# OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 12 DECEMBER 1978 [1]

*Mr President,*
*Members of the Court,*

Article 4 (1) of the Netherlands Vestigingswet Bedrijven 1954 (Law of 1954 on the establishment of businesses) provides that the exercise of certain trades without authorization from the competent Chamber of Commerce and Industry (Kamer van Koophandel en Fabrieken) may be prohibited by regulation. This was done by Articles 19 and 27 of the Vestigingsbesluit bouwnijverheidsbedrijven 1958 (Decree of 1958 on establishment in building trades) so far as the plumbing and water fitting trades were concerned and by Article 7 of the Vestigingsbesluit verwarmings- en aanverwante bedrijven 1960 (Decree of 1960 on the establishment of heating and associated businesses) so far as the central heating business was concerned. Article 15 (1) (c) of the above-mentioned law provides as follows:

"Our Minister of Economic Affairs shall on application grant exemption from a prohibition contained in a decision relating to establishment on the exercise of a trade referred to in that decision:

(a) ...

(b) ...

(c) if the provisions of a directive of the Council of the European Communities with regard to the establishment of natural persons and companies in the territory of one of the Member States of the European Economic Community or with regard to the provision of services by natural persons and companies in that territory require such exemption."

The plaintiff in the main action, who was born in Urmond in the Netherlands in 1939 and is a Netherlands national, married a Belgian woman on 30 April 1962 in Dilsen (Stokkem) in Belgium and has since been resident there. Until 13 March 1970 he was employed at his father-in-law's undertaking which carried on work in central heating, plumbing, water fitting and gas fitting. According to certificates within the meaning of Article 4 (2) of Directive No 64/427/EEC of the Council of 7 July 1964 laying down detailed provisions concerning transitional measures in respect of activities of self-employed persons in manufacturing and processing industries falling within ISIC Major Groups 23-40 (Industry and small craft industries) (Official Journal, English Special Edition 1963-1964, p. 148) issued on 21 June 1976 by the Belgian Minister van Middenstand (Minister for Small Firms and Trades) the plaintiff was engaged in Dilsen (Stokkem) from 13 March 1970 without interruption as an independent tradesman, namely as a central-heating contractor and sanitary contractor and plumber.

As the plaintiff intends to operate as an independent contractor in central heating, plumbing and water fitting at his birthplace, Urmond, he lodged on 24 June 1976 an application for an

1 — Translated from the German.

exemption pursuant to Article 15 (1) of the Vestigingswet Bedrijven 1954 to the Kamer van Koophandel en Fabrieken voor de Mijnstreek te Heerlen (Chamber of Commerce and Industry for the mining region of Heerlen). By decision of 31 January 1977 the Secretary of State for Economic Affairs, the defendant in the main action, rejected the application on the ground that as a Netherlands national in the Netherlands the applicant cannot be considered to be a beneficiary within the meaning of Article 4 (1) (a) of Council Directive No 64/429/EEC. On 14 April 1977 the plaintiff appealed to the College van Beroep voor het Bedrijfsleven against the rejection by decision of the defendant of 15 March 1977 of the objection which he had lodged against that decision — in so far as the decision of 15 March 1977 forwarded the application for examination on the basis of Article 15 (1) (b) of the Vestigingswet Bedrijven to the Sociaal Economische Raad (Economic and Social Council) it is not the subject-matter of the main action — requesting that that court should annul the contested decision and grant the exemptions applied for.

By judgment of 9 May 1978 the College van Beroep voor het Bedrijfsleven stayed the proceedings and referred the following question to the Court of Justice for a preliminary ruling:

Must Directive No 64/427/EEC of 7 July 1964 of the Council of the European Economic Community be interpreted as meaning that the expression "beneficiaries" as referred to and as defined in Article 1 (1) of the directive also includes persons who possess and have always possessed solely the nationality of the host Member State?

I adopt the following viewpoint with regard to this question:

1. On the basis of the wording of Directive No 64/427/EEC, Article 1 (1) defines the class of beneficiaries by reference to Title I of the General Programmes of the Council of 18 December 1961 for the abolition of restrictions on freedom to provide Services (Official Journal, English special Edition, Second Series, IX, p. 3) and for the abolition of restrictions on freedom of establishment (Official Journal, English Special Edition, Second Series, IX, p. 7). Both programmes describe as the beneficiaries, in so far as natural persons are concerned, who alone are of interest in the present case, the nationals of Member States; in this connexion the sole condition laid down is that they are established within the Community or wish to establish themselves in order to pursue activities as self-employed persons in the territory of a Member State. This broad definition of the class of persons who are beneficiaries precludes, as the Commission correctly emphasizes, an interpretation of Title I of both programmes as meaning that nationals of the Member States who wish to establish themselves or provide services in a State of which they are nationals should not be considered as beneficiaries. The fact that both programmes, as follows in each case from Title III thereof, are primarily concerned with the progressive abolition of restrictions on freedom to provide services and freedom of establishment with regard to foreigners, in other words with guaranteeing for the nationals of the Member States the same treatment as nationals of the host Member State, makes no difference to this. This is so because the definition of the beneficiaries given in Title I contains no corresponding restriction and could, if such a restriction were intended, in no way be taken into consideration for the purpose of defining the class of persons who are beneficiaries under Directive No 64/427/EEC since that directive, as

shown by Articles 3 and 4 thereof, is precisely not concerned with giving nationals of other Member States the same treatment as nationals of the host Member State but with the consideration, in derogation from national law, of knowledge and skills acquired in another Member State by a long period of practical exercise of an occupation as a sufficient condition for the taking up of a corresponding commercial activity in the host State.

2. The broad interpretation of the concept of "beneficiary" which results from the wording of Article 1 (1) of Directive No 64/427/EEC in conjunction with Title I of the General Programme for the abolition of restrictions on freedom to provide services is also compatible with the relevant provisions and the general objectives of the EEC Treaty. The objective of the principle of freedom of movement, which the Treaty seeks to attain as fully as possible, is that all nationals of every Member State should be able to exercise their economic activity at any place they wish in the Community by establishing themselves or providing services there. The principle of freedom of movement is therefore one of the foundations of the common market, as follows also from Article 3 (c) of the EEC Treaty. Any discrimination against nationals of the Member States on the ground of their nationality is absolutely incompatible with that principle.

Of the principles laid down in the Treaty which are decisive with regard to the attainment of freedom of movement, Article 48 (freedom of movement for workers) and Article 59 (freedom to provide services) correspond, according to their wording too, to the above-mentioned objective of the Treaty. Both provisions guarantee to the nationals of the Member States full freedom of movement as regards the taking up of employment and the provision of services in the whole of the common market regardless of nationality and the place of the activity. On the other hand the wording of the first paragraph of Article 52 gives rise to certain doubts because it provides for the abolition of restrictions on freedom of establishment with regard only to the establishment of nationals of a Member State in the territory of another Member State. However, I share the Commission's view that this provision, which differs from Articles 48 and 59, must not be considered as a departure from the fundamental principles of the Treaty. The first paragraph of Article 52, which moreover in no way precludes a guarantee of freedom of establishment going beyond its wording, must in any case not be interpreted as meaning that it permits discrimination against nationals of the Member States in no matter what circumstances; this is so because such an interpretation would infringe a fundamental principle of the EEC Treaty. Mr Advocate General Mayras stated this quite clearly in his opinion in Case 71/76 *Jean Thieffry* v *Conseil de l'Ordre des Avocats à la Cour de Paris* [1977] ECR 765 at 792, when he criticized in the following terms a judgment of the Cour d'Appel, Paris, which had taken the view that the provisions of the EEC Treaty on freedom of establishment were not applicable to a French national who intended to establish himself in France:

"This judgment appears aberrant to me. It completely misunderstands the objectives of the Treaty, in particular that of Article 52 thereof which makes freedom of establishment one of the fundamental principles of the common market. To refuse a French national — even a naturalized one — the right to establish himself in the country of which he has become a citizen appears to me to

be a blatant infringement of Article 52, the aim of which is to enable each national of every Member State to practise his profession in any State of the Community and above all in the State of which he has acquired the nationality".

I can only agree with this view and thus reach the conclusion that Article 52 of the EEC Treaty does not prevent an interpretation of Directive No 64/427/EEC as meaning that persons who possess the nationality of the host State are also included among the beneficiaries in accordance with Article 1 (1).

3. The following consideration shows in addition that a different interpretation cannot be correct but would lead to blatant discrimination against the plaintiff in infringement of one of the fundamental principles of the Treaty: the plaintiff had at the age of 23 married a Belgian woman after training in the Netherlands to be an engine fitter and has resided since then in Dilsen (Stokkem) in Belgium. Having been at first employed at his father-in-law's undertaking, which carried on work in central heating, plumbing, water fitting and gas fitting, he was engaged in Dilsen from March 1970 without interruption as an independent tradesman in the central heating and sanitary contracting and plumbing businesses. When he lodged his application for exemption in the Netherlands in June 1976 in order to be able to operate as an independent contractor in central heating, plumbing and water fitting, he had already earned his living in Belgium for 15 years, had learned and had also carried on as an independent contractor for more than six years the trade which he now wishes to practise in the Netherlands. He was and is therefore in the same situation as a Belgian national with the same background. It is simply absurd for the plaintiff to be treated differently from a Belgian or national of another Member State in the same situation solely because of his Netherlands nationality. Such a procedure would be clear discrimination against the plaintiff exclusively on the ground of his nationality, which would be absolutely incompatible with the principles laid down in the EEC Treaty. The Commission correctly refers to the fact that if the interpretation put forward by the Netherlands Government were followed the freedom of movement for all persons who have exercised their right to freedom of movement and have learned or carried on another occupation in the Member State in which they established themselves would in practice be restricted in so far as they would be unable to return to their home State without having to expect difficulties with regard to the exercise of their new occupation. The same would apply to children who had emigrated with their parents to another Member State and had learned their occupation *in that State.*

4. I cannot agree with the fear of the Netherlands Government that if nationals of the host State were also subject to the rules laid down in Articles 3 and 4 of Directive No 64/427/EEC this would lead to the circumvention of the special provisions laid down by the host State with regard to the exercise of certain occupations. The requirements for acceptance of the corresponding exercise of an occupation in another Member State are, so far as the duration of that practice and the capacity required are concerned, not simple and can in no

way be fulfilled by everybody, so that it cannot be expected that a substantial number of nationals of the host State might use this method in order to escape the provisions of national law relating to training and examinations.

5. I therefore conclude that the question referred to this Court for a preliminary ruling should be answered as follows:

Directive No 64/427/EEC of 7 July 1964 of the Council of the European Economic Community must be interpreted as meaning that the expression "beneficiaries" as referred to and as defined in Article 1 (1) of that directive also includes persons who possess and have always possessed solely the nationality of the host Member State.