 1994), which provides:

'After the third paragraph of Article 18 of Law No 2231/94 (FEK 139A), paragraphs 3(a), 3(b) and 3(c) shall be added, which state as follows:

"3(a) Persons holding a diploma conferred by a higher educational establishment as required by Article 10(1) of Presidential Decree No 226/92 shall be exempt from the examination prescribed by Article 18(3) of Law No 2231/94 and shall be considered lawfully entered on the rolls of the Institute

of Certified Auditors provided for by Article 13 of Presidential Decree No 226/92, provided that they can demonstrate, by the date of publication of this law at the latest, 18 years' experience in Greece of auditing work as at 1 January 1989, as shall persons who have obtained approval to pursue the profession of certified auditor or certified accountant in another Member State of the European Union or in one of the following countries: United States of America, Canada, Australia, New Zealand or South Africa, and who have ten years' experience of auditing work, of which at least three in Greece, as at 1 January 1989. The Supervisory Board of the Institute of Certified Auditors shall decide within two months whether all those conditions have been satisfied. Certified auditors referred to in the subparagraphs above of this paragraph who are held by the Supervisory Board of the Institute of Certified Auditors not to have the requisite qualifications shall submit documentary evidence of their qualifications for reconsideration by a special three-member committee, which shall be appointed by decision of the Minister for Economic Affairs and shall consist of a professor of auditing or accounting of a higher educational establishment, a representative of the Financial Chamber and a member of the academic board of the Institute of Certified Auditors. Persons held by the special committee to possess the qualifications required, other than the years of professional experience, shall be enrolled at the grade of assistant certified auditor and shall not advance to the grade of certified auditor until they have the experience required under subparagraph 3a of this paragraph. ...".'

The dispute in the main proceedings and the questions referred for a preliminary ruling

24 The applicants brought an action before the Simvoulio tis Epikratias (Council of State), seeking annulment of Decision No 75 of 19 January 1995 of the Supervisory Board of the Institute of Certified Auditors, by which the Board admitted to the Institute 60 candidates who had not been members of the former Institute of Certified Accountants, without requiring them to sit an examination of professional competence, on the ground that they satisfied all the conditions laid down in Article 18(3)a of Law No 2231/94, as added by Article 3(2) of Law No 2257/94 ('Article 18(3)a of Law No 2231/94').

25 Some of those 60 candidates, such as Mr Samothrakis and others, hold diplomas certifying completion of higher studies in economics or business, possess Greek nationality and have 15 years experience in the field of economics, accountancy or law, while others, such as Mr Panagiotidis, are Greek nationals or nationals of other States who have been approved to exercise the profession of certified accountant or certified auditor in another Member State and have 10 years' experience of auditing work.

26 The applicants having raised the issue of the compatibility with the Eighth Directive of the exemption from the examination of professional competence granted by Article 18(3)a of Law No 2231/94, which was taken as the legal basis for Decision No 75, and considering that doubts lingered as to the interpretation of Articles 11 and 15 of the Eighth Directive, the Simvoulio tis Epikratias has decided to stay proceedings and to refer the two following questions to the Court for a preliminary ruling:

'(1) May the national legislature, on the basis of Article 15 of the Eighth Directive ..., make use of the power provided for by that article and provide that various categories of persons may be approved to carry out the auditing of accounting documents, in derogation from the general rules, that is to say, without first sitting an examination of professional competence, when the Member State in question has already, before the directive was adopted, established that examination in its domestic law? In any case, may the national legislature make repeated use of the power to adopt transitional measures on the basis of the abovementioned article of the directive, in particular after the deadline of 1 January 1991 (Article 15 in conjunction with Article 30(2) of the Directive)?

(2) Does Article 11 of the Directive simply mean that, if a candidate for approval to audit accounting documents in one Member State of the European Union has obtained, under the regime prevailing before harmonisation, some of the requisite qualifications in another Member State, the State from which approval is sought may regard those qualifications as having been obtained in that State,

but does not introduce a derogation from the general rule that approval is granted only after an examination of professional competence has been passed? Or is it to be interpreted as allowing a person holding approval to audit accounting documents granted in one Member State under the regime obtaining before harmonisation to receive the corresponding approval in another Member State without being obliged to sit an examination of professional competence, but merely on the basis of verification that his qualifications are equivalent?'

Concerning the questions referred for a preliminary ruling

Concerning the first question

27 By its first question, which falls into two parts, the national court asks, first, whether a Member State may make use of the power conferred by Article 15 of the Eighth Directive in order to adopt transitional provisions on the basis of which certain classes of persons may be approved to carry out the auditing of accounting documents, without first having passed an examination of professional competence such as that provided for by the directive, in circumstances in which that Member State had already established an examination of professional competence in its domestic law before the Eighth Directive was adopted. Second, if the answer to the first question should be 'Yes', the national court seeks to ascertain whether, in the light of Article 15 in conjunction with Article 30(2) of the Eighth Directive, the Member State concerned may make use of that power after 1 January 1991 and, in any event, repeatedly.

Concerning the first part of the first question

28 With regard to the first part of the first question, the applicants in the main proceedings claim that the power provided for by Article 15 of the Eighth Directive

ought not to make it possible to disregard the provisions of national law pre-dating the adoption of the directive or the provisions of Community law establishing the general system of certification of the professional competence of accountants. Recourse to that power serves to protect the body of law already in existence in the Member States' national laws. Accordingly, that power is not to be used as a legal basis for introducing new rules of domestic law which depart from both the general system under the Eighth Directive and the pre-existing national regime.

29 In consequence, having regard to the fact that before the Eighth Directive was adopted domestic law required candidates to have passed an examination of professional competence, the applicants maintain that the Greek legislature could not use Articles 15 and 30 of the Eighth Directive to exempt certain professional persons from that requirement.

30 By contrast, Mr Samothrakis and Others, the Greek Government and the Commission are of the opinion that the power provided for by Article 15 of the Eighth Directive is not subject to statutory prescriptions existing in the Member States before the Eighth Directive was adopted. Such an interpretation could, in their view, lead to unequal treatment of the professional persons satisfying the conditions laid down in Articles 15 and 19 of that directive.

31 The Commission points out that, with regard to the Greek regime in place before the adoption of the Eighth Directive, while a specific category of auditors of accounts was subject to an examination, other auditors carried out activity falling within the ambit of the Eighth Directive without first having passed special professional examinations or competitions.

32 On this point the applicants in the main proceedings maintained at the hearing that under Greek law, before the Eighth Directive was adopted, only certified

accountants could carry on certain activities and that, therefore, the interveners in the main proceedings were not in a position to make use of the transitional provisions enacted on the basis of Article 15 of the directive.

33 It must be stated, first of all, that Article 15 of the Eighth Directive is addressed to all the Member States. Exercise of the power it confers is therefore limited only by the conditions specified in that article.

34 According to those conditions, the power in question relates only to 'professional persons who have not been approved by individual acts of the competent authorities but who are nevertheless qualified in a Member State to carry out statutory audits of the documents referred to in Article 1(1) and who have in fact carried on such activities until [one year after the application of the provisions referred to in Article 30(2)]'.

35 If, therefore, a person satisfies those conditions, he or she may be granted approval under the power granted in Article 15 of the directive, without its being necessary to consider whether or to what extent the national rules before the adoption of the directive laid down a requirement for a particular class of professional persons to have passed an examination.

36 None the less, in order to answer the argument put forward by the applicants in the main proceedings, as set out in paragraph 28, it must be observed that, in so far as before the Eighth Directive was adopted it was the national rules that determined whether a professional person was authorised to carry out the statutory auditing of the documents referred to in Article 1(1) of the directive, the application of the conditions laid down in Article 15 of the directive has the effect that, in circumstances where the previous national rules required candidates to have passed an examination of professional competence in order to carry on the activity covered

by the Eighth Directive, the professional persons mentioned in Article 15 thereof as capable of benefiting from the transitional provisions in that article would, in any case, have had to pass the examination in question.

37 In those circumstances, it must be concluded that Article 15 of the Eighth Directive permits the Member States to approve persons who meet the conditions laid down in that article, namely, persons who have the qualifications in the Member State concerned to carry out the statutory auditing of the documents referred to in Article 1(1) of that directive and who did so until the date fixed in Article 15, without their being required first to have passed an examination of professional competence.

Concerning the second part of the first question

38 By the second part of its first question, which also falls into two parts, the national court asks, where the persons concerned satisfy the two conditions laid down in Article 15 of the Eighth Directive, first, whether a Member State is able to make use after 1 January 1991 of the power conferred by Article 15 of the Eighth Directive and, second, whether it may do so repeatedly.

39 So far as the first sub-part of the question is concerned, both the applicants in the main proceedings and the Spanish Government maintain, in agreement with the majority view in the national court, that it is clear from Articles 15 and 30 of the Eighth Directive that a Member State may approve professional persons pursuant to Article 15 during a period which cannot go beyond 1 January 1991.

40 In this respect, the applicants in the main proceedings state that in the instant case decision No 75 was adopted on 19 January 1995, that is to say, at a date when the period prescribed by Article 15 of the Eighth Directive had already expired. In contrast, the majority opinion within the national court is based on Article 18(3)a of Law No 2231/94, added on 23 November 1994 by Law No 2257/94, which too postdates 1 January 1991.

41 For their part, Mr Samothrakis and Others and the Greek Government contend that Article 15 of the Eighth Directive confers on the professional persons to which it refers the right to be approved, in derogation from the general provisions of the directive, a right which cannot be restricted by reason of any delay by the Member State concerned in adopting the transitional provisions necessary for obtaining approval.

42 The Commission, for its part, is of the view that, in accordance with the wording of Article 15 of the Eighth Directive, the period of a year prescribed for the obtaining of approval under that article starts to run from the date of actual implementation of the measures transposing the directive, which transposition was, in its submission, effected by Presidential Decree No 226/92, as amended by Presidential Decree No 121/93. In that regard, it notes that although Article 18(3)a of Law No 2231/94 was published more than a year after the date of actual transposition of the Eighth Directive by the Greek Government, that article must be deemed to have been adopted in good time, inasmuch as in that article the legislature did no more than reactivate, for retrospective application, the transitional provisions adopted in due time under Presidential Decree No 121/93.

43 It must at the outset be observed that Article 15 of the Eighth Directive provides that the power provided for by that article may be used '[u]ntil one year after the application of the provisions referred to in Article 30(2)'. In this respect, although Article 30(1) of the directive provides that the Member States 'shall bring into force before 1 January 1988 the laws, regulations and administrative provisions necessary

for them to comply with this Directive', under Article 30(2) they 'may provide that the provisions referred to in paragraph (1) shall not apply until 1 January 1990'.

44 That last provision therefore allows the Member States to defer till 1 January 1990 the application of the provisions necessary to transpose the Eighth Directive. On that basis, the effect of Article 15 of the directive is to enable a Member State to make use of the power which it confers for up to a year following the date of application of the national provisions transposing the Eighth Directive, which date must in no circumstances fall after 1 January 1990.

45 First, it must be stated that the argument, put forward by Mr Samothrakis and Others and by the Greek Government, that Article 15 of the Eighth Directive grants a right to the professional persons referred to therein, regardless of any delay by the Member State in using the power provided for by that article, cannot be accepted. As the Advocate General pointed out in paragraph 55 of his Opinion, inasmuch as in accordance with the wording of Article 15 of the Eighth Directive a Member State 'may' approve the class of professional persons referred to by that article, it does no more than make it possible for Member States to adopt transitional provisions, that is to say, it confers a discretionary power which cannot, by its very nature, be used as a legal basis giving rise to rights for those in whose favour such power might be exercised.

46 Second, the Commission's argument that the period of a year prescribed by Article 15 of the Eighth Directive starts to run from the date of actual transposition of that directive into domestic law cannot be accepted either. The result of that argument would be to allow a Member State to have recourse to the power to adopt transitional provisions, provisions the effect of which is *ex hypothesi* to put back complete adoption of the directive, even where the directive is transposed belatedly.

47 In this connection, as has been stated in paragraph 44 above, the power provided for by Article 15 of the Eighth Directive may be exercised up to a year after the date of application of the provisions transposing the directive into domestic law, which date may in no circumstances fall after 1 January 1990. It must be held that Article 15, in conjunction with Article 30, of the Eighth Directive has the effect of achieving a balance between, on the one hand, the ultimate purpose of the directive, which is to establish a harmonised body of Community rules and, on the other, the legitimate protection of professional persons who were already carrying on the activity in question, by allowing the Member States the period of a year to adopt transitional provisions in favour of those professional persons.

48 The result of the interpretation suggested by the Commission would be the upsetting of that balance in so far as that interpretation would enable a Member State to adopt transitional provisions in a period starting to run from the date of actual transposition of the directive at issue into domestic law, which might occur after the expiry of the period prescribed.

49 It must therefore be concluded that it is contrary to Article 15 of the Eighth Directive for a Member State to exercise the power provided for by that article to approve professional persons, without requiring them first to have passed an examination of professional competence in derogation from the general provisions of that directive, after the expiry of a period of a year starting to run from the date of application of the national provisions transposing the directive, which date may in no circumstances fall after 1 January 1990.

50 With regard to the second sub-part of the question, which seeks to ascertain whether the power provided for by Article 15 of the Eighth Directive may be exercised repeatedly, it must be noted that that question is premised on the notion that to adopt a provision of national law allowing the competent authority to approve a professional person under that article amounts to exercise of that power.

51 However, in so far as the persons concerned could have been approved only as a result of a decision of the competent national authority, which is moreover provided for by Article 19 of the directive, it is in the circumstance of this case only Decision No 75, taken on 19 January 1995, that is to say, after the terminal date 1 January 1991, that can be regarded as an attempt to exercise that power. It is therefore not necessary to give an answer to the second sub-part of the second part of the first question.

52 In light of the foregoing, the answer to be given to the first question must be that Article 15 of the Eighth Directive permits all the Member States to approve persons who satisfy the conditions laid down in that article, namely, persons who have the qualifications in the Member State concerned to carry out the statutory auditing of the documents referred to in Article 1(1) and who did so until the date fixed in Article 15, without their being required first to have passed an examination of professional competence.

53 Nevertheless, it is contrary to Article 15 of the Eighth Directive for a Member State to exercise the power provided for therein after the expiry of a period of a year starting to run from the date of application of the national provisions transposing the directive, which date may in no circumstances fall after 1 January 1990.

Concerning the second question

54 By its second question the national court asks, in essence, whether under Article 11 of the Eighth Directive professional persons approved in one Member State to audit accounting documents may obtain approval to carry on that activity in another Member State, without being required to pass an examination of professional competence, as provided for by the Eighth Directive.

55 The applicants in the main proceedings and the Greek Government maintain, just as the national court unanimously considered, that Article 11 of the Eighth Directive does no more than provide for assessment by the host Member State of the qualifications obtained in another Member State, with a view to granting professional approval on its territory, and that it does not enable the host Member State to grant professional approval without examination since, according to other provisions of the Eighth Directive defining the qualifications required, success in an examination of professional competence constitutes an essential qualification for the granting of professional approval.

56 Furthermore, they state that Article 11 of the Eighth Directive is concerned only with the possibility of regarding as equivalent qualifications obtained by a candidate in another Member State, and not with the recognition of approval obtained in another State.

57 The Commission, for its part, submits that both the letter and the spirit of Article 11 of the Eighth Directive, relating to a finding of the actual equivalence of qualifications obtained in one Member State to those required in the host Member State, militate in favour of an interpretation according to which the competent authorities of the host Member State assess and evaluate the equivalence of those qualifications to those required in their State, without being bound to require the professional persons concerned to take the examination referred to in Article 4 of the directive.

58 It must first of all be observed that Article 11 of the Eighth Directive is concerned, essentially, with the determination by the competent authority of the host Member State of the equivalence of the 'qualifications' of persons who have obtained all or part of those qualifications in another Member State.

59 Now, the word 'qualifications' is not defined in the Eighth Directive. In these circumstances, it cannot be held that the qualifications for the purposes of Article 11

of the directive correspond in turn to the separate requirements prescribed in Article 4 of the directive, which includes the requirement to pass an examination of professional competence. Rather, use of that word allows the competent authorities of the host Member State to make an overall assessment of the abilities of the person concerned, an assessment which does not, furthermore, oblige them to require the person in question to pass the examination of professional competence in that State or require that he or she should have passed such an examination in another Member State.

60 In addition, it must be stated that the establishment of equivalence under Article 11 of the Eighth Directive is based on a factual assessment and not a formal finding of the equivalence of a particular qualification. In this respect, it is to be noted that it is 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 (OJ 1989 L 19, p. 16) that concerns recognition of approval obtained for the exercise of a profession regulated in another Member State. However, although that directive was applicable at the material time, the question referred by the Council of State turns on the interpretation of the Eighth Directive, which was adopted before Directive 89/48. What is more, as the Advocate General remarked in paragraph 74 of his Opinion, the 12th recital in the preamble to the Eighth Directive clearly states that that directive does not cover 'recognition of the approval given to nationals of other Member States for the purpose of carrying out ... audits [of accounting documents]', which, according to that recital, is to be regulated subsequently.

61 In addition, in order to answer the second question referred, it has to be made clear that exercise of the power provided for by Article 11 of the Eighth Directive is not restricted to assessment of the equivalence only of qualifications gained under the rules in force before that directive was adopted and that the assessment of equivalence must not be dependent upon the moment at which those qualifications were gained, that is to say, whether before or after implementation of the Eighth Directive.

62 So far as the actual nature of the assessment referred to in Article 11 of the Eighth Directive is concerned, it must be held that, in the absence of specific provisions to regulate the assessment of equivalence, it falls to the competent authorities to carry out that assessment, observing the obligations imposed on the Member States by the rules of the EC Treaty and, in particular, the rules on freedom of establishment.

63 Under Article 52 of the EC Treaty (now, after amendment, Article 43 EC), a Member State seised of an application for authorisation to practise a profession access to which, under national law, depends on possession of a diploma or professional qualification must take into consideration the diplomas, certificates and other evidence of qualifications which the person concerned has acquired in order to practise that profession in another Member State, by comparing the specialised knowledge and abilities certified by those diplomas with the knowledge and qualifications required by the national rules (see Case C-340/89 *Vlassopoulou* [1991] ECR I-2357, paragraph 16; Case C-232/99 *Commission* v *Spain* [2002] ECR I-4235, paragraph 21, and Case C-313/01 *Morgenbesser* [2003] ECR I-13467, paragraph 57).

64 If that comparative examination of diplomas results in the finding that the knowledge and qualifications certified by the foreign diploma correspond to those required by the national provisions, the Member State must recognise that diploma as fulfilling the requirements laid down by its national provisions (*Vlassopoulou*, paragraph 19).

65 If, on the other hand, the comparison reveals that the knowledge and qualifications certified by the foreign diploma and those required by the national provisions correspond only in part, the host Member State is entitled to require the person concerned to show that he or she has acquired the knowledge and qualifications which are lacking. In such a case, it will be for the competent national authorities to

assess whether the knowledge acquired in the host Member State, either during a course of study or by way of practical experience, is sufficient in order to prove possession of the knowledge which is lacking (*Vlassopoulou*, paragraph 20).

66 In so far as the approvals granted to the persons addressed by Decision No 75 were based on provisions of national law transposing Article 11 of the Eighth Directive, it belongs to the national court to determine whether, as a result of Article 18(3)a of Law No 2231/94 in conjunction with Decision No 75, those approvals were granted in accordance with the abovementioned principles.

67 In the light of the foregoing, the answer to be given to the second question must be that Article 11 of the Eighth Directive enables a host Member State to approve, for the purpose of carrying out the statutory auditing of accounting documents, professional persons already approved in another Member State, without requiring them to pass an examination of professional competence, if the competent authorities of the host Member State consider their qualifications to be equivalent to those required under the national legislation of the host Member State, in accordance with the directive.

Costs

68 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) rules as follows:

1. **Article 15 of Eighth Council Directive 84/253/EEC of 10 April 1984 based on Article 54(3)(g) of the Treaty on the approval of persons responsible for carrying out the statutory audits of accounting documents permits all the Member States to approve persons who satisfy the conditions laid down in that article, namely, persons who have the qualifications in the Member State concerned to carry out the statutory auditing of the documents referred to in Article 1(1) and who did so until the date fixed in Article 15, without their being required first to have passed an examination of professional competence.**

   Nevertheless, it is contrary to Article 15 for a Member State to exercise the power provided for therein after the expiry of a period of a year starting to run from the date of application of the national provisions transposing the directive, which date may in no circumstances fall after 1 January 1990.

2. **Article 11 of the Eighth Directive enables a host Member State to approve, for the purpose of carrying out the statutory auditing of accounting documents, professional persons already approved in another Member State, without requiring them to pass an examination of professional competence, if the competent authorities of the host Member State consider their qualifications to be equivalent to those required under the national legislation of the host Member State, in accordance with the directive.**

Signatures.