OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 19 April 1989 *

Mr President,
Members of the Court,

1. The College van Beroep has referred four questions to the Court concerning the interpretation of certain provisions of Council Directive 64/427/EEC of 7 July 1964 [1] (hereinafter referred to as the 'directive').

2. The facts may be summarized as follows: Mr van de Bijl, the plaintiff in the main proceedings, who is of Dutch nationality, was employed in the Netherlands in various painting businesses until 31 August 1980. In June 1976 he was awarded the Dutch trainee journeyman painter's diploma and in October 1980 the diploma for journeyman painters. Those two diplomas are not recognized in the Netherlands as evidence of the professional ability required to carry on the trade of painter in an independent capacity. In October 1980 the plaintiff in the main proceedings took up the activity of painter and decorator in the United Kingdom. From 29 December 1981 to 20 February 1982 and from 1 March to 2 September 1983 he was again in paid employment in the Netherlands.

3. On 14 March 1984 Mr van de Bijl registered a company at the Company Registration Office, Cardiff, United Kingdom, under the name C. C. van de Bijl (UK) Limited. On 14 December 1984 he registered a branch office of C. C. van de Bijl (UK) Limited at the Chamber of Commerce and Industry, Zaanland, Netherlands, stating that the undertaking was set up on 26 October 1980 and its Netherlands office on 1 April 1984. He had previously applied to the Sociaal-Economische Raad (Social and Economic Council) in the Netherlands for exemption in respect of the branch office from the prohibition on carrying on the trade of painter without a licence from the Chamber of Commerce and Industry. That application was rejected by a decision of 7 October 1983 which was confirmed in a decision of 13 December of the same year. However, the Sociaal-Economische Raad referred the application to the Staatssecretaris van Economische Zaken (Secretary of State for Economic Affairs) with regard to the points concerning the application of Community law.

4. In effect the plaintiff in the main proceedings sought to rely on Article 15(1)(c) of the Netherlands law of 1954 on setting up as a tradesman (hereinafter referred to as the 'Law of 1954'), which permits the Minister of Economic Affairs to grant exemption from the prohibition on carrying on a specific trade without a licence from the Chamber of Commerce and Industry where the provisions of a directive of the Council of the European Communities relating to the establishment of natural persons or companies or the provision of services give rise to the granting of exemption.

5. On 20 March 1985 Mr van de Bijl obtained a certificate from the Department of Trade and Industry of the United Kingdom attesting to the fact that he had

* Original language: French.

1 — Directive 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 to 40 ((Industry and small craft industries) OJ, English Special Edition 1963-64, p. 148).

been engaged as a painter in an independent capacity for a total period of four years and five months and had received previous training regarded by a competent professional body as satisfying its requirements and that he therefore satisfied the conditions laid down in the directive. The basis of the certificate was the fact that Mr van de Bijl had managed C. C. van de Bijl (UK) Limited since October 1980 and had previously obtained, after a period of five years 11 months, the Dutch trainee journeyman painter's diploma and diploma for journeyman painters.

6. The Netherlands Secretary of State for Economic Affairs rejected Mr van de Bijl's application, questioning the validity of the certificate issued by the Department of Trade and Industry on the grounds that during the period taken into account by the British authorities in which the plaintiff had pursued the activity in the United Kingdom he had twice been employed in the Netherlands and that the previous training referred to in the certificate had been received in the Netherlands, where it was not recognized as being sufficient.

7. The Netherlands Court before which the proceedings were brought has referred questions to the Court of Justice concerning, first, the validity of certificates issued pursuant to the directive and, secondly, the interpretion of Article 3 of the directive.

8. The directive adopts transitional measures intended to facilitate the attainment of freedom of movement and freedom to provide services in a certain number of industrial and small craft activities of self-employed persons.

9. In order to resolve the difficulties caused by the fact that in some States there is freedom to take up and pursue certain trades whereas in others there are rules requiring possession of formal qualifications, Article 3 of the directive provides that a Member State in which the taking up of any of these activities is dependent on the possession of specific knowledge and ability is to accept as sufficient evidence of such knowledge and ability the fact that the activity in question has been pursued in another Member State for a given period. Consequently the host State is to grant authorization to pursue the activity on production of a certificate of experience issued by the competent authority in the Member State whence the person concerned comes.

10. The system introduced by the directive has not given rise to much litigation before the Court; until now only one question has been referred to the Court concerning the interpretation of that text. In effect, in its judgment in *Knoors*, the Court held that the directive benefits all Community nationals, including nationals of the host Member State. The Court did, however, make one reservation, when it stated

'however, it is not possible to disregard the legitimate interest which a Member State may have in preventing certain of its nationals, by means of facilities created under the Treaty, from attempting wrongly to evade the application of their national legislation as regards training for a trade.' [2]

2 — Judgment of 7 February 1979 in Case 115/78 *Knoors* v *Secretary of State for Economic Affairs* [1979] ECR 399, paragraph 25.

11. That *obiter dictum* is perhaps not without bearing on the present case.

12. Let us examine one by one the four questions put by the national court.

13. The first question seems to me to require a qualified reply. In effect, the certificate issued by the competent authority of the Member State from which the person concerned comes is to some extent the pivot of the system introduced by the directive. It is that certificate, drawn up having regard to the official description of the occupation in question supplied by the host State, which permits freedom of establishment in the Member States that require possession of specific knowledge and ability.

14. If the host State were recognized as having extensive power to check the accuracy of the certificate, that might lead to the system introduced by the directive being deprived of all its efficacy. Conversely, it does not seem to me to be possible to deny that State any power at all on that point. In fact Article 4(3) of the directive already accepts that the State may check whether 'the activity certified conforms to the main features of the description of the activity' previously communicated.

15. In this respect a separation must be established as regards the checks effected by the State from which the person concerned comes when issuing the certificate and those carried out by the host State when, on production of that certificate, it grants access to the occupation in question, in order to avoid a situation where both those checks have the same purpose. It is in the light of the general principle of the protection of legitimate expectations that the separation of those checks must be perceived. The matters already checked by the competent authority of the State whence the person concerned comes, that is to say, for instance, the nature of the activity and the adequacy of training prior to taking it up, do not need to be checked again by the competent authority of the host State. On the other hand, reason dictates that if there is a material error or intrinsic defect in the certificate, the host Member State must be able to regard the document as not satisfying the requirements of the directive. As the Commission points out, its Recommendation 65/76/EEC of 12 January 1965 [3] provides for the possibility of such a check by implication since it advocates the use of identical forms in order to 'facilitate the task of the authorities and competent bodies responsible for checking certificates from the various Member States and to avoid errors'.

16. However, it seems to me important to underline the nature of that check which, I repeat, must necessarily be confined to checking for material error or intrinsic defect, that is to say a patent flaw in the certificate which is revealed on first examination and does not require the competent authority to request supplementary evidence or to undertake any investigation itself, the purpose of the Community measure being to prohibit such action. If I were to situate the discussion in the realm of evidence, I would say that the certificate is incontrovertible proof of what it contains unless merely reading it reveals a material error, for example a typing mistake, or an intrinsic defect, for example an error in calculating the years of training or experience. On the other hand, it should not be thought that the certificate is valid only until proof to the contrary is available because that could lead

3 — Recommendation to the Member States concerning certificates of experience in the country whence the migrant comes provided for in Article 4(2) of Council Directive 64/427/EEC 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 to 40 ((Industry and small craft industries) JO 24, 11.2.1965, p. 410).

national administrations to search, in a particular case, for any facts that contradicted those of the certificate, in particular by questioning the public authorities of another Member State, which runs directly counter to the principle of the protection of legitimate expectations. Similarly, subject to the abovementioned provisions of Article 4(3) of the directive, there cannot be any checking of the nature of the occupation since that has already been carried out in the Member State whence the person concerned comes by means of a comparison between the official description of the occupation and the evidence supplied by the person applying for the certificate.

17. Besides that strictly formal check, it seems to me that there could well be another case in which the 'incontrovertible' value of the certificate could be called into question. That is the case of fraud. The general principle of *fraus omnia corrumpit* is involved. Can it be supposed that a host Member State which is aware, without having searched for them, of a certain number of facts showing that the competent authority of the Member State whence the person concerned came had been deceived when issuing the certificate cannot raise any objection to that fraud but, that being the case, is obliged to allow the person concerned to take up the occupation in question? The United Kingdom suggests that in those circumstances the competent authority of the host State should raise the matter with the State whence the person concerned comes and ask it to revoke the certificate. That solution does not allow for penalizing the fraud directly. I consider that, pursuant to the principle that fraud vitiates everything, the competent authority of the host State might, in such circumstances, refuse to take the fraudulently obtained certificate into account. The very narrow definition usually given to the concept of fraud is, I believe, a protection against the risks just mentioned as regards the efficacy of the system introduced by the directive.

18. That leads me directly to the second and third questions regarding the interpretation of Article 3 of the directive.

19. That article lays down the requirements in respect of the fact that the activity in question has been pursued, making up for the absence of diplomas. The Court may wish to look particularly carefully at Article 3(b) and (d) to which the national court refers directly. Those paragraphs state that the host Member State is to accept as sufficient the fact that the activity in question has been pursued in another Member State for a certain length of time either in an independent capacity or as a person responsible for managing an undertaking or in a technical post of some importance where the beneficiary can prove that for the occupation in question he has received at least three years' previous training attested by a certificate recognized by the State or regarded by the competent professional body as fully satisfying its requirements.

20. The difficulty is to be found in the interpretation of the term 'certificate recognized by the State'. The United Kingdom considers that the State in question is necessarily that in which the activity in question has been pursued. That view finds support in the wording of Article 3 of the directive, the first paragraph of which provides that the host Member State is to take into account the fact that the activity in question has been pursued in 'another' Member State. Combining that provision with the provisions of Article 3(b) and (d), the United Kingdom infers a requirement that the previous training 'must have been received in the Member State in which the activities in question were actually pursued'.

21. That argument cannot be accepted. Nowhere in Article 3 is that specifically stated and it is supported by the spirit of the article even less than by the letter. Let us imagine, to take the example given by the Commission, that a national of Member State A obtains training in Member State B, subsequently works in Member State C and finally establishes himself in Member State D. Should he be precluded from relying on the directive? That contention cannot really be sustained. What would appear to be needed is that the State where the activity was actually pursued — Member State C in the above example — should recognize, if necessary by equivalence, the validity of the previous training received in State B. If the other requirements are satisfied the person concerned could claim the benefit of the directive and establish himself in the Member State of his choice.

22. Should there be included among those requirements the condition forming the subject-matter of Question 3? The national court explains the question in its grounds for the decision to refer questions to the Court. Assuming that the training was received in a Member State other than that in which the activity was actually pursued, the College van Beroep asks whether that training should ensure access to the pursuit of the activity in question not only in that State, but also in the Member State where the training was received.

23. As the Commission itself recognizes, the wording of the directive would seem to indicate that only the State where the training was undertaken can issue the approval required by the directive, either by recognizing the certificate obtained or through the intermediary of a competent professional body which will assess the validity of that training. [4]

4 — See the Commission's observations, p. 13 in the French version.

24. On that point I consider that only the State where the previous training was obtained is in a position to ascertain the suitability of that training and how seriously it has been undertaken when deciding whether or not to recognize the diploma awarded on completion or by delegating the task of assessing its validity to a competent professional body. In fact, once again it is a question of the strict application of the principle of protection of legitimate expectations. Subject to generic recognition of equivalence, the State granting access to an occupation cannot and should not check whether the previous training undertaken in another Member State is suitable for the pursuit of that occupation. Neither can it assess whether the training has been undertaken seriously. It suffices that the previous training was awarded the 'label of guarantee' — if you will allow the expression — from the State in which it was received. Each State may, so to speak, export as far as training is concerned only what is recognized as valid within its frontiers. The legitimate expectations of the host State would be gravely shaken if that State was not certain that it could have complete confidence in the previous training undertaken in another Member State because such a label of guarantee was lacking. Moreover, the State which provides training or which causes training to be provided must be able to oversee all the consequences and decide whether or not to approve that training with regard to its genuineness, its quality and adequacy, by recognizing or not recognizing diplomas obtained or by allowing a professional body to do so. Such a requirement is, in some ways, the counterpart to the option that I propose should be granted to migrant workers to follow a course of training in a Member State other than the State where they pursue their activity.

25. The whole system of the directive must thus be understood as resting on the general principle of protection of legitimate expec-

tations, tempered by the recognition of limited checking of the certificate by the host State and by the requirement that the Community national, whose freedom of movement is ensured both as regards occupation and previous training, obtain a 'label of guarantee' showing that one of the conditions required to establish equivalence by holding an occupational qualification is satisfied.

26. Finally, how can a Member State which lays down no requirement of previous training for a particular occupation assess the validity of training undergone in another State? To which professional body, which may not even exist, could it entrust that task? It is only right to point out the paradoxical nature of such a situation.

27. In my view it is therefore unreasonable to dissociate the State which, directly or indirectly, provides the training and the State which approves that training in the form of a diploma or recognition by a professional body. I would add that that does not appear to be the scheme of the directive. Article 4(2) thereof indicates that the State whence the beneficiary comes is to certify what professional activities were actually pursued by him. There is no question of certifying the previous training.

28. Consequently, I suggest that the reply to the third question should be that the previous training referred to in Article 3(b) and (d) of the directive must have received approval in the form of a certificate recognized by the State where the training has been undertaken or have been recognized by a competent professional body as fully satisfying its requirements.

29. The fourth question concerns the interpretation of the concept of 'consecutive years' appearing in Article 3 of the directive. Must 'consecutive years' be interpreted as meaning a period unbroken except for reasons of sickness or holiday leave?

30. The reply to that question presupposes a decision whether the Court should give a definition of that concept or whether it considers that it is for the national bodies and, if necessary, national courts, to arrive at a definition. In other words, should the concept be assigned to Community law or national law?

31. As regards free movement of workers, there is a consistent line of case-law stating that

'the terms "worker" and "activity as an employed person" may not be defined by reference to the national laws of the Member States but has a Community meaning' [5]

32. In so far as the concept of 'consecutive years' constitutes one of the requirements enabling freedom of establishment in many industrial and small craft industries, it seems to me necessary that interpretations which might be given to the concept by the various national bodies should be made uniform. It is for that reason that I would suggest that the Court should give the concept in question a Community dimension.

5 — Judgment of 23 March 1982 in Case 53/81 *Levin* v *Staatssecretaris van Justitie* [1982] ECR 1035; see also the judgments of 11 July 1985 in Case 105/84 *Foreningen af Arbejdsledere i Danmark* v *Dannols Inventor* [1985] ECR 2639, and of 3 July 1986 in Case 66/85 *Lawrie-Blum* [1986] ECR 2121, paragraph 16.

33. It would appear reasonable on that point to regard as consecutive years a period interrupted only by events of everyday life, essentially the usual holidays and sicknesses of limited duration. Periods of activity as an employed person which have been spent in another Member State ought to be deducted from the calculation of the total length of occupational activity. I would propose that the Court reply to the fourth question along those lines.

34. In conclusion, I conclude that the Court should rule:

'(1) Council Directive 64/427/EEC 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 to 40 (Industry and small craft industries) must be understood as meaning that the competent authority of the host Member State is bound to grant access to the occupation in question to a national of a Member State who produces the certificate referred to in Article 4(2) unless that certificate contains a material error or has an intrinsic defect, if that error or defect does not relate to the nature of the activity in question, or unless the certificate has been obtained by fraud on the part of the Community national in question.

(2) Article 3 of the abovementioned directive should be interpreted as meaning that the previous training may have been undertaken in a Member State other than that where the occupation is pursued.

(3) That same article should be interpreted as meaning that the previous training must have received approval in the form of a certificate recognized by the State where the training has been undertaken or regarded by a competent professional body of that State as fully satisfying its requirements.

(4) The concept of "consecutive years" referred to in that article must be understood as a period which has been interrupted only by the incidents of everyday life, such as absences on sick-leave of limited length and normal holidays.'