industries falling within ISIC Major Groups 23-40 (Industry and small craft industries) is based on a broad definition of the "beneficiaries" of its provisions, in the sense that the nationals of all Member States must be able to avail themselves of the liberalizing measures which it lays down, provided that they come objectively within one of the situations provided for by the directive, and no differentiation of treatment on the basis of their residence or nationality is permitted.

Thus the provisions of the directive may be relied upon by the nationals of all the Member States who are in the situations which the directive defines for its application, even in respect of the State whose nationality they possess.

In Case 115/78

REFERENCE to the Court under Article 177 of the EEC Treaty by the College van Beroep voor het Bedrijfsleven (administrative court of last instance in matters of trade and industry) for a preliminary ruling in the proceedings pending before that court between

J. KNOORS, a central heating contractor, residing at Dilsen/Stokkem (Belgium),

and

SECRETARY OF STATE FOR ECONOMIC AFFAIRS,

on the interpretation of Article 1 (1) of Council Directive No 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 23-40 (Industry and small craft industries),

THE COURT

composed of: H. Kutscher, President, J. Mertens de Wilmars and Lord Mackenzie Stuart (Presidents of Chambers), A. M. Donner, P. Pescatore, M. Sørensen, A. O'Keeffe, G. Bosco and A. Touffait, Judges,

Advocate General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts, the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

In the Netherlands the activities of self-employed persons in manufacturing and processing industries, in particular those of central heating contractor, plumber and water fitter, are governed by the Vestigingswet Bedrijven (Law on the establishment of undertakings) 1954.

Article 4 (1) of that law provides that the practice, without an authorization from the relevant Chamber of Commerce and Industry, of certain trades in the sphere of self-employment in the processing industries may be forbidden by general provisions of public administration in the form of decrees relating to establishment.

As regards operations as a contractor in central heating, plumbing and water fitting, prohibitions on the practice of those trades without an authorization from the relevant Chamber of Commerce and Industry are laid down by Article 7 of the Vestigingsbesluit verwarmings- en aanverwante bedrijven (Decree on the establishment of heating and associated businesses) 1960 and by Articles 19 and 27 of the Vestigingsbesluit bouwnijverheidsbedrijven (Decree on establishment in building trades) 1958.

These decrees impose various conditions on the grant of an authorization from the Chamber of Commerce and Industry, in particular that of skill in the trade concerned.

Article 15 (1) of the 1954 Law on establishment provides that the Minister for Economic Affairs may grant exemption from a prohibition on the practice of a trade referred to in a decree relating to establishment "if the provisions of a directive of the Council of the European Communities with regard to the establishment of natural persons and companies in the territory of one of the Member States of the European Economic Community or with regard to the provision of services by natural persons and companies in that territory require such exemption".

In pursuance of that provision, J. Knoors, a Netherlands national, residing at Dilsen/Stokkem (Belgium), where since 13 March 1970 he has been carrying on trade as a central heating contractor and sanitary contractor and plumber as the head of an independent undertaking, applied to the Kamer van Koophandel en Fabrieken voor de Mijnstreek (Chamber of Commerce and Industry for the Mining Region), whose office is at Heerlen, for an exemption from the prohibition on practising in the Netherlands, as head and administrator

of a business, the trades of central heating contractor, plumber and water fitter.

The Secretary of State for Economic Affairs on 31 January 1977 sent Mr Knoors a decision rejecting his application on the ground that, as a Netherlands national, he could not be considered in the Netherlands as being a "beneficiary" within the meaning of Article 4 (1) (a) of Council Directive No 64/429/EEC of 7 July 1964 concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in manufacturing and processing industries falling within ISIC Major Groups 23-40 (Industry and small craft industries) (Official Journal, English Special Edition, 1963-1964, p. 155).

On 22 February 1977 Mr Knoors entered a protest against that decision.

In reply to that protest the Secretary of State for Economic Affairs sent Mr Knoors a fresh decision dated 15 March 1977 in which he stated that he maintained his decision of 31 January 1977 rejecting Mr Knoors's application and stating that he had submitted his request for exemption under Article 15 (1) (b) of the 1954 Law on establishment to the Sociaal Economische Raad (Social and Economic Council).

On 22 April 1977 the Commissie Uitvoering Vestigingsregelingen (Commission for drawing up rules relating to establishment) of the Social and Economic Council sent Mr Knoors a decision refusing the exemption applied for.

Previously, on 14 April 1977, Mr Knoors had appealed from the decision of the Secretary of State for Economic Affairs of 31 January 1977 to the College van Beroep voor het Bedrijfsleven (administrative court of last instance in matters of trade and industry).

That court, by decision of 9 May 1978, stayed the proceedings and in pursuance of Article 177 of the EEC Treaty put the following question to the Court of Justice for a preliminary ruling:

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

The decision of the College referring the matter to the Court was lodged at the Court Registry on 12 May 1978.

In pursuance of Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted on 20 July 1978 by the Commission of the European Communities and on 31 July by the Government of the Kingdom of the Netherlands.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry.

II — Written observations submitted to the Court

The *Government of the Kingdom of the Netherlands* is of the opinion that the concept of "beneficiaries" within the meaning of Article 1 (1) of Directive No 64/427 does not apply to the host Member State's own nationals.

(a) It is clear from the preamble that the directive relates to the beneficiaries of transitional measures laid down in

Titles V and VI of the General Programmes of 18 December 1961 for the abolition of restrictions on freedom of establishment and for the abolition of restrictions on freedom to provide services respectively (Official Journal, English Special Edition, Second Series, IX, pp. 7 and 3). These programmes related only to the restrictions imposed by a Member State on the nationals of other Member States and not to restrictions applied to nationals of the host State; the transitional measures for which they provided thus also concerned only persons other than nationals.

The general programmes provided that the duration and details of the transitional systems were to be settled when the directives were drawn up. As regards the conditions in particular, the sixth recital in the preamble to Directive No 64/427 stated that "the main object of the transitional measures should be to allow, as sufficient qualification for taking up the activities in question in host States which have rules governing the taking up of such activities, the fact that the occupation has been pursued for a reasonable period of time in the country whence the person concerned comes, such period being, in cases where no previous training is required, sufficiently recent to ensure that such person possesses professional knowledge equivalent to that required of the host country's own nationals". This provision means that nationals are not considered as beneficiaries of the system.

The system laid down by the general programmes establishes a close link between a directive dealing with transitional measures and a directive for the abolition of restrictions. The link between Directive No 64/427 and Directive No 64/429, which were adopted on the same day, may be seen in particular by the reference in Article 1 (2) on the first directive to the second.

Both directives contain an Article 1 (1) which, for the concept of "beneficiaries", refers to Title I of the general programmes. This term must therefore necessarily have the same meaning in each of the two directives. Article 4 (1) and Article 5 of Directive No 64/429 make a clear distinction between beneficiaries and nationals.

These findings make it clear that Directive No 64/427 does not consider nationals of the host State as beneficiaries.

(b) The question arises, however, whether, since the end of the transitional period, a difference in treatment by a host Member State between its own nationals and the nationals of other Member States is still permitted in the sense that nationals cannot rely on rules intended to facilitate the exercise of the right of establishment and the freedom to provide services which, on the other hand, applies to the nationals of other Member States. In other words, the question is whether, in such a case, nationals may rely on Article 52, the first paragraph of Article 59 and the third paragraph of Article 60 of the EEC Treaty.

The answer to this question is in the negative. Article 52 concerns the abolition of restrictions on the freedom of establishment of nationals of a Member State on the territory of *another* Member State; according to the second paragraph, freedom of establishment includes the right to take up activities as self-employed persons and to pursue them under the conditions laid down for its *own* nationals by the law of the country where such establishment is effected. The condition for nationals therefore determines the condition for

Community citizens in the country in question. Where a Member State requires for its nationals evidence of skill in the performance of a trade the nationals of the other Member States must comply with the same conditions. The same conclusion follows from the wording of Article 53.

The situation is nó different as regards the provision of services. The provision of services by nationals operating from other Member States must not be affected by discriminatory measures based on place of residence; but in this case too the rule is that the condition for nationals established in the host country determines that of the nationals of Member States supplying services in that country within the meaning of the Treaty (third paragraph of Article 60).

(c) Only the effective realization of mutual recognition of diplomas, certificates and other qualifications will supply the objective nature of such recognition and also permit the nationals of a Member State to avail themselves of it within their own country. Such is not the case with the transitional measures adopted hitherto, in particular those laid down by Directive No 64/427, which did not establish any objective equivalence between the possession of a national qualification and a given skill at a trade: it simply accepted as a principle that, for the nationals of other Member States, a number of years' practice constitutes a sufficient proof of qualification; the intention was not to provide nationals with a means of evading national rules justified in the general interest.

Moreover, such an opportunity of evading national requirements relating to establishment does not appear desirable. A person who has carried out a number of years' practice in a Member State in which no proof of qualification is required cannot claim to possess without further ado a degree of skill in his trade corresponding to the level which, elsewhere, must be established by examinations. The admission of such a person to a trade which is governed by rules would undermine national provisions and would be calculated to provoke reactions on the part of those who have had to undergo the required tests of qualification.

(d) It is true that this system of transitional provisions involves a difference of treatment between a State's nationals and the nationals of other Member States. A definitive set of rules in the form of mutual recognition of diplomas, certificates and other qualifications, perhaps accompanied by measures of co-ordination, would be bound to put an end to this distortion; in the meanwhile it is not possible to state that there is an incompatibility with Article 7 of the Treaty based on discrimination against a State's own nationals. Article 7 is applicable without prejudice to the special provisions of the Treaty; as regards the right of establishment and the freedom to provide services, its application is limited to cases of discrimination not based on national legal or administrative provisions. Article 52, the first paragraph of Article 59 and the third paragraph of Article 60, in conjunction with Article 66, by no means make it possible to call in question less favourable treatment for a State's own nationals.

The *Commission of the European Communities* points out that Article 1 (1) of Directive No 64/427 defines its scope, not only as regards the activities but also as regards the persons and companies to which it relates. The question of its scope *ratione personae* is thus decisive in

defining the scope of Article 4, which is the essential provision in the main action.

(a) Article 1 (1) of the directive refers to Title 1 of the general programmes, which simply designate the persons who are to benefit from the abolition of restrictions by the words "nationals of Member States". The general nature of this expression makes impossible any interpretation according to which the text of Title I of the general programmes has the effect of excluding from the whole class of beneficiaries nationals of Member States who wish to establish themselves or provide services in a Member State of the Community whose nationality they possess. According to those provisions, freedom of establishment and freedom to provide services apply equally to persons who come from another Member State and desire to pursue their activity in the country whose nationality they possess.

(b) The broad scope of Directive No 64/427, determined by reference to Title I of the general programmes, is in accordance with the principles of Articles 52 and 59 of the Treaty and with the general objectives of the Treaty. The Treaty was intended to make as complete as possible the free movement of persons and made of this principle one of the foundations of the Common Market. Free movement of persons has the object of creating a single large market in which all the nationals of each of the Member States would have the opportunity to carry on their livelihoods by establishing themselves or providing services in any place within the Community.

The wording of Articles 48 and 59 of the Treaty is entirely in conformity with this objective. The difference in the wording of the first paragraph of Article 52 does not make it possible to conclude that there is a derogation as regards freedom of establishment from the fundamental principles of the Treaty. It follows from the case-law of the Court that Articles 48 to 51 and 59 to 66 are based on the same principles as regards not only entry and residence on the territory of the Member States of persons subject to Community law but also the prohibition of any discrimination towards them based on nationality.

(c) One of the conditions necessary for the realization of freedom of movement is that persons who wish to establish themselves in a Member State other than that whose nationality they possess must have, for themselves and their children, the certainty that they may resume, if they desire, a trade in their country of origin. If that were not the case the position would be absurd — the greater use was made of a right conferred by the Treaty to go to another Member State to carry on a trade there, the greater would be the number of people whose mobility was restricted by the fact that their return was made impossible.

(d) It should also be recognized that the value of a qualification depends only on the requirements applied by the authority which confers it and not on the nationality of the person on whom it is conferred.

(e) The Council also recognizes that the principle of freedom of establishment has a general scope. Thus in the minutes of the meeting during which the directives relating to doctors were adopted, the Council made a declaration in which it "reaffirms that it is to be understood that freedom of establishment, particularly for the

holders of certificates obtained in other Member States, must be accorded on the same terms to nationals of other Member States and to nationals of the Member State concerned . . .".

(f) The following answer should be given to the question raised by the College van Beroep voor het Bedrijfsleven:

"Article 1 (1) of Council Directive No 64/427 of 7 July 1964 laying down detailed provisions concerning transitional measures in respect of activities of self-employed persons in manufacturing and processing industries falling within ISIC Major Groups 23-40 (Industry and small craft industries) must be understood to mean that persons who possess exclusively the nationality of the host Member State are also beneficiaries."

III — Oral procedure

The Commission of the European Communities, represented by H. J. Bronkhorst, a member of its Legal Department, presented oral argument at the hearing on 21 November 1978.

The Advocate General delivered his opinion at the hearing on 12 December 1978.

Decision

1 By an order of 9 May 1978 which reached the Court on 12 May, the College van Beroep voor het Bedrijfsleven (administrative court of last instance in matters of trade and industry) referred to the Court for a preliminary ruling in pursuance of Article 177 of the EEC Treaty a question on the interpretation of Council Directive No 64/427 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 [United Nations' International Standard Industrial Classification of all Economic Activities] Major Groups 23-40 (Industry and small craft industries) (Official Journal, English Special Edition, 1963-1964, p. 148).

2 The order referring the matter to the Court shows that the plaintiff in the main action, a Netherlands national residing in Belgium, was engaged, during lengthy residence in that Member State, as an employed person in a plumbing business and that since 1970 he has worked as a plumbing contractor as the head of an independent business.

3 The plaintiff applied to the competent Netherlands authorities for an authorization to carry on the same trade in his country of origin. However, his application was refused because he did not possess the qualifications required for that trade by Netherlands legislation.

4 On that occasion the Netherlands authorities informed the plaintiff that he could not take advantage of the provisions of Article 15 (1) (c) of the Vestigingswet Bedrijven (Law on establishment 1954) under which an authorization to practise certain trades may be granted when the provisions of a directive of the Council of the European Communities relating to establishment require the grant of such an authorization.

5 In this respect the Netherlands Secretary of State for Economic Affairs, in two successive decisions, stated that the plaintiff, as a Netherlands national, could not be considered as a beneficiary of the provisions of the directive in question according to which, when access to certain economic activities in a Member State is made subject to the possession of given trade qualifications, that Member State must recognize as a sufficient proof of those qualifications the actual practice in another Member State of the activity in question.

6 The plaintiff takes the view that Directive No 64/427 ought to have required the Netherlands authorities to grant him the authorization for which he had applied.

7 To enable it to give judgment in this matter the College van Beroep voor het Bedrijfsleven has submitted the following question:

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

8 The definition of the persons to whom Directive No 64/427 applies depends, first, on the actual aim of that directive and, secondly, on the provisions which form its basis and its framework, namely the General Programmes for the abolition of restrictions on freedom to provide services and freedom of establishment of 18 December 1961 (Official Journal, English Special Edition, Second Series, IX, pp. 3 and 7 respectively) as well as on the relevant provisions of the Treaty.

9 Directive No 64/427 is intended to facilitate the realization of freedom of establishment and of freedom to provide services in a large group of trade activities relating to industry and small craft industries, pending the harmonization of the conditions for access to the trades in question in the various Member States, which is an indispensable precondition for complete freedom in this sphere.

10 More particularly that directive takes account of the difficulties resulting from the fact that, in certain Member States, certain of the activities in question may be freely taken up and pursued, whilst other Member States apply more or less strict conditions involving the possession of specialized training for admission to certain trades.

11 With a view to resolving the problems created by this disparity, Article 3 of the directive provides that, where, in a Member State, the taking up or pursuit of any activity referred to in the directive is dependent on the possession of certain qualifications, "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".

12 That article further states what is to be understood by "pursuing" an activity, in particular by fixing minimum periods during which it must have been practised.

13 As a counterpart, Article 5 of the same directive dealing with Member States in which the taking up of one of the activities in question is not subject to the possession of any given trade qualifications, governs the situation of persons coming from a Member State where such qualifications are required.

14 The persons to whom the directive applies are essentially defined by Article 1 (1), under which "Member States, acting in accordance with the provisions hereinafter laid down, shall adopt the following transitional measures in respect of establishment or provision of services in their territories by natural persons or companies or firms covered by Title I of the general programmes (hereinafter called 'beneficiaries') wishing to engage in activities as self-employed persons in manufacturing and processing industries".

15 The General Programme for the abolition of restrictions on freedom to provide services, in the first indent of Title I, defines as beneficiaries the "nationals of Member States who are established within the Community", without making any distinction as to the nationality or residence of the persons concerned.

16 The same idea is expressed by Title I of the General Programme for the abolition of restrictions on freedom of establishment, which designates as beneficiaries, in the first and third indents, the "nationals of Member States" without any distinction as regards nationality or residence.

17 It may therefore be stated that Directive No 64/427 is based on a broad definition of the "beneficiaries" of its provisions, in the sense that the nationals of all Member States must be able to avail themselves of the liberalizing measures which it lays down, provided that they come objectively within one of the situations provided for by the directive, and no differentiation of treatment on the basis of their residence or nationality is permitted.

18 Thus the provisions of the directive may be relied upon by the nationals of all the Member States who are in the situations which the directive defines for its application, even in respect of the State whose nationality they possess.

19 This interpretation is justified by the requirements flowing from freedom of movement for persons, freedom of establishment and freedom to provide services, which are guaranteed by Articles 3 (c), 48, 52 and 59 of the Treaty.

20 In fact, these liberties, which are fundamental in the Community system, could not be fully realized if the Member States were in a position to refuse to grant the benefit of the provisions of Community law to those of their nationals who have taken advantage of the facilities existing in the matter of freedom of movement and establishment and who have acquired, by virtue of such facilities, the trade qualifications referred to by the directive in a Member State other than that whose nationality they possess.

21 In contesting this solution the Netherlands Government states, first, that the first paragraph of Article 52 provides for the abolition of "restrictions on the

freedom of establishment of nationals of a Member State in the territory of another Member State" and, secondly, that according to the second paragraph of the same article, freedom of establishment is to include the right to take up activities as self-employed persons under the conditions laid down by the law of the country where such establishment is effected "for its own nationals".

22 It is claimed that those provisions of the Treaty show that the nationals of the host State are not regarded by the Treaty as being beneficiaries of the liberalization measures for which provision is made and that they therefore remain entirely subject to the provisions of their national legislation.

23 Moreover, the Netherlands Government draws attention to the risk that the nationals of a Member State might evade the application of their national provisions in the matter of training for a trade if they were authorized to avail themselves, as against their own national authorities, of the facilities created by the directive.

24 Although it is true that the provisions of the Treaty relating to establishment and the provision of services cannot be applied to situations which are purely internal to a Member State, the position nevertheless remains that the reference in Article 52 to "nationals of a Member State" who wish to establish themselves "in the territory of another Member State" cannot be interpreted in such a way as to exclude from the benefit of Community law a given Member State's own nationals when the latter, owing to the fact that they have lawfully resided on the territory of another Member State and have there acquired a trade qualification which is recognized by the provisions of Community law, are, with regard to their State of origin, in a situation which may be assimilated to that of any other persons enjoying the rights and liberties guaranteed by the Treaty.

25 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.

26 In this case, however, it should be borne in mind that, having regard to the nature of the trades in question, the precise conditions set out in Article 3 of Directive No 64/427, as regards the length of periods during which the

activity in question must have been pursued, have the effect of excluding, in the fields in question, the risk of abuse referred to by the Netherlands Government.

27 Moreover, it should be emphasized that it is always possible for the Council, by virtue of the powers conferred upon it by Article 57 of the Treaty, to remove the causes of any abuses of the law by arranging for the harmonization of the conditions of training for a trade in the various Member States.

28 The answer to be given to the question referred to the Court should therefore be that Council Directive No 64/427 of 7 July 1964 laying down detailed provisions concerning transitional measures in respect of activities of self-employed persons in manufacturing and processing industries falling within ISIC Major Groups 23-40 (Industry and small craft industries) must be understood to mean that persons who possess the nationality of the host Member State are also "beneficiaries" within the meaning of Article 1 (1) of the directive.

Costs

29 The costs incurred by the Government of the Kingdom of the Netherlands and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

30 As these proceedings are, so far as the parties to the main action are concerned, in the nature of a step in the action pending before the College van Beroep voor het Bedrijfsleven, costs are a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the College van Beroep voor het Bedrijfsleven by order of 9 May 1978, hereby rules:

Council Directive No 64/427 of 7 July 1964 laying down detailed provisions concerning transitional measures in respect of activities of self-employed persons in manufacturing and processing industries falling within ISIC Major Groups 23-40 (Industry and small craft industries) must be understood to mean that persons who possess the nationality of the host Member State are also "beneficiaries" within the meaning of Article 1 (1) of the directive.

Kutscher Mertens de Wilmars Mackenzie Stuart Donner Pescatore

Sørensen O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 7 February 1979.

A. Van Houtte
Registrar

H. Kutscher
President