OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER
delivered on 5 March 1998 *

1. The Tribunal Administratif (Administrative Court) of the Grand Duchy of Luxembourg has made a reference to the Court of Justice for a preliminary ruling on the interpretation of certain provisions of Directive 64/427/EEC [1] in order to enable it to give judgment in the cases pending before it in which Manuel de Castro Freitas, a Portuguese national, and Raymond Escallier, a French national, have each brought an action against the Ministre des Classes Moyennes et du Tourisme (Minister for Small and Medium-sized Businesses and the Self-employed, and for Tourism) challenging the administrative decisions refusing to grant them licences to establish themselves as self-employed persons in Luxembourg in order to pursue the same trades which they had previously pursued in Portugal and France respectively.

I — The facts in both cases

2. It appears from the documents before the Court that, on 21 October 1993, Mr de Castro Freitas applied to the Luxembourg authorities for a licence to pursue the activity of 'civil construction: construction and repair of buildings, including work on façades'. On 10 January 1994, he was informed that his application could not be granted on the basis of the certificates provided and he was asked to supply an EC certificate as provided for in Article 4(2) of Directive 64/427, which was to be issued by the Confederação da Industria Portuguesa (hereinafter 'the Confederation'), in respect of the activities he had pursued in Portugal. He then submitted a certificate issued by the Commercial and Industrial Association of Fafe, Cabeceiras de Basto and Celorico de Basto, and the Luxembourg authorities, in a decision of 3 March 1994, refused to grant the business licence on the ground that an EC certificate had not been provided.

3. On the basis of an EC certificate issued by the Confederation on 24 April 1994, which showed that Mr de Castro Freitas had pursued the activity of civil construction in Portugal between 6 January 1981 and 31 December 1989, the Luxembourg authorities issued a licence to pursue the activity of building contractor on 15 June 1994. By letter of 27 June 1994, Mr de Castro Freitas was informed that he would be unable to obtain a licence to pursue the activity of façade finisher since, once the years taken into account for the trade of building contractor were subtracted, he would still have to provide evidence of an additional period of activity in order to satisfy the conditions laid down in Article 3 of Directive 64/427.

* Original language: Spanish.

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) (OJ, English Special Edition 1963-1964, p. 148).

4. The Confederation issued him a new certificate, dated 27 September 1994, which included an additional reference to his having pursued the activity of 'exterior finishings, façades and roofs', in accordance with the detailed description of the occupation communicated by the Luxembourg authorities, for the same nine-year period, and Mr de Castro Freitas submitted a new application for a façade finisher's licence, which, on 10 November 1994, was refused on the same ground, namely that no evidence of an additional period of activity had been provided to satisfy the requirement that the trade in question should have been pursued for at least six years.

5. Mr de Castro Freitas made a further application for a business licence, this time including a new certificate from the Confederation, dated 25 December 1994, which again stated that the activity of 'civil construction' and 'exterior façade and roof finishings' had been pursued for the same period. By letter of 20 January 1995, that application was refused for lack of further evidence, the details contained in the new certificate having already been taken into account when the previous decisions were taken. He then lodged an internal appeal on 20 February 1995, which was rejected by decision of 17 March 1995 for lack of further evidence. Mr de Castro Freitas made an application for judicial review on 19 April 1995.

6. The plaintiff in the other main action before the Tribunal Administratif is Raymond Escallier, who, by letter of 16 July 1995, applied to the Luxembourg authorities for a licence to pursue the trades of construction carpenter, roofer and sheet and galvanised metal craftsman in Luxembourg.

Following the opinion of the Consultative Committee, provided for in Article 2 of the Law of 28 December 1988 regulating authorisation to engage in business as a craftsman, tradesman, or industrial entrepreneur and admission to certain professions in Luxembourg, on 24 January 1996 Mr Escallier was issued a licence to pursue the trade of roofer, but was refused licences for the trades of construction carpenter and sheet and galvanised metal craftsman. The refusal of the Luxembourg authorities was based on the fact that Mr Escallier did not yet have the number of years' actual experience required under Article 3(a) and (c) of Directive 64/427 in respect of each of the two trades in question, based on the interpretation that the conditions laid down in Article 3 must be fulfilled separately in respect of each trade.

7. On 14 February 1996, Mr Escallier made an application for judicial review of the decision of 24 January 1996. In support of his application, he pointed out that the certificates provided by him showed that he was authorised to pursue the three trades in question in France, and that he fulfilled the conditions laid down in Article 3 of the Directive. He referred in this respect to the certificate relating to the activities pursued, provided for in Article 4(2) of Directive 64/427, issued to him by the Chamber of Commerce and

Industry for the Moselle, which shows that he pursued the three trades in question as a person responsible for managing an undertaking during the period from 21 January 1983 to 5 February 1990.

II — The questions referred

8. In order to resolve these two disputes, the Tribunal Administratif, Luxembourg has referred the following questions for a preliminary ruling:

'(1) Does the first paragraph of Article 3 of Directive 64/427, which refers to the taking up "or pursuit of *any* activity referred to in Article 1(2)" ["*l'une* des activités mentionnées à l'article premier paragraphe 2", ou l'exercice de "*celles-ci*"] and to "the fact that *the activity* in question has been pursued" ["l'exercice effectif ... *de l'activité* considérée"], also cover the situation where a Community national has pursued simultaneously in the Member State whence he comes more than one activity falling within the scope of this Directive and applies to establish his business in another Member State, continuing the simultaneous pursuit of those activities or trades [2] having regard, in particular, to the principle of the freedom of establishment laid down in Article 52 of the Treaty ... establishing the European Economic Community?

(2) If so, is the period of experience required by Article 3(a) altered in respect of all or some of the activities concerned owing to the fact that they were pursued *simultaneously*?

(3) Does the fact that the activities in question are closely connected, or even unconnected, have any relevance?'

III — The national legislation

9. The Law of 28 December 1988, which regulates authorisation to engage in business as a craftsman, tradesman or industrial entrepreneur and admission to certain professions, makes the pursuit of craft, industrial or commercial activities, whether by natural persons or by legal persons, conditional on the prior acquisition of a written authorisation. In accordance with Title V thereof, infringement of that Law is punishable by imprisonment and fines.

2 — The wording of the three questions referred by the Tribunal Administratif is the same in both cases except for this word, which, in the order for reference relating to the action brought by Mr de Castro Freitas, appears as 'activities', but, in the order for reference relating to the action brought by Mr Escallier, appears as 'trades'.

Title II, Chapter II, of that Law, which contains the rules relating to manual trades and industrial building firms, provides, in Article 13, that both the list of principal and secondary trades and the activities which they cover are to be established by regulations implementing the Law adopted following consultation of the relevant professional associations. In order to pursue a principal trade, manual tradesmen must hold a master craftsman's certificate or a university engineering qualification in the relevant field. It also states, however, that an applicant who has no such qualifications may be deemed to have sufficient professional ability to pursue a trade or part of a trade, on the basis of documentary evidence recognised as equivalent. The equivalence criteria against which such professional competence is assessed were laid down in the Regulation of 15 September 1989.

10. The list of trades is set out in the Regulation of 19 February 1990, which classifies them by a number consisting of five digits: the first determines the professional group; the second and third indicate the various trades within a group and the technical relationship between them; while the fourth and fifth serve to distinguish the principal trades, identified by the digits 00 to 09, from the secondary trades, which are numbered from 11 upwards. The principal trades identified by the digits 00 carry the right to pursue the trades numbered 01 to 09 listed after them.

11. The activities covered by the principal and secondary trades in the manual trades sector are laid down in the Regulation of 26 March 1994. The trades which must be taken into consideration for the purposes of this case are the following:

Group 4: Trades relating to construction and housing

401-00 Building contractor

414-00 Roofer

415-00 Sheet and galvanised metal craftsman

416-00 Construction carpenter

419-00 Plasterer and façade finisher.

12. The equivalence criteria used to assess whether an applicant has sufficient professional ability to pursue one of these trades were laid down in the Regulation of 15 September 1989, which provides, in so far as it is relevant here:

'Article 4. The holder of a government licence to pursue one of the trades in the list set out in Article 13(1) of the Law ... of ... 1988 shall be authorised to pursue another trade, or part thereof, to which the first is technically and economically related, provided that he is able to furnish evidence of six years' professional

practice in the trade, or in that part of the trade, in respect of which he is applying for a licence.'

'Article 6.Certificates issued by the competent bodies of the Member States of the common market on the basis of Community directives in the field of small crafts industries are to be accepted as equivalent documents where the person concerned fulfils the conditions laid down in respect of professional ability.'

'Article 7.For the purposes of [this Regulation], professional practice shall mean any occupation affording additional practical experience in the relevant areas of the manual trade in question.'

IV — The Community legislation

13. The Community provisions which the national court seeks to have interpreted in order to enable it to give judgment in these cases are contained in both the EC Treaty and Directive 64/427.

Article 52 of the Treaty provides that restrictions on the freedom of establishment of nationals of one Member State in the territory of another Member State are to be abolished by progressive stages in the course of the transitional period. The second paragraph lays down:

'Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 58, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital.'

14. Pursuant to Article 54 of the Treaty, the Council drew up a General Programme for the abolition of restrictions on freedom of establishment [3] (hereinafter the 'General Programme'), which adopts a timetable for the effective abolition of such restrictions, with varying time-limits for the activities listed in its five Annexes. Construction, for example, appears in Annex I, which means that restrictions on the right of establishment in respect of that activity should have been effectively abolished before the end of the second year of the second stage of the transitional period. [4]

3 — OJ, English Special Edition, Second Series (IX), p. 7.

4 — Part B of Title IV of the General Programme lays down a longer time-limit for activities within Annex I, Group 400 — 'Construction, including public works' carried out under public works contracts.

15. The Council did not, however, adopt Directive 64/427 until July 1964. In the preamble, it recognised that, in view of the disparity between Member States as regards the definition of small craft activities and the dividing-line between them and industrial activities, and the fact that, in the case of small craft activities, freedom to take up and pursue some occupations existed alongside the requirement of a formal qualification for admission to others, it was not possible to coordinate the national provisions concerning the taking-up and pursuit of small craft activities. Accordingly, the Directive deferred coordination and confined itself to laying down transitional measures in order primarily to avoid causing exceptional difficulties for nationals of Member States in which the taking-up of such activities was not subject to any conditions.

16. Those transitional measures were to consist mainly in allowing, as sufficient qualification for taking up small craft activities in host States which have rules governing such activities, the fact that the occupation has actually been pursued in the country from which the person concerned comes for a reasonable period of time and at a sufficiently recent point in time, in cases where no previous training is required to guarantee that the beneficiary possesses professional knowledge equivalent to that required of the host country's own nationals. [5]

5 — Second, fourth, fifth and sixth recitals in the preamble.

17. The articles of Directive 64/427 which are of relevance in disposing of these cases are the following:

Article 3:

'Where, in a Member State, the taking up or pursuit of any activity referred to in Article 1(2) [activities of self-employed persons in manufacturing and processing industries falling within ISIC Major Groups 23 to 40 (Industry and small craft industries)] is dependent on the possession of general, commercial or professional knowledge and ability, that Member State shall accept as sufficient evidence of such knowledge and ability the fact that the activity in question has been pursued in another Member State for any of the following periods:

(a) six consecutive years either in an independent capacity or as a person responsible for managing an undertaking; or

(b) three consecutive years either in an independent capacity or as a person responsible for managing an undertaking, where the beneficiary can prove that for the occupation in question he has received at least three years' previous training, attested by a certificate recognised by the State, or regarded by the competent professional body as fully satisfying its requirements; or

(c) three consecutive years in an independent capacity, where the beneficiary can prove

that he has pursued the occupation in question for at least five years in a non-independent capacity; or

(d) five consecutive years in a managerial capacity, not less than three years of which were in technical posts with responsibility for one or more departments of the undertaking, where the beneficiary can prove that for the occupation in question he has received at least three years' previous training, attested by a certificate recognised by the State or regarded by the competent professional body as fully satisfying its requirements.

In the cases referred to in subparagraphs (a) and (c), pursuit of the activity shall not have ceased more than ten years before the date when the application provided for in Article 4(3) is made.'

Article 4

'For the purpose of applying Article 3:

1. Member States in which the taking-up and pursuit of any occupation referred to in Article 1(2) is subject to the possession of general, commercial or professional knowledge or ability shall, with the assistance of the Commission, inform the other Member States of the main characteristics of that occupation (description of the activities covered by the occupation).

2. The competent authority designated for this purpose by the country whence the beneficiary comes shall certify what professional activities were actually pursued by the beneficiary and the duration of those activities. Certificates shall be drawn up having regard to the official description of the occupation in question supplied by the Member State in which the beneficiary wishes to pursue such occupation, whether permanently or temporarily.

3. The host Member State shall grant authorisation to pursue the activity in question on application by the person concerned, provided that the activity certified conforms to the main features of the description of the activity communicated pursuant to paragraph 1 and provided that any other requirements laid down by the rules of that State are satisfied.'

18. On 18 June 1992, the Council adopted Directive 92/51/EEC, [6] which is intended to facilitate the pursuit of all those professional

6 — Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC (OJ 1992 L 209, p. 25).

activities which in a Member State are dependent on the completion of a certain level of education and training through the introduction of a second general system for the recognition of professional education and training. That directive supplements the system established in 1988 for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration. [7] However, the second paragraph of Article 2 excludes from the scope of the directive both professions which are the subject of a specific directive establishing arrangements for the mutual recognition of diplomas by Member States and activities covered by one of the directives listed in Annex A. Second on that list is Directive 64/427, which the Tribunal Administratif seeks to have interpreted in these proceedings.

19. The Proposal for a Directive establishing a mechanism for the recognition of qualifications in respect of the professional activities covered by the Directives on liberalisation and transitional measures and supplementing the general system for the recognition of qualifications, [8] presented by the Commission on 9 February 1996 and still awaiting adoption, contains virtually no changes to the text of Directive 64/427, which is still in force and is the relevant directive for the purpose of settling the disputes in the main proceedings.

7 — 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).

8 — Proposal for a European Parliament and Council Directive establishing a mechanism for the recognition of qualifications in respect of the professional activities covered by the Directives on liberalisation and transitional measures and supplementing the general system for the recognition of qualifications, COM(96) 22 final (OJ 1996 C 115, p. 16).

V — The observations submitted in these proceedings

20. Written observations have been submitted, within the period laid down in Article 20 of the EC Statute of the Court of Justice, by the plaintiffs in the main actions, Mr de Castro Freitas and Mr Escallier, and by the Commission. At the hearing, in addition to the parties mentioned, the representative of the Portuguese Republic also appeared to present observations orally.

21. Mr de Castro Freitas states that, as it is worded, the only condition which the first paragraph of Article 3 of Directive 64/427 lays down is that a person applying for a licence to engage in a trade must actually have pursued the activity in question. It does not require that to be the only activity engaged in during the periods referred to in subparagraphs (a) to (d), and it does not therefore exclude the situation of a Community national who has simultaneously pursued more than one of the activities covered by the Directive in the Member State of origin. He further states that Article 52 of the Treaty guarantees the right of establishment for all Community nationals without discrimination on grounds of nationality as regards the taking-up and pursuit of an occupation. This means that a national of a Member State who proves, by means of a certificate issued by the competent authority, that he has actually pursued certain

professional activities in that State must automatically be authorised to establish himself in any other Member State, since, otherwise, the system introduced by Directive 64/427 for the automatic recognition by the host Member State of the experience attested to by the competent authority of the State of origin would be prevented from functioning properly.

In his opinion, Article 3(a) of Directive 64/427 must be interpreted to the effect that the period of experience which it lays down cannot be increased on the ground that the various activities were pursued simultaneously, provided that they cover fields which are sufficiently closely related for the fact of their being pursued simultaneously not to impair assimilation of the theoretical and practical knowledge needed to learn the trade in question properly. He then raises the question whether the legislator may have deliberately used the word 'activity' in Article 3 so as to make it possible for the same activity to encompass several 'occupations' or 'trades' capable of being pursued simultaneously as part of a single, more generic, 'activity'; the trades of façade finisher and building contractor for exterior finishings, for example, would thus form part of the generic activity of construction and housing. He states finally that the existence of a close relationship between several occupations or trades for which a licence is sought will be conclusive in determining whether the period of experience laid down in Article 3(a) of Directive 64/427 is six years or a multiple thereof, where more than one occupation or trade has been pursued simultaneously.

22. The plaintiff in the other main action, Mr Escallier, contends that Directive 64/427 is a transitional measure the wording of which quite clearly lays down that a Community national who has simultaneously pursued more than one activity falling within its scope in the State of origin and who applies for a licence to establish himself in another Member State may also pursue those activities simultaneously in the latter State. He maintains that the Luxembourg State cannot rely on Directive 64/427 in order to refuse the right of establishment in those circumstances since that right has applied to all types of independent activity since 1 January 1970. In his view, the period of experience laid down in Article 3(a) of Directive 64/427 cannot be affected by the fact that more than one of the activities falling within the scope of that Directive has been pursued simultaneously. He states finally that Directive 64/427 does not lay down any rules applicable to related activities. Accordingly, the existence or otherwise of such a relationship between the activities for which a licence is sought has no bearing on the interpretation of its provisions.

23. The Commission takes the view that there are two concepts in the sixth recital in the preamble to Directive 64/427 which are crucial to the interpretation of Article 3 thereof, namely the requirements that the occupation must actually have been pursued for a reasonable period in the country of origin and that it must have been pursued at a sufficiently recent point in time. For the purposes of these cases, the period of previous experience

deemed reasonable was fixed at six consecutive years, if completed in an independent capacity or as a person responsible for managing an undertaking. As regards how recent that experience must have been, it is stipulated that the pursuit of the activity in question must not have ceased more than ten years before the application is made. The Commission submits that the national court's reference to the inconsistency between the use of the plural at the beginning and the singular at the end of the first paragraph of Article 3, in the French version, does not point conclusively towards either interpretation, since that paragraph refers to Article 1(2), which defines the material scope of the Directive. It would be altogether wrong to take the view that Article 3 is not applicable where a person applies for a licence to pursue more than one activity simultaneously.

The Commission considers that in order for previous experience to be regarded as valid for the purposes of granting authorisation to take up such activities in the host Member State, the person concerned must provide documentary evidence that he has pursued those activities for the period required. By way of example, it cites the case of a person who has pursued three entirely separate occupations for a total period of six years; as that period would have to be counted as two years' experience in each occupation, he would not be entitled to take up any of the three occupations in the host Member State. It is the Commission's view that only pursuit of the activity on a full-time basis may be taken into account as 'actual pursuit' for the purposes of Article 3 of Directive 64/427. Simultaneous pursuit of more than one activity for six years cannot be regarded as equivalent to the pursuit of each of those activities on a full-time basis. None the less, if such activities are closely connected or are supervised by a single manager, the experience so acquired would be valid. It suggests that this is a criterion to be applied by the national court on the basis of the evidence at its disposal, such as the detailed descriptions of the occupations, as provided for in Article 4 of Directive 64/427. It concludes, with regard to the first question, that both the activities previously pursued by Mr de Castro Freitas in Portugal and those pursued by Mr Escallier in France are to be regarded as closely related activities.

It then examines the factors which the national authorities must take into account when recognising the previous professional experience of a person who has pursued a number of activities in the Member State of origin and wishes to carry on pursuing them in the host Member State. The first of these relates to the capacity in which the person concerned intends to pursue those activities, given that, if he has worked as a person responsible for managing an undertaking, which primarily entails supervision of often more than one trade, it will be easier for him to fulfil the requirements than for someone who has been self-employed. The second relates to the nature of the activities and, above all, to the relationship between them. If no such relationship exists, the experience acquired in pursuing them simultaneously for six years cannot be deemed sufficient. Finally, it must be decided exactly what period is to be taken into account for each activity. In this respect, the Commission distinguishes between two possibilities: either the person concerned proves, by means of the certificate provided for in Article 4(2)

of Directive 64/427, that he has pursued a number of related activities for six consecutive years and at a sufficiently recent point in time, in which case the experience acquired should be regarded as an indissociable whole which will entitle him to take up each of the activities in the host Member State; or else the activities pursued simultaneously are not related, in which case it might be decided to attribute the period of experience to the predominant activity, if there is one, or, if not, to divide the period proportionately between the various activities.

24. At the hearing, the Portuguese Republic maintained that Directive 64/427, with a view to facilitating exercise of the right of establishment, introduces a comprehensive system to ensure that a Member State in which the taking-up of certain professional activities is subject to the possession of specific knowledge and ability may accept, as sufficient evidence thereof, the fact that those activities have actually been pursued in another Member State. Accordingly, the Member State in which the person concerned wishes to establish himself cannot rely on its internal legislation or invoke the provisions of the Directive in order to refuse to recognise as valid and effective the certificate which the competent authority of the Member State of origin has issued in respect of the activity pursued and its duration, on the basis of the detailed description of the occupation communicated by the Member State in which the person concerned intends to establish himself, provided that the activity certified conforms to the main features of the description of that activity.

VI — Analysis of the questions referred

25. By the three questions submitted, which I consider should be answered jointly, the national court wishes to ascertain whether a Community national who proves that he has simultaneously pursued in another Member State two or three professional activities falling within the scope of Directive 64/427 may rely on his right of establishment in order to continue to pursue those activities as a self-employed person in another Member State in which the taking-up of such activities is dependent on the possession of specified knowledge and ability, and, if so, under what conditions.

26. The Court of Justice has consistently held that 'Article 52 of the EEC Treaty embodies one of the fundamental principles of the Community and has been directly applicable in the Member States since the end of the transitional period. By virtue of that provision, freedom of establishment for nationals of one Member State on the territory of another includes the right to take up and pursue activities as self-employed persons and to set up and manage undertakings under the conditions laid down for its own nationals by the law of the country where such establishment is effected'. The Court infers from this that 'Article 52 is intended to ensure that all nationals of Member States who establish themselves in another Member State, even if that establishment is only secondary, for the purpose of pursuing activities there as self-employed persons receive the same treatment as nationals of that State and it prohibits, as a restriction on freedom of establishment, any

discrimination on grounds of nationality resulting from the legislation of the Member State'. [9]

27. It is true that the Luxembourg legislation does not introduce any difference in treatment on grounds of nationality as regards the rules governing the taking-up or pursuit of manual trades in the construction sector. The conditions it lays down are the same for both nationals and non-nationals, and it expressly provides that certificates issued by the competent bodies of Member States on the basis of Community directives relating to manual trades shall be regarded as equivalent to adequate professional qualifications.

I none the less consider that the practice of the Luxembourg authorities may be contrary to Article 52 of the Treaty and to the provisions of Directive 64/427, since it may have the effect of discouraging any Community national who has been self-employed in that sector in another Member State from establishing himself in Luxembourg.

28. In this respect, the Court has held that 'the provisions of the Treaty relating to the free movement of persons are thus intended to facilitate the pursuit [by Community nationals] of occupational activities [of any kind] throughout the Community, and preclude national legislation which might place Community nationals at a disadvantage when they wish to extend their activities beyond the territory of a single Member State'. [10]

29. The Court has also held that, in laying down that freedom of establishment shall be attained at the end of the transitional period, Article 52 imposes an obligation to attain a precise result, the fulfilment of which has to be made easier by, but not dependent on, the implementation of a programme of progressive measures. [11]

30. Annex I to the General Programme adopted in 1962 for the purpose of giving effect to Article 54(1) of the Treaty lists the activities in respect of which Member States were required to have effectively abolished all restrictions on freedom of establishment before the end of the second year of the second stage of the transitional period. The activities in that list are classified into major groups and groups.

9 — Case 270/83 *Commission* v *France* [1986] ECR 273, paragraphs 13 and 14.

10 — Case C-53/95 *Inasti* v *Kemmler* [1996] ECR I-703, paragraph 11; Case 143/87 *Stanton* v *Inasti* [1988] ECR 3877, paragraph 13; and Joined Cases 154/87 and 155/87 *RSVA* v *Wolf and Others* [1988] ECR 3908, paragraph 13.

11 — Case 11/77 *Patrick* v *Ministre des Affaires Culturelles* [1977] ECR 1199.

31. When drawing up the annexes to the General Programme, use was made of the 'International Standard Industrial Classification of all Economic Activities' [12] ('ISIC'), which, together with its explanatory notes, must be used as a basis when classifying the various activities into major groups and groups. Activities which are not listed in that classification are to be included under the heading covering activities most closely related to them, having regard to the circumstances of the industry within the EEC and, in particular, to technical developments.

32. As its title states, Directive 64/427, which the national court seeks to have interpreted, lays 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.

Those major groups are: Major Group 23, Manufacture of textiles; Major Group 24, Manufacture of footwear; Major Group 25, Manufacture of wood and cork; Major Group 26, Manufacture of furniture and fixtures; Major Group 27, Manufacture of paper and paper products; Major Group 28, Printing, publishing and allied industries; Major Group 29, Manufacture of leather; Major Group 30, Manufacture of rubber products; Major Group 31, Manufacture of chemicals and chemical products; Major Group 32, Manufacture of products of petroleum and coal; Major Group 33, Manufacture of non-metallic mineral products; Major Group 34, Basic metal industries; Major Group 35, Manufacture of metal products, except machinery and transport equipment; Major Group 36, Manufacture of machinery, except electrical machinery; Major Group 37, Manufacture of electrical machinery, appliances and supplies; Major Group 38, Manufacture of transport equipment; Major Group 39, Miscellaneous manufacturing industries; and Major Group 40, which consists solely of Group 400, comprising construction and public works.

By way of information, the 1958 ISIC lists, under Group 400, a diverse range of no less than 179 activities in the construction sector, including carpentry, construction of ports, roof repairs, construction of hangars and road surfacing, without providing a description or definition of any of them.

33. It appears from the documents before the Court that Mr de Castro Freitas worked as a self-employed building contractor and as a façade finisher in Portugal for nine years. He gave evidence of this to the Luxembourg authorities in the form of the certificate provided for in Article 4(2) of Directive 64/427, with a view to obtaining a licence to engage in business in Luxembourg as a building contractor authorised to carry out exterior façade and roof finishings. In his case, a licence was granted in respect of only part of the activities applied for, being refused in respect of the remainder on the ground that, in Luxembourg, the list of principal and secondary trades contained in the Regulation of 19 February 1990 separates the trades simultaneously

12 — Issued by the Statistical Office of the United Nations, Statistical Papers, Series M, No 4, Rev 1, New York, 1958.

pursued by Mr de Castro Freitas in Portugal under two headings, namely that of building contractor and that of façade finisher, classifying them both as principal trades under reference numbers 401-00 and 419-00 respectively.

In accordance with the definition of the activities covered by those two trades contained in the Regulation of 26 March 1994, authorisation to pursue the first trade covers, *inter alia*, the building of façades in natural or artificial stone, the laying of cement surfaces and stone flooring, the application of lime and cement rendering, and the erection of scaffolding, whereas authorisation to pursue the second trade covers, *inter alia*, the finishing of ceilings and walls by means of plaster or plasterboard, the installation of false ceilings, the plastering of surfaces, the rendering of interior and exterior walls, the installation of insulating façades, the cleaning of façades, and the erection of scaffolding.

34. Mr Escallier provided to the Luxembourg authorities a certificate issued by the competent authority as evidence that he had simultaneously pursued the trades of construction carpenter, roofer and sheet and galvanised metal craftsman, as a person responsible for managing an undertaking for seven years in France, when he applied for a licence to pursue those trades in Luxembourg. He was granted a licence solely to pursue the trade of roofer, the remainder of his application being refused. Under the classification of trades contained in the aforementioned Regulations, all three of the trades in question are deemed to be principal trades — with reference numbers 416-00, 414-00 and 415-00 respectively — for which individual licences are required. The three trades essentially involve: in the first case, the construction and installation of timber roof frames; in the second case, the laying of tiles; and in the third case the laying of any kind of metal roofing elements.

35. The purpose of Directive 64/427 is to adopt measures intended primarily to avoid causing exceptional difficulties for nationals of Member States in which the taking-up of activities as a self-employed person in manufacturing and processing industries covered by the Directive is not dependent on any conditions — as in the case of the trades described in Portugal and France — when they intend to establish themselves in order to pursue such activities in a Member State in which the taking-up of such activities is regulated, as it is in Luxembourg.

36. In order to avoid such difficulties, Directive 64/427 requires a host Member State in which the taking-up and pursuit of such activities is subject to the possession of professional knowledge and ability to accept as sufficient evidence of such knowledge and ability the fact that the activity in question has actually been pursued for a reasonable period, fixed at six consecutive years in the case of an activity pursued in an independent capacity or as a person responsible for managing an

undertaking, and at a sufficiently recent point in time, it being accordingly required that pursuit of the activity must not have ceased more than ten years before the date when the application for a licence is made.

37. There is no doubt that the taking-up of the occupations in question is regulated in Luxembourg. I agree with the definition of a 'regulated profession' proposed by Advocate General Léger for the purpose of interpreting the provisions of Directive 89/48/EEC 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, [13] and adopted by the Court in its judgment in the same case; according to that definition, a regulated profession exists only where the State has directly or indirectly laid down rules governing the taking-up and pursuit of the profession and where penalties are imposed for failure to comply with those rules. [14]

38. Pursuant to the rules governing the taking-up of the relevant occupations in Luxembourg, the Luxembourg authorities have not accepted as sufficient evidence the certificate issued to Mr de Castro Freitas by the competent authority in Portugal, showing that he pursued two trades as a self-employed person for nine consecutive years, or the certificate issued to Mr Escallier by the competent authority in France, showing that he pursued three trades for seven consecutive years as a person responsible for managing an undertaking, despite the fact that, in both cases, the activity in question was actually pursued for longer than the period of six consecutive years laid down in Article 3(a) of Directive 64/427, and have refused to grant either of them a licence to pursue the same trades in Luxembourg. It had nevertheless been necessary for those certificates to be drawn up, in the light of the detailed description of the occupations in question communicated by Luxembourg, in accordance with Article 4(2) of Directive 64/427.

39. The Luxembourg legislation regards each of those five trades as a principal trade for which a separate licence is required; to obtain such a licence, individuals must show that they possess either a master craftsman's certificate or a university engineering qualification in the relevant field. An applicant who does not hold such qualifications may be deemed to have sufficient professional competence to pursue a trade or part of a trade on the basis of documentary evidence recognised as equivalent. The certificates issued in Portugal and in France are thus of course considered to be equivalent, by virtue of Directive 64/427, although it has been shown in practice that they serve only to enable an individual to take up one, but not all, of the activities previously pursued, as Community nationals in identical or similar circumstances to those of Mr de Castro Freitas or Mr Escallier, who wish to obtain a licence to pursue each of the trades classified as principal trades under the Luxembourg legislation, are required to provide evidence that they have pursued each trade for at least six consecutive years.

13 — Cited at footnote 7 above.

14 — Opinion in Case C-164/94 *Aranitis* [1996] ECR I-135 et seq., in particular at p. I-147.

40. The Court of Justice has held that the formulation 'the activity in question has been pursued in another Member State for [a specified number of] consecutive years', contained in Article 3 of Directive 64/427, constitutes one of the conditions for the recognition, by a Member State which regulates the activity in question, of the exercise of their activity in another Member State and thus makes it possible to ensure freedom of establishment in the activities covered by the Directive. For that reason, the Court added, in order to apply Directive 64/427 uniformly, it is necessary to give a Community interpretation to that concept. In accordance with its case-law, those words refer solely to the actual exercise of the activity in question for a period which must be unbroken except for reasons of (short) illness or (normal) holiday leave. [15]

41. Bearing in mind that the Directive requires that exercise of the activity covered by the certificate be genuine and last for six consecutive years, and in the light of the interpretation given to those words by the Court, the only conclusion that can be drawn is that, if the Luxembourg authorities' interpretation of Directive 64/427 were to prevail, a Community national in the same situation as Mr de Castro Freitas or Mr Escallier would, at best, only succeed in establishing himself in Luxembourg in order to pursue two at most of the trades regarded in that country as principal trades. It must not be forgotten that the last paragraph of Article 3 of Directive 64/427 provides that an applicant must not have ceased pursuing the activity in respect of which he is applying for a licence more than ten years before he makes the application in the host Member State.

Mr Escallier's case is a very good illustration of that eventuality. After spending seven years as a person responsible for managing a roofing firm in France, he applies to establish himself in Luxembourg in order to continue building roofs, but, on the basis of the experience for which he provides evidence, he is granted a licence only to lay roofs. If he also wishes to be authorised to build timber roof frames or to fit the metal elements which usually come with roofs, and he is content to pursue only one of those two activities, he will have to wait until he has accumulated twelve years' experience. If, however, he is determined to gain the years of experience necessary to obtain a licence to pursue all three trades in Luxembourg, he will find that, once the 16th year of gaining experience has elapsed, the experience he acquired over the first six years will no longer be reckonable in his favour because it will be more than ten years since he ceased pursuing the first trade. Furthermore, given that the activity must be carried on for six consecutive years and that, under the Luxembourg legislation, the exercise of a principal trade seems to preclude the exercise of any other of the same nature, I am curious to know which of the trades pursued simultaneously in France would be counted as having suffered the loss of experience.

15 — Case 130/88 *Van de Bijl* v *Staatssecretaris van Economische Zaken* [1989] ECR 3039, paragraphs 17 and 19.

42. I take the view that such a practice is unacceptable not only because it leads to the absurd situation which I have just outlined, but also because Article 4 of Directive 64/427 lays down quite unambiguously that Member States in which the taking-up and pursuit of any of the occupations to which it applies is regulated is, with the assistance of the Commission, to inform the other Member States of the main characteristics of that occupation by means of a description of the activities covered by the occupation; that there is to be in each Member State a competent authority designated for that purpose which is to certify what professional activities were actually pursued by the beneficiary and the duration of those activities, on the basis of the detailed description of the occupation communicated by the Member State in which the beneficiary wishes to establish himself; and finally that the host Member State is to grant the authorisation applied for provided that the activity certified conforms to the main features of the detailed description of the occupation communicated to the competent authority of the Member State of origin to enable it to issue that certificate and provided that any other conditions laid down by the rules of that State are satisfied. Such conditions cannot, in my view, include the requirement of more years' experience in a given activity than are required by the Directive.

43. Directive 64/427 thus introduces a comprehensive system intended to ensure that a professional activity pursued in one Member State will be recognised, for the purposes of rights of establishment, in another Member State. It does so by means of a threefold guarantee: first, Member States inform each other of the main characteristics of the regulated professions by providing detailed descriptions of the activities they cover; secondly, the Member State in which authorisation to pursue an activity has been applied for communicates to the State of origin the detailed description of the occupation in question to which the State of origin must have regard in issuing the certificate — and in so doing, the State of origin must, in my view, conduct a critical evaluation not only of the activity actually pursued but also of its duration; and finally the host Member State must grant authorisation provided that the activity certified conforms to the main features of the detailed description of the occupation.

44. The Court held in 1989 [16] that the certificate issued by the Member State of origin on the basis of the detailed description of the trade communicated by the host Member State constitutes the document which enables freedom of establishment and freedom to provide services to be actually exercised in those Member States which prescribe certain conditions of qualification. The host Member State which imposes such conditions is therefore, in principle, bound by the declarations contained in the certificate issued by the Member State from which the beneficiary comes, as that certificate would otherwise be deprived of its effectiveness. In particular, the host Member State may not call in question the accuracy of the particulars provided by the competent authority in the Member State from which the beneficiary comes concerning the activities in which that person was there engaged or their duration.

16 — *Ibidem*, paragraphs 21 to 23.

45. The Luxembourg authorities none the less refuse to grant to a Community national who has submitted a certificate issued by the competent authority of another Member State showing that he has simultaneously pursued more than one trade for the reasonable and sufficiently recent period required by Directive 64/427, a licence to continue to pursue those trades in its territory, on the ground that under national legislation they are regarded as principal and separate trades the pursuit of which can only be authorised separately.

46. In my opinion, this practice is contrary to the provisions of the Treaty governing freedom of movement for persons, which are intended to facilitate the exercise of professional activities throughout the Community, and in particular to Article 52 and the provisions of Directive 64/427, which is designed to facilitate attainment of freedom of establishment in relation to the activities of self-employed persons in manufacturing and processing industries to which it applies, since it inevitably has the effect of discouraging Community nationals who have simultaneously pursued in another Member State more than one of the activities which are considered to be principal trades in Luxembourg from establishing themselves there.

VII — Conclusion

In the light of the foregoing, I propose that the Court of Justice reformulate the questions referred to it for a preliminary ruling by the Tribunal Administratif, Luxembourg, and answer them as follows:

It is contrary to Article 52 of the Treaty and Articles 3 and 4 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) for a Community national who provides to the authorities of the host Member State, in the form of the certificate issued by the competent authority of the Member State of origin, evidence that he has simultaneously pursued more than one trade for the reasonable period laid down for his situation, and that he did not cease pursuing those trades more than ten years earlier, to be refused a licence to pursue part of those trades on the ground that, in the host Member State, they are regarded as principal and separate trades, and the authorities of that Member State consider that the condition requiring the activity to have been pursued for a reasonable period must be satisfied separately in respect of each trade.