OPINION OF ADVOCATE GENERAL LÉGER

delivered on 13 January 2000 *

1. Dr Erpelding, a Luxembourg national, is a doctor trained in Austria. He returned to Luxembourg to practise as a specialist in internal medicine, with the consent of the competent national authority.

In spite of his qualification as a specialist in general internal medicine (branch: cardiology) obtained in Austria, the Minister of Health in Luxembourg has not allowed him to use the professional title of specialist in cardiology, relying on the fact that cardiology does not constitute a specialisation recognised by the Austrian authorities.

2. The dispute between the parties to the main proceedings raises the question of the conditions under which a professional title obtained in one Member State will be recognised in another Member State, and the conditions under which an academic title obtained in that context may be used.

I — Directive 93/16

3. Council Directive 93/16/EEC of 5 April 1993 is intended to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications. [1]

4. Article 6 of the Directive, which applies to diplomas, certificates and other evidence of formal qualifications in specialised medicine peculiar to two or more Member States, provides as follows:

'Each Member State with provisions on this matter laid down by law, regulation or administrative action shall recognise the diplomas, certificates and other evidence of formal qualifications in specialised medicine awarded to nationals of Member States by the other Member States in accordance with Articles 24, 25, 27 and 29 and which are listed in Article 7, by giving such qualifications the same effect in its territory as those which the Member State itself awards.'

* Original language: French.

1 — OJ 1993 L 165, p. 1 (hereafter 'the Directive')

5. With the exception of Article 7, the articles referred to in Article 6 are intended to coordinate the national rules on the practice of medical specialists with a view to the mutual recognition of corresponding qualifications. [2] They provide in particular for '... certain minimum criteria... concerning the right to take up specialised training, the minimum training period, the method by which such training is given and the place where it is to be carried out, as well as the supervision to which it should be subject'. [3]

6. Article 7, following the accession of the Republic of Austria, [4] states:

'1. The diplomas, certificates and other evidence of formal qualifications referred to in Article 6 shall be those which, having been awarded by the competent authorities or bodies listed in Article 5(2), correspond for the purposes of the specialised training in question to the designations listed in paragraph 2 of this Article in respect of those Member States which give such training.

2. The designations currently used in the Member States which correspond to the specialist training courses in question are as follows:

...

— *cardiology*

...

Luxembourg: cardiologie et angiologie

...'

7. Under Chapter V, headed 'Use of academic title', Article 10(1) of the Directive provides:

'Without prejudice to Article 19, host Member States shall ensure that the nationals of Member States who fulfil the conditions laid down in Articles 2, 4, 6 and 9 have the right to use the lawful academic title or, where appropriate, the abbreviation thereof, of their Member State of origin or of the Member State from which they come, in the languages of that State.

2 — Fourteenth recital to the preamble.

3 — Ibidem.

4 — See the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded, (OJ 1994 C 241, p. 21, and OJ 1995 L 1, p. 1), and in particular, Annex I, XI, D, III, (d).

Host Member States may require this title to be followed by the name and location of the establishment or examining board which awarded it.'

8. Under Chapter VI, headed 'Provisions to facilitate the effective exercise of the right of establishment and freedom to provide services in respect of the activities of doctors', Article 19 states as follows:

'Where in a host Member State the use of the professional title relating to one of the activities of a doctor is subject to rules, nationals of other Member States who fulfil the conditions laid down in Articles 2 and 9(1), (3) and (5) shall use the professional title of the host Member State which, in that State, corresponds to those conditions of qualification and shall use the abbreviated title.

The first paragraph shall also apply to the use of professional titles of specialist doctors by those who fulfil the conditions laid down in Articles 4, 6 and 9(2), (4), (5) and (6).' [5]

5 — Article 4 is equivalent, for the mutual recognition of formal qualifications in specialist medicine common to all the Member States, to Article 6, which governs the mutual recognition of formal qualifications peculiar to two or more Member States. Article 9 governs acquired rights of doctors holding diplomas, certificates and other evidence of formal qualifications awarded by the Member States and approving training which commenced before the implementation of the Directive (eighth recital to the preamble).

II — Facts and procedure in the main proceedings

9. On 30 March 1985 Dr Erpelding was awarded the Austrian diploma of 'Doktor der gesamten Heilkunde' (diploma of doctor of medicine) by the University of Innsbruck. On 11 April 1986 this diploma was approved by the Minister of National Education of Luxembourg.

10. On 10 April 1991 he obtained the authorisation of the Österreichische Ärztekammer (the Austrian doctors' professional body) to practise medicine as a 'Facharzt für Innere Medizin' (Specialist in General (Internal) Medicine). By decision of the Luxembourg Minister for Health of 29 August 1991 he was authorised to practise medicine as a specialist in general (internal) medicine in Luxembourg.

11. On 11 May 1993 the Österreichische Ärztekammer awarded Dr Erpelding the diploma of 'Facharzt für Innere Medizin — Teilgebiet Kardiologie' (Specialist in General (Internal) Medicine — Branch: Cardiology). By decision of 9 July 1993 the Luxembourg Minister for Health authorised Dr Erpelding to use, in addition to his professional title of specialist in general (internal) medicine, his academic title in the language of the State where he obtained it, namely 'Facharzt für Innere Medizin — Teilgebiet Kardiologie'.

12. On 15 April 1997 Dr Erpelding informed the Minister for Health that, since he intended to practise exclusively in cardiology, he proposed to renounce the professional title of specialist in general (internal) medicine, provided that he was authorised to use the title of specialist in cardiology.

13. By decision of 25 April 1997, the Minister for Health refused that request on the ground that, since the discipline of cardiology does not constitute a specialisation recognised by the Austrian authorities, Dr Erpelding could not be authorised to practise medicine in that specialisation. The Minister added that it was not his task to transcribe foreign diplomas and that Luxembourg law permitted recognition of diplomas only as worded.

14. Upon Dr Erpelding's application, that decision was set aside by judgment of 18 February 1998 of the Tribunal Administratif (Administrative Court) of Luxembourg, on the ground that it infringed *inter alia* Article 19 of the Directive.

15. On 31 March 1998 the Minister for Health appealed against that judgment to the Cour Administrative (Higher Administrative Court, Luxembourg).

III — The questions referred

16. Taking the view that the outcome of the dispute depended upon the interpretation not only of Article 19 of the Directive, on the use of the professional title of doctor, but also of Article 10, on the use of academic titles in medicine, the Cour Administrative decided to stay proceedings and to refer to this Court for a preliminary ruling.

17. The referring court asks:

'(1) May Article 19 of Directive 93/16/EEC to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications be applied, in a State with provisions on this matter laid down by law, in favour of an applicant with a qualification obtained in another Member State but not included in the list of specialist training courses contained in Article 7 of the Directive who requests authorisation, on the basis of the training he has acquired in the other Member State, to use an equivalent professional title in the host State?

If not,

(2) Does Article 10 of Directive 93/16/EEC confer on holders of academic titles acquired in another Member State merely the option of using their academic title or, where appropriate, the abbreviation thereof, or, conversely, should the text of the directive be interpreted to the effect that only the academic title in the language of the country in which it was awarded may be authorised, to the exclusion of equivalent titles formulated in the language and according to the terminology of the host State?'

IV — The first question

Initial observations

18. Since this question is not interpreted in the same way by all parties, it is necessary to clarify its true meaning.

19. According to Dr Erpelding, the recognition of a foreign diploma entitling the holder to practise as a specialist is a separate question from that of the use of an academic title. Although he draws no conclusion as to the admissibility of the question asked, he submits that only use of the latter title is at issue in this case. [6]

20. This position does not seem to me to be sustainable.

21. Firstly, the referring court has not confined its question to the use of academic titles. It is also concerned with the use of professional titles, as Dr Erpelding himself recognises in citing Article 19 of the Directive, and in pointing out that the Tribunal Administratif, whose judgment was appealed to the referring court, took the view that he was entitled to use the professional title of cardiologist.

22. Furthermore, according to settled case-law, it is for the national courts alone which are seised of the case and are responsible for the judgment to be delivered to determine, in view of the special features of each case, both the need for a preliminary ruling in order to enable them to give their judgment and the relevance of the questions which they put to the Court. Consequently, where, as here, the questions put by national courts concern the interpretation of a provision of Community law, the Court is, in principle, bound to give a ruling. [7]

6 — Pages 2 and 4 of the written observations.

7 — See, for example, Case C-7/97 *Bronner* [1998] ECR I-7791, paragraph 16.

23. It should also be noted that, according to the same case-law, Article 177 of the Treaty (now Article 234 EC), which is based on a clear separation of functions between national courts and this Court, does not allow this Court to review the reasons for which a reference is made. Consequently, a request from a national court may be rejected only if it is quite obvious that the interpretation of Community law sought by that court bears no relation to the actual facts of the case or to the subject-matter of the main action. [8]

The first question clearly concerns the use of professional titles, as confirmed by the order for reference, in which the national court states that the application concerns '... authorisation of the applicant to use the professional title of specialist in cardiology'. [9] The first question is, therefore, to be read as requesting clarification of the circumstances in which *the use of the professional title* of specialist may be authorised.

24. The Italian Government suggests that Article 19 must be interpreted in conjunction with Article 9(5) of the Directive, which is said to apply in this case. [10]

25. The latter provision, cited in Article 19, concerns the rights acquired by doctors prior to the implementation of the Directive. [11] It provides, in particular, that each Member State shall recognise as being sufficient proof, in the case of nationals of the Member States whose specialist titles do not conform to those designations set out for that State in Article 7, the qualifications awarded by those Member States *accompanied by a certificate issued by the competent authorities.* The certificate shall state that these qualifications were awarded following training in accordance with the articles referred to in Article 6 and are treated by the Member State which awarded them as the qualifications or designations set out in Article 7.

26. In the view of the Italian Government, Article 19 of the Directive must be interpreted as meaning that, in the circumstances in which Article 9 applies, [12] the use of a professional title is only authorised if it is treated by the awarding Member State of origin or provenance as one of the titles set out in Article 7, failing which, each Member State could unilaterally determine the equivalence of titles. However, in the present case the specialist title of which recognition is sought does not exist as such in the State the person concerned comes from.

27. According to settled case-law, it is for the Court alone, where questions are for-

8 — Ibidem, paragraph 17.

9 — Page 2 of the order for reference.

10 — Point 1 of the written observations.

11 — See note 5 of this Opinion.

12 — Whilst not expressly stating as much, the Italian Government appears to base its reference to Article 9 on the fact that Mr Erpelding undertook his training in internal medicine, cardiology branch, in Austria before the accession of that State to the Community.

mulated imprecisely, to extract from all the information provided by the national court and from the documents in the main proceedings the points of Community law which require interpretation, having regard to the nature of the dispute. [13]

28. In the present case, without ruling on the Italian Government's interpretation of the problem and the question of the applicability of Article 9, it is appropriate to recall that the wording of the first question referred mentions Articles 19 and 7. This suggests that the referring court seeks clarification of the interpretation of Article 19, in so far as it refers to Article 6, which itself refers to Article 7, rather than of Article 9, as to which nothing in the file suggests that it could have formed the basis of any application by Mr Erpelding.

29. It does not appear from the order for reference that the national court seeks from the Court an interpretation of Article 9, even if Article 19 refers to that provision. For one thing, the Cour Administrative nowhere refers to Article 9. For another, Dr Erpelding himself refers neither in his application for authorisation dated 15 April 1997 nor in his written observations to the existence of, or the need to produce, a certificate of the type provided for by Article 9, for the recognition of acquired rights to practise as a specialist.

30. It appears from the statement of facts and procedure in the main proceedings, as set out in the order for reference, that the determination of the dispute before the national court depends on whether the fact that a qualification obtained in another Member State does not appear on the list of training courses set out in Article 7 justifies the refusal of the competent authorities of the host Member State to authorise the use of the corresponding professional title. [14]

31. Therefore it is appropriate to conclude that, by this question, the referring court asks whether Article 19 of the Directive precludes a Member State, in which the practice of specialists is regulated, from refusing to accord to one of its nationals, who has obtained a specialist qualification in another Member State, the use of the professional title of the host Member State, on the ground that the awarding Member State's title does not correspond to one of the designated titles appearing in Article 7 of the Directive.

13 — See, for example, Case C-107/98 *Teckal* [1999] ECR I-8121, paragraph 34.

14 — The Cour Administrative states at page 5 of the order for reference, that: '... the parties disagree as to whether, in a case where, as here, the diploma in cardiology in question does not appear on the list of specialisations in Article 7 of the Directive in respect of Austria, since Articles 6 and 7 are applicable in Luxembourg, where the matter is subject to rules, nevertheless the applicant for authorisation should be allowed to use the title of specialist in cardiology...'.

The right to refuse the use of professional titles

32. As the Commission pointed out, the Directive distinguishes the following types of specialist qualification:

— specialist qualifications recognised as *acquired rights* by virtue of Article 9. In accordance with the eighth recital to the preamble it is appropriate '... to make provision for measures relating to acquired rights with regard to diplomas, certificates and other evidence of formal qualifications in medicine issued by the Member State and approving training which had commenced before the implementation of this directive';

— specialist qualifications common to *all Member States* awarded following specialised training, the designation of which in each Member State appears in Article 5(3) of the Directive. Under the terms of Article 4, the holder of such a qualification is entitled to mutual recognition in the whole of the Community;

— specialist qualifications peculiar to *two or more Member States* awarded following specialised training, the designation of which, in the Member States where such specialised training exists, appears in Article 7(2) of the Directive. Under the terms of Article 6, the holder of such a qualification is entitled to mutual recognition in the Member States of the Community where such specialised training exists. Cardiology is one such training listed in Article 7(2).

33. Under the heading 'cardiology', for Luxembourg, is given the designation 'cardiologie et angiologie'. By contrast there is no such entry for Austria.

34. It follows from this that Luxembourg awards a qualification attesting to a specialised training in the field of cardiology and angiology, whilst Austria, which does not provide this type of training, has no corresponding qualification.

35. Accordingly, Luxembourg is not required to give the same effect in its territory to a specialist qualification awarded by Austria in the specific field of cardiology as to the national qualification awarded following training, in Luxembourg, in the field of cardiology and angiology.

36. As regards not only the recognition of specialist qualifications, but also that of the

right to use an equivalent professional title, it should be noted from reading Article 19 of the Directive that the conditions to which such recognition is subject are identical in each case.

37. It follows from Article 19, second paragraph, that the use of the professional title of specialist depends upon the specialist's compliance with the conditions set out in Article 6, which refers to the training conditions laid down in Articles 24, 25, 27 and 29 and to the possession of a qualification awarded following a course of training listed in Article 7(2). The reference to the training conditions, upon which depend both the recognition of qualifications obtained in another Member State, thereby accepted as having effect in the territory of the host Member State, and the right to use the professional title of the latter State, demonstrates that the right to practise as a specialist and the right to use the corresponding professional title are closely linked.

38. In other words, compliance with the conditions of training set out in Article 6 means that a host Member State which provides the specialised training in question is obliged to recognise both the equivalent diploma obtained in the Member State of origin or from which the person comes and the right to use the corresponding professional title.

39. Conversely, failure to comply with these conditions and the absence of the equivalent training from the list in Article 7 absolve the host Member State from granting the application for authorisation to practise and from recognising the right to use the professional title.

40. Since it has its own provisions on the matter laid down by law, regulation or administrative action, within the meaning of Article 6 of the Directive, a host Member State may thus not be required to treat as equivalent to its own professional qualifications one awarded by another Member State, without having the assurance that the minimum conditions of training set out in Articles 24, 25, 27 and 29, cited in Article 6, have been complied with.

41. As its title clearly shows, the purpose of the Directive is to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications, which means that doctors trained in one Member State must be able to avail themselves of the freedom of establishment and freedom to provide services in another Member State.

The pursuit of these objectives involves not only the prohibition of all discriminatory treatment based on nationality, [15] but also the introduction of positive measures to

15 — Second recital in the preamble.

facilitate the effective exercise of these freedoms, such as those permitting the recognition by Member States of qualifications awarded by other Member States. [16]

42. However, more so than for other activities or professions, the free movement of doctors cannot be achieved without safeguards to ensure that training and experience acquired elsewhere are adequate to satisfy the demands of public health. [17]

43. Approximation of qualifications in the Member States by means of the setting of minimum training conditions therefore meets a particular need in this area.

44. It is therefore understandable that, while automatic recognition of qualifications is a pledge of effectiveness in the process of freeing the movement of persons and services, this can only be required, as regards services of a medical nature in particular, on condition that the Member State of origin or from which the person comes has provided guarantees as to the qualification of Community nationals trained within its territory.

45. According to the Commission, which has not been contradicted on this point, the relevant Austrian legislation (the Österreichische Ausbildungsordnung) does not recognise the profession of specialist in cardiology. This discipline is an additional specialisation linked to the basic specialisation of internal medicine. The Commission has explained that the absence, in the Directive, of any mention of cardiology for Austria arises because, in that State, the specialised training in cardiology does not strictly comply with the minimum training conditions set out in Article 27, namely four years of training in the relevant specialisation. Cardiology, which is a specialisation in addition to the basic five-year training for internal medicine, is subject to a training period of only two years. [18]

46. Since the minimum conditions of training have not been complied with in the Member State from which the person concerned comes, and the designation 'cardiology' does not appear in Article 7(2) for that State, the competent authorities of the Grand Duchy of Luxembourg are entitled to refuse the request for authorisation to use the professional title corresponding to this specialisation within their territory.

47. That, according to the respondent in the main proceedings, [19] he was '... authorised to practise the specialisation of cardiology in Luxembourg and that he ran a

16 — Third and fifth recitals in the preamble.

17 — See Article 57(3) of the EC Treaty (now, after amendment, Article 47(3) EC), which renders the prior coordination of the conditions of medical practice in the different Member States a condition of their gradual liberalisation.

18 — Points 15 and 16 of the written observations.

19 — Page 4 of Dr Erpelding's written observations.

cardiology practice for several years' is a question of fact which need not concern the Court, all the more so since it is contradicted by one of the other parties to the main proceedings. It appears from the order for reference that, according to the letter of 25 April 1997, the Minister for Health refused Dr Erpelding the right to practise medicine as a cardiologist. [20] Therefore attention should be confined to the facts as found by the referring court.

48. Faced with an application to set aside the refusal decision of the Luxembourg authorities, the referring court is therefore required to take into account that Article 19 of the Directive does not preclude a Member State, in which the activity of medical specialist is regulated, from refusing to allow one of its nationals who has obtained a specialist qualification in another Member State to use the professional title of the host Member State, when the qualification of the Member State from which he comes does not correspond to one of the designations listed in Article 7 of the Directive.

49. However, in the interests of completeness, the precise scope of the obligations of a Member State faced with an application to use a professional qualification where recognition of this qualification is not provided for under the Directive should be stated. The question arises whether, in such a case, Article 19 nevertheless permits the grant of such an application following a comparison of skills.

The extent of Member States' obligations to compare knowledge and ability

50. The existence of a duty on Member States to compare knowledge and qualifications is put forward by the Finnish Government, which has raised the question of the applicability of the *Vlassopoulou* case to this case. [21]

Whilst recognising that the conditions laid down by Article 19 have not been fulfilled, since the specialisation of cardiology in Austria is not listed in Article 7, and that it does not appear from the case-file that Dr Erpelding produced a certificate of equivalence within the meaning of Article 9(5), the Finnish Government nevertheless submits that the host Member State cannot refuse the application without considering whether the knowledge and skills attested to by the qualification satisfy the requirements of that State. [22]

20 — Page 3.

21 — Case C-340/89 [1991] ECR I-2357.

22 — Points 4 and 5 of the written observations.

The Finnish Government argues that this duty arises from the Treaty rules on freedom of establishment as well as from the case-law of the Court, in particular the *Vlassopoulou* decision referred to above.

51. It will be recalled that, in that case, the applicant in the main proceedings, a Greek lawyer enrolled at the Athens Bar, applied to be admitted to the Mannheim Bar in Germany. Her application was refused on the ground that she did not have the qualifications for holding judicial office necessary to be admitted to the legal profession.

52. In addition to her Greek diplomas, Mrs Vlassopoulou held a doctorate in law from a German university, and had worked for five years as a legal adviser in Germany.

53. The Court was asked whether Article 52 of the EC Treaty (now, after amendment, Article 43 EC) required the competent authorities responsible for admitting applicants to the legal profession to take into consideration qualifications obtained in another Member State as well as the professional experience of the applicant.

54. After noting that '... in the absence of harmonisation of the conditions of access to a particular occupation the Member States are entitled to lay down the knowledge and qualifications needed in order to pursue it and to require the production of a diploma certifying that the holder has the relevant knowledge and qualifications', [23] the Court decided that, even if applied without any discrimination on the basis of nationality, national requirements concerning qualifications may have the effect of hindering freedom of establishment if the national rules in question take no account of the knowledge and qualifications already acquired by the person concerned in another Member State. [24]

55. The Court inferred from this that '... a Member State which receives a request to admit a person to a profession to which access, under national law, depends upon the possession of a diploma or a professional qualification must take into consideration the diplomas, certificates and other evidence of qualifications which the person concerned has acquired in order to exercise the same profession in another Member State by making a comparison between the specialized knowledge and abilities certified by those diplomas and the knowledge and qualifications required by the national rules'. [25]

56. Skills acquired in another Member State, under a different method of training or through professional practice, may not therefore be treated as irrelevant.

23 — *Vlassopoulou*, already cited, paragraph 9.
24 — Ibidem, paragraph 15.
25 — Ibidem, paragraph 16.

57. The question is, therefore, whether the same duty on the host Member State to take into consideration Dr Erpelding's qualification arises in this case.

58. In my opinion such an obligation does not arise where the conditions for access to a profession have been the subject of harmonisation resulting in the mutual recognition of qualifications.

59. The *Vlassopoulou* decision, already cited, and subsequent decisions[26] were concerned with professions which were not governed by a system of mutual recognition.

60. It is understandable that the establishment of such a system releases the Member States from the obligation to compare qualifications and experience acquired in other Member States, since the aim of the sectorial harmonisation directives and the general systems of mutual recognition, according to their own specific methods, is precisely to make such comparisons in order to define those equivalences.[27]

61. What is required of the Member States by the *Vlassopoulou* line of authority — the laying down of general guidelines binding on them whilst leaving them a certain margin of discretion as to the method of defining equivalence[28] — has been harmonised, clarified and codified in a single text by the directives adopted pursuant to Article 57 of the Treaty. The principal characteristic of this type of rule is that, henceforth, the Member States are, without exception, under a duty to recognise any qualification satisfying the harmonised conditions of training in any given sector.

Moreover, as the Commission rightly pointed out at the hearing, Article 8 of the Directive already satisfies the require-

26 — See, for example, Case C-104/91 *Aguirre Borrell* [1992] ECR I-3003; Case C-319/92 *Haim* [1994] ECR I-425; Case C-375/92 *Commission* v *Spain* [1994] ECR I-923; Case C-164/94 *Aranitis* [1996] ECR I-135; and Case C-234/97 *Fernández de Bobadilla* [1999] ECR I-4773, hereafter the '*Vlassopoulou* line of authority'.

27 — It will be recalled that, in addition to the sectorial rules for the mutual recognition of diplomas, introduced for seven professions between 1975 and 1985 (doctors, nurses, dentists, veterinary surgeons, midwives, pharmacists and architects), there are two general systems of recognition. The sectorial rules make recognition of diplomas subject to compliance with a minimum level of coordination of conditions of access to the professions or conditions of practice. Having regard to the complexity of the process of establishing rules for harmonisation, and the consequent slow progress in realising the internal market in the areas of freedom of establishment and freedom to provide services, the general systems have supplemented the sectorial systems on the basis of the principle of mutual trust, as a result of which the training given by the Member States with a view to access to regulated professions and their practice are presumed to be comparable from one Member State to another.

28 — On this point, the *Vlassopoulou* line of authority requires each Member State to take into consideration qualifications obtained in another Member State by a comparison between, on the one hand, the knowledge and qualifications attested to, and on the other, those required. The sole criterion for determining equivalence of abilities is the level of knowledge and skill which can be presumed from the qualification in question. The Member States may however take account of objective differences relating both to the legal framework governing a particular profession in the Member State of origin and to its field of activity.

ments of the *Vlassopoulou* line of authority. Paragraph 2 of that article provides that host Member States, when faced with a request from Community nationals who do not hold a specialist qualification obtained in the conditions laid down by Article 6, must take into account, in whole or in part, the training periods completed by such nationals, and attested to by the award of a qualification by the competent authorities of the Member State of origin or from which the national comes, when such periods correspond to those required in the host Member State for the specialised training in question. Under Article 8(3) a period of additional training can be required by the host Member State.

62. If, alongside these provisions of the Directive, there existed, by virtue of the *Vlassopoulou* line of authority, a duty on Member States to consider applications to practise the profession and to use professional titles whose recognition is not required by this Directive, there would be a risk of diminishing the unifying effect of the Directive and the level of coordination thereby attained. This is because the minimum training conditions could be disregarded, and that moreover under different conditions in different Member States. Such distortions would, furthermore, obscure the clarity of the relevant Community rules. Lastly, they would harm the interests of Community nationals, in that the latter would face objectively more frequent risks that the principle of equality of treatment would be breached as a result of the variety of criteria of assessment in the different Member States.

63. These factors argue against a duty of Member States to consider, on the basis of other criteria, applications for authorisation to enter a profession subject to the provisions of a harmonisation directive, or to practise such a profession, when such applications do not comply with the conditions laid down by the directive. They also preclude a Member State from spontaneously acceding to such an application.[29] It follows that any application falling within the scope of the Directive cannot be approved other than as laid down by that measure.

V — The second question

64. By this question, the referring court is concerned with the meaning of Article 10 of the Directive in the case where, under Article 19, the use of a professional title obtained in another Member State is not authorised in the host Member State.

65. He asks whether, in such a case, Article 10 should be interpreted as meaning that the holder of an academic title obtained in another Member State can only use such a title in the language of the Member State of origin or from which he comes or, instead, if he is entitled to use

29 — Note that in the *Fernández de Bobadilla* case, already cited, paragraph 27, it was held that, '... where one or other of [the] Directives... is applicable, a public body in a Member State which is bound to comply with the rules laid down in the relevant directive can no longer require that a candidate's qualifications be granted official recognition by the competent national authorities'.

such a title in the language of the host Member State or, in the further alternative, to use the equivalent title of the host Member State.

66. The answer to this question is given by the wording of Article 10(1), read in the light of the ninth recital of the Directive.

67. As has been seen, Article 10(1) confers the right on nationals of Member States who satisfy the conditions of Article 6 to '... use the lawful academic title or, where appropriate, the abbreviation thereof, of the Member State of origin or of the Member State from which they come, in the languages of that State.'

68. As drafted, this provision establishes a right on behalf of doctors trained in other Member States, and a duty on host Member States to uphold that right.

69. In stating that '... the use of such qualifications should be authorised only in the language of the Member State of origin or the Member State from which the foreign national comes', the ninth recital, nevertheless, restricts the scope of this right. The right to use a qualification in the language of origin alone is justified by the fact that '... a directive on the mutual recognition of diplomas does not necessarily imply equivalence in the training covered by such diplomas'. [30]

70. In other words, while the exercise of freedom of establishment for doctors can be ensured by means of the mutual recognition of professional qualifications, which is made possible by a minimum coordination of the conditions of training, such training — and therefore the qualification which it confers — cannot, on any view, be strictly equivalent in all the Member States concerned.

71. This situation differs from that of the professional title, which confers the right to practise a profession.

Since a professional title obtained in one Member State must have the same effect in the territory of another Member State, it is natural that the doctor who benefits from such recognition has the right to use the equivalent professional title in the host Member State. This right is an integral part of the consequences of equivalence accorded to his qualification since, if he were deprived of that right, the doctor would not have the benefit of all those qualities which enable doctors already established in the host Member State to be identified. The use of a professional title

30 — Ninth recital in the preamble.

in another language would strongly risk casting doubt on the reality of his right to practise as a doctor, which would constitute a major obstacle to the freedom of establishment.

72. By contrast, the possession of an academic title bears witness to the pursuit of a particular degree course conferring knowledge and skills, which, whilst being partly harmonised, is not yet fully standardised. In these circumstances, such training cannot but be designated by its original title, otherwise different situations would be concealed by a single title, to the detriment of patients, and without tangible benefit in terms of ensuring freedom of establishment.

73. Courses of training must therefore be distinguished and evaluated for what they are. This requirement explains why a host Member State is entitled to require the holder of an academic title to use it '... in a suitable form to be drawn up by the host Member State', so as to ensure that the title of the Member State of origin or from which the foreign national comes is not '... confused... with a title requiring in [the host Member State] additional training which the person concerned has not undergone...'. [31] It also explains why 'the host Member States may require this title to be followed by the name and location of the establishment or examining board which awarded it'. [32]

74. These factors explain why an academic title can only be used in the language of the State of origin or from which the holder comes and, even more so, why the holder of a qualification is not entitled to use another title, such as, for example, the equivalent qualification of the host Member State.

75. I would add that, whilst Article 10(1) requires host Member States to guarantee the right of nationals of other Member States to use their academic titles, provided that they fulfil the conditions laid down in Article 6, [33] it does not, in my view, prevent those same States from granting this right even though these nationals do not satisfy the conditions of training laid down by that article.

76. As we have seen, Article 10(1) lays down a duty on Member States, the scope of which is determined by the conditions which the nationals concerned must satisfy in order to be entitled to use their academic titles. On the other hand the requirements of freedom of establishment justify not preventing those Member States who wish to do so from authorising a doctor trained

31 — Article 10(2) of the Directive.

32 — Article 10(1) of the Directive.

33 — See point 37 above.

in another Member State, although in circumstances which do not permit the recognition of his professional title, to use his academic title, provided that this use is confined to the language of the State of origin or from which the doctor comes.

77. This is because it seems to me to be desirable that, even where there is no direct link with the specialisation of the doctor in question, a qualification acquired within the Community should contribute, as far as possible, to his practising his profession, whilst also serving to inform his clientele, who will be in a position to appreciate the meaning and scope of the qualification.

78. It is surely not irrelevant, both from the point of view of the clientele of a specialist in internal medicine such as Dr Erpelding, and from his own point of view, that he is authorised to tell that clientele that he is the holder of an academic title relating to cardiology obtained in another Member State. In any event that decision can be left to the discretion of the Member States, given the Directive's silence as to their powers in the matter.

Conclusion

79. In the light of the foregoing, I propose that the Court gives the following answers to the questions referred by the Cour Administrative:

(1) Article 19 of Council Directive 93/16/EEC of 5 April 1993 to facilitate the free movement of doctors and the recognition of their diplomas, certificates and other evidence of formal qualifications must be interpreted as not precluding the right of a Member State, in which the activity of medical specialists is subject to provisions laid down by law, to refuse to allow a

Community national who has obtained in another Member State a specialist qualification in relation to that activity, and who intends to practise that activity in the first Member State, to use the professional title of the latter State, where the title of the Member State of origin or from which he comes does not correspond to one of the designations in Article 7 of that directive.

(2) Article 10(1) of Directive 93/16 must be interpreted as meaning that, even when he does not satisfy the conditions laid down in Article 19, a specialist who holds an academic title obtained in another Member State is authorised to use that title in a host Member State only in the language of the Member State of origin or from which he comes, thereby preventing him from using the title in the language of the host Member State, or using an equivalent academic title of that Member State.