OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 17 November 1993 *

Mr President,
Members of the Court,

1. May a Member State refuse to recognize a diploma of dentistry awarded by a non-member State although the holder has had it recognized in another Member State? That, essentially, is the question referred to the Court from the French Conseil d'État.

2. Article 3 of Council Directive 78/686/EEC of 25 July 1978 concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications of practitioners of dentistry, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services ('the first directive') [1] lists the diplomas awarded by each of the Member States to which the others must give the same effect in their territory as those which they themselves award. [2]

3. Council Directive 78/687/EEC of 25 July 1978 concerning the coordination of provisions laid down by law, regulation or administrative action in respect of the activities of dental practitioners ('the second directive'), [3] lays down the training which the Member States are to require for access to the dental profession. [4]

4. As regards recognition of qualifications awarded by Member States before the entry into force of the second directive, Article 7 (1) of the first directive provides that

'In the case of nationals of Member States whose diplomas, certificates and other evidence of formal qualifications do not satisfy all the minimum training requirements laid down in Article 1 of Directive 78/687/EEC, each Member State shall recognize as being sufficient proof the diplomas, certificates and other evidence of formal qualifications in dentistry awarded by those Member States before the implementation of Directive 78/687/EEC, accompanied by a certificate stating that those nationals have effectively and lawfully been engaged in the activities in question for at least three consecutive years during the five years prior to the date of issue of the certificate.'

* Original language: French.
1 — OJ 1978 L 233, p. 1.
2 — Article 2.
3 — OJ 1978 L 233, p. 10.
4 — Article 1.

5. That article was transposed into French law by Article L.356-2 of the Code de la Santé Publique (Public Health Code) making the right to practise as a dental surgeon in France available to those holding 'either the French State Diploma of Doctor of Dental Surgery ... or, if the person concerned is a national of a Member State of the European Economic Community, a diploma, certificate or other evidence of formal qualifications as a practitioner of dentistry awarded by one of those States in accordance with Community obligations ... or any other diploma, certificate or other evidence of formal qualifications as a dental practitioner awarded by one of the Member States attesting to training as a dental practitioner acquired in one of those States which was commenced before 28 January 1980, provided that it is accompanied by a certificate from that State stating that the holder of the diploma, certificate or other evidence of formal qualifications has actually been lawfully engaged in dental practice for at least three consecutive years during the five years prior to the date of issue of the certificate'.

6. Mr Tawil-Albertini, a French national, obtained a diploma of doctor of dental surgery in Beirut (Lebanon) in 1968.

7. On 20 July 1979, that is to say prior to the entry into force of the second directive, the Belgian Minister for National Education and French Culture recognized his Lebanese qualification as equivalent to the Belgian 'diplôme légal de licencié en science dentaire' (official diploma of graduate in dental science), a decision which had the effect of authorizing Mr Tawil-Albertini to pursue a dental profession in Belgium. His qualification was also recognized by the United Kingdom and Irish authorities.

8. Relying on such recognition by the authorities of various Member States, Mr Tawil-Albertini applied to the Minister for Social Security and Employment for authorization to practice dentistry in France. He was refused that authorization on 2 May 1986.

9. By a judgment of 28 October 1987, the Tribunal Administratif (Administrative Court), Paris, dismissed his application for annulment of that decision.

10. The matter was brought before the Conseil d'État, which referred a question to the Court of Justice in order to ascertain whether Article 7 excludes from its scope qualifications obtained by virtue of equivalence which therefore do not testify to dental training acquired in one of the Member States of the Community .

11. This provision must be placed in its legislative context.

12. It appears from Articles 2 and 3 that the object of the first directive is the *mutual recognition* by Member States of diplomas in dentistry which are exhaustively listed and *awarded by those States.*

13. Diplomas conferred by any Member State are *automatically* recognized in the

other States of the Community because they correspond to the minimum criteria, defined by the second directive, [5] on which the Member States have agreed.

14. There is no such coordination of training and legislation with non-member countries. Article 1 (4) of the second directive provides, in that respect, that 'nothing in this directive shall prejudice any *facility* which may be granted *in accordance with their own rules* by Member States *in respect of their own territory* to authorize holders of diplomas, certificates and other evidence of formal qualifications *which have not been obtained in a Member State* to take up and pursue the activities of a dental practitioner'. [6]

15. The *ratio legis* of that provision was explained in an answer given on 29 July 1993 on behalf of the Commission by Mr Vanni d'Archirafi to a written question submitted by an MEP: '...automatic recognition is based on procedures ensuring mutual trust between Member States (each Member State awards a diploma in respect of training given in its territory which it guarantees as meeting the minimum training standards laid down in Directive 78/687/EEC) . Yet it follows from Article 1 (4) referred to above that Member States have not been — and are still not — prepared to trust one another in the case of training received in a third country, the reason being that the Member State granting recognition is not able to verify such training to the same degree as that received in its territory.' [7]

16. By means of Directive 89/48/EEC of 21 December 1988, [8] the Council introduced a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration. However, that directive does not apply to professions which are the subject of a separate directive establishing arrangements for the mutual recognition of diplomas by Member States. [9] Thus, although the effect of Article 1 (a) is that diplomas obtained in a non-member State may be recognized, the present dispute falls outwith its scope. Moreover, by a recommendation of that date, the Council recommended that the governments of the Member States should allow their nationals who hold diplomas awarded by a non-member State to take up and pursue regulated professions within the Community. [10]

17. 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 [11] likewise does not apply to

5 — The first recital of the directive refers to 'the requirement that minimum standards be observed'.

6 — My emphasis.

7 — Answer to Written Question No 257/93 (OJ 1993 C 297, p. 26) . See also the answer to Question No 690/93 (OJ 1993 C 292, p. 39) which appears to relate to the situation of the applicant in the main proceedings.

8 — OJ 1989 L 19, p. 16.

9 — Second paragraph of Article 2.

10 — Council Recommendation 89/49/EEC concerning nationals of Member States who hold a diploma conferred in a non-member State (OJ 1989 L 19, p. 24).

11 — OJ 1992 L 209, p. 25.

professions which are the subject of a specific directive establishing arrangements for the mutual recognition of diplomas by Member States. [12]

18. There is therefore no requirement for a Member State to recognize a diploma obtained in a non-member State, even in the case of a Community national. That is still the case as regards the transitional arrangements provided for in Article 7 which refers only to the recognition of qualifications *awarded by the Member States.*

19. However, must a Member State recognize as equivalent a qualification obtained in a non-member State on the ground that *another* Member State has recognized it as equivalent to its own diplomas?

20. The question of recognition by Member States of diplomas conferred by non-member States is not germane to the specific directives on the mutual recognition of diplomas. Generally they refer to it only in order to explain that it is governed by national law which determines its own criteria for equivalence and which retains an unfettered power of discretion which Community law does not put in question. [13] Thus, a Member State cannot be obliged to recognize a diploma awarded by a non-member State on the ground that another Member State considers it to be equivalent.

21. Any other solution would lead to a logical impasse: in effect, the facility granted to a Member State pursuant to Article 1 (4) of the second directive would become an obligation with regard to all the others. Such a construction cannot be placed on that provision without distorting it. More specifically, the equivalence of diplomas within the Community cannot depend on bilateral agreements concluded between Member States on one side, and non-member States on the other, and which do not observe a minimum Community standard.

22. Commenting on a provision analogous to Article 1 (4) of the second directive which appears in Article 1 (5) of the Directive 75/363/EEC on doctors, [14] Lord Cockfield, replying on behalf of the Commission to a question from an MEP, [15] stated as follows: 'Recognition of diplomas obtained in a non-Community country thus depends solely on the regulations in force in the host Member State; these regulations must, of course, apply equally to nationals of that Member State and the nationals of the other Member States. By virtue of Article 1 (5) referred to above, the United Kingdom retains the right not to recognize a basic Israeli diploma, even though it has been recognized by the Federal Republic of Germany'.

23. That view was repeated on 13 March 1989 in an answer given by Mr Bangemann, again on behalf of the Commission. Commenting in particular on that occa-

12 — Article 2.

13 — See, for example, Article 1 (4) of Council Directive 78/1027/EEC of 18 December 1978 concerning the coordination of provisions laid down by law, regulation or administrative action in respect of the activities of veterinary surgeons (OJ 1978 L 362, p. 7).

14 — Council Directive of 16 June 1975 concerning the coordination of provisions laid down by law, regulation or administrative action in respect of activities of doctors (OJ 1975 L 167, p. 14).

15 — Written Question No 2076/87 (OJ 1988 C 283, p. 11).

sion on the directives of 25 July 1978, he stated that 'the diplomas of non-Community States are not covered by this "mutual recognition". The legal instruments in question specifically leave to the Member States the right to grant on their own territory and in line with their own regulations access to the professional activities in question and their exercise by the holders of diplomas acquired in non-Community States. However, recognition of such diplomas by a Member State does not automatically imply an obligation upon the other Member States to recognize them as well'. [16]

24. It follows that, where a national of a Member State does not hold a Community qualification, he may not rely on the provisions of the first directive, and in particular on Article 7 of that directive.

25. I therefore propose that the Court give the following answer to the question submitted by the national court:

A Community national who holds a diploma in dentistry awarded by a non-member State cannot rely vis-à-vis a Member State on the provisions of Article 7 of Council Directive 78/686/EEC of 25 July 1978 concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications of practitioners of dentistry, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services, even if the diploma in question has been recognized as equivalent in one or more other Member States.

16 — Answer to Written Question No 2103/88 (OJ 1989 C 202, p. 19).