must be capable of being made the subject of judicial proceedings in which its legality under Community law can be reviewed and that the person concerned must be able to ascertain the reasons for the decision taken in his regard.

If those diplomas correspond only partially, the national authorities in question are entitled to require the person concerned to prove that he has acquired the knowledge and qualifications which are lacking. In this regard the said authorities must assess whether the knowledge acquired in the host Member State, either during a course of study or by way of practical experience, is sufficient in order to prove possession of the knowledge which is lacking.

If the completion of a period of preparation or training for entry into the profession is required in the host Member State, the national authorities must decide whether professional experience acquired in the Member State of origin or in the host Member State may be regarded as satisfying that requirement in full or in part.

REPORT FOR THE HEARING
in Case C-340/89 *

I — Facts and procedure

1. *Legal background and facts of the case before the national court*

Mrs Vlassopoulou, a Greek national, was admitted to the Athens Bar in 1982. In that same year she submitted her doctoral thesis to the University of Tübingen. Since July 1983 she has been working in a firm of German lawyers in Mannheim. Although she continues to practice in Greece, her main practice is in Mannheim.

On 9 November 1984 she was given permission to deal with foreign legal matters and to provide legal advice, pursuant to Paragraph 1(1), second sentence, point 5, of the Rechtsberatungsgesetz (Law on legal advice) in relation to Greek law and Community law.

On 13 May 1988 Mrs Vlassopoulou applied to be admitted to the profession of Rechtsanwalt (lawyer) and to be admitted to practice as a Rechtsanwalt before the Amstgericht (local court) Mannheim and the Landgerichte (regional courts) at Mannheim and Heidelberg. The Ministerium für Justiz, Bundes- und Europaangelegenheiten (Ministry for Justice, Federal

* Language of the case: German.

and European Affairs) of the Land Baden-Württemberg (hereinafter referred to as 'the Ministry') rejected her application on the ground that she did not have the qualifications necessary for holding judicial office stipulated in Paragraph 4 of the Bundesrechtsanwaltsordnung (Federal regulation on the profession of Rechtsanwalt, Bundesgesetzblatt 1959 I, p. 565). The qualifications for the holding of judicial office are laid down in the Richtergesetz (Law on judges). Essentially, those qualifications are acquired by studying law at a German university, passing the First State Examination and completing a preparatory training period ('Vorbereitungsdienst') ending with the Second State Examination. At least two years of study at university must be completed in the Federal Republic. The Ministry also stated that the second paragraph of Article 52 of the EEC Treaty did not give the applicant the right to practice her profession in the Federal Republic of Germany on the basis of her professional qualification acquired in Greece.

Mrs Vlassopoulou applied for judicial review of that decision and her application was dismissed by the Ehrengerichtshof (Lawyers' Disciplinary Council). She then appealed against the decision of that body to the Bundesgerichtshof which, on 18 September 1989, stayed the proceedings and referred the following question to the Court for a preliminary ruling:

'Is freedom of establishment within the meaning of Article 52 of the EEC Treaty infringed if a Community national who is already admitted and practising as a lawyer in her country of origin and for five years has been admitted in the host country as a legal adviser (Rechtsbeistand) and also practises in a law firm established there can be admitted as a lawyer in the host country only in accordance with the statutory rules of that country?'

2. *Procedure before the Court*

The order for reference was received at the Court Registry on 3 November 1989.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the European Communities, written observations were submitted on 7 February 1990 by Mrs Vlassopoulou and by the Ministry, represented by Mr Schmolz, acting as Agent, on 5 February 1990 by the Government of the Federal Republic of Germany, represented by Ernst Röder and Horst Teske, acting as Agents, on 22 February 1990 by the Italian Government, represented by Pier Georgio Ferri, Avvocato dello Stato, acting as Agent, and on 27 February 1990 by the Commission of the European Communities, represented by Friedrich-Wilhelm Albrecht and Étienne Lasnet, Legal Advisers, acting as Agents.

Upon 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 — Summary of the written observations submitted to the Court

Mrs Vlassopoulou considers that the Court should reply in the affirmative to the

question submitted to it. In her view, it is clear from the judgment in Case 107/83 *Klopp* [1984] ECR 2971 that the rule that national treatment should be applied, laid down in the second paragraph of Article 52 of the EEC Treaty, must not lead to a situation in which a national of another Member State is prevented from effectively exercising the right to freedom of establishment. That limitation of the rule requiring national treatment was confirmed, as far as the freedom to provide services is concerned, in the judgment of the Court of Justice in Case 427/85 *Commission* v *Germany* [1988] ECR 1123. Requiring a lawyer from another Member State to fulfil the same conditions for admission to the Bar as German lawyers therefore constitutes a restriction which is incompatible with the freedom of establishment. Such requirements must be justified by considerations concerning the general good and must not be disproportionate to their aim. The refusal to admit Mrs Vlassopoulou to the profession of Rechtsanwalt cannot be justified on the ground of the protection of consumers because in its judgment in Case 427/85 the Court held that such an argument cannot be invoked against a lawyer providing services.

According to Mrs Vlassopoulou, it follows from Article 52 of the EEC Treaty that the Member States must adopt appropriate procedures for facilitating admission to the bars of the other Member States. In this regard she quotes the favourable opinion delivered by the German delegation on a proposal made in the CCBE (Commission Consultative des Barreaux de la Communauté européenne) according to which a lawyer of a Member State who has worked for five years with a German lawyer should be allowed to give advice on national law as well as appear before the courts. Furthermore, another Member State, France, has already adopted measures (Decree No 85-1123 of 23 October 1985 and the Order of 24 December 1985) allowing any lawyer from a Member State to practice on its territory with the same rights as its own nationals. Mrs Vlassopoulou states that she is prepared to take an aptitude test of the kind provided for by the French legislation.

Mrs Vlassopoulou disputes that the effective exercise of freedom of establishment for lawyers depends on the adoption of directives provided for in Article 57 of the EEC Treaty. In her view, it is clear from the judgment in Case 2/74 *Reyners* [1974] ECR 631 that the direct applicability of Article 52 is not dependent on the adoption of directives relating to the recognition of diplomas. Furthermore, neither Directive 89/48/EEC of 21 February 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 (Official Journal 1989 L 19, p. 16) nor the German Law which implements that directive are applicable to the case before the national court. In her view, that directive concerns only the question of the admission of a lawyer from the Community who is just beginning to practice in the host Member State and who must therefore provide evidence of sufficient knowledge of the legal system of that State. Her case is quite different because her knowledge of German law is already considerable. First of all, Greek law has incorporated German law in important fields, in particular in civil law and criminal law. The thesis which she submitted in order to obtain her doctorate in law was related exclusively to German law. Her knowledge of German law is also attested by publications which have appeared in German legal periodicals. Finally, Mrs Vlassopoulou deals independently with cases which are chiefly concerned with civil law, and the law on

foreigners and social welfare, albeit under the responsibility of a German lawyer. That work has enabled her to deepen her knowledge, particularly in the practical field and in matters of professional ethics.

The *Ministry* considers that the question submitted to the Court calls for a negative reply. It observes that under Article 206 of the Bundesrechtsanwaltsordnung, as amended by the Gesetz zur Änderung des Berufsrechts der Rechtsanwälte und der Patentanwälte (Law amending the legislation relating to the professions of Rechtsanwalt and patent agent, Bundesgesetzblatt 1989 I, p. 2135), Mrs Vlassopoulou has the right to establish herself in the Federal Republic of Germany using her professional Greek title. Furthermore, having obtained permission to deal on a professional basis with foreign legal matters, she may also practice in Germany as a legal adviser on Greek law and Community law.

On the other hand, using the title 'Rechtsanwalt' and pursuing the activities of a Rechtsanwalt presuppose that the qualification requirements laid down by German law are satisfied. However, Mrs Vlassopoulou does not satisfy those requirements. Furthermore, according to the Ministry, there is no provision which allows her Greek diploma to be considered to be equivalent to the German qualifications. Moreover, in content the Greek and German courses are not comparable. The examination passed by Mrs Vlassopoulou in the obtaining of her doctorate is a university examination which merely demonstrates her aptitude to deal theoretically with a narrow legal question. It grants no access to the profession of Rechtsanwalt.

The permission which she has had for the last five years to deal on a professional basis with foreign legal matters is also irrelevant. The knowledge needed to obtain that permission is not comparable to the requirements which a German Rechtsanwalt must satisfy.

The Ministry points out that under the second paragraph of Article 52 of the EEC Treaty freedom of movement entails the right to take up and pursue activities as self-employed persons 'under the conditions laid down for its own nationals by the law of the country where such establishment is effected. The Ministry deduces from this that in the absence of specific Community rules governing the matter each Member State remains at liberty to regulate the exercise of professional activities on its territory. It does not believe that this conclusion is weakened by the case-law of the Court. In the judgment in the *Klopp* case, the Court only struck down a national rule prohibiting secondary establishment; it considered other national rules concerning conditions of access and the pursuit of the profession of lawyer to be compatible with the second paragraph of Article 52. The judgment of 25 February 1988 in *Commission* v *Germany* concerned only the freedom to provide services and not freedom of establishment. The judgment in Case 71/76 *Thieffry* [1977] ECR 765 concerned a specific case in which the diploma obtained by the person concerned in his country of origin had already been recognized by the competent authorities of the host country. That is not the case in this instance.

Finally, the Ministry points out that Article 57(1) of the EEC Treaty directs the Council to adopt directives for the mutual recognition of diplomas and for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking up and pursuit

of activities as self-employed persons. Such directives would be superfluous if Article 52 had the legal effect for which Mrs Vlassopoulou contends. According to the Ministry, Council Directive 89/48/EEC is based on the principle that the different national diplomas needed for access to a profession regulated in the Member States are in principle equivalent. However, the directive allows the Member States under certain conditions to make the recognition of a diploma subject to additional requirements, namely the completion of an adaptation period or the passing of an aptitude test. According to Article 12 of the directive, the Member States have until 4 January 1991 to complete the transposition of the directive into national law. The Ministry points out that the draft Law tabled by the German Government for this purpose will, as soon as it enters into force, afford Mrs Vlassopoulou the possibility of obtaining admission to the profession of Rechtsanwalt in the Federal Republic of Germany.

The *German Government* and the *Italian Government* also consider that the Court must reply in the negative to the questions submitted to it.

They point out that it is clear from the judgment in Case 292/86 *Gullung* v *Conseil de l'Ordre des Avocats du Barreau de Colmar et de Saverne* [1988] ECR 131 that when a national of a Member State wishes to establish himself as a lawyer in a host country using the title laid down for that profession in that country, the Member State in question may make his registration as a lawyer dependant on the fulfilment of non-discriminatory conditions laid down by national law. The application of the German legislation, which applies both to German nationals and to nationals from other Member States, is in conformity with that judgment.

The German Government also observes that Mrs Vlassopoulou does not fulfil the requirements for access to the profession of Rechtsanwalt. Permission to practice as a legal adviser (Rechtsbeistand) does not require knowledge of Greek law and Community law. The profession of legal adviser has a different legal standing in the Federal Republic than the profession of Rechtsanwalt and its field of activity is considerably narrower. Finally, the German Government considers that Directive 89/48/EEC is based on the legal position set out in the *Gullung* judgment. It points out that Article 4(1)(b) of the directive provides for special provisions for the recognition of diplomas affording access to the legal professions: it offers the host country the possibility of requiring a migrant to undergo a period of adaptation or to take an aptitude test.

The *Commission* states, as a preliminary point, that the question submitted by the Bundesgerichtshof relates exclusively to the right of establishment which, unlike freedom to provide services, is based on the principle that the migrant is theoretically subject, in the host country, to all the obligations resting on the nationals of that country.

The Commission also starts from the principle that in the absence of specific Community rules governing the matter each Member State remains at liberty to regulate the exercise of the profession of lawyer in its territory, provided that the rules in question are not capable of producing discriminatory effects. The Commission concludes that a Member State may make access to the profession of lawyer subject to qualification requirements, even where the applicant has already exercised the profession of lawyer in another Member

State or is authorized to exercise the profession of legal adviser in the Member State in question.

However, the Commission has some doubt about the question whether it is in accordance with Community law for a lawyer who is admitted in another Member State to be made subject, without any restriction, to the qualification requirements to which candidates who have completed their training in the host Member State are subject. It poses the question whether there is not a duty on the Member States under Article 5 of the EEC Treaty to facilitate freedom of establishment. In this regard, the Commission observes first of all that Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (Official Journal L 78, p. 17) provides for the mutual recognition of the status of lawyer, which indicates that the qualifications of that profession may be regarded as comparable in all the Member States. Secondly, the fifth recital of the preamble to Directive 89/48/EEC provides that in the absence of Community coordinating measures 'any host Member State in which a profession is regulated is required to take account of qualifications acquired in another Member State and to determine whether those qualifications correspond to the qualifications which the Member State concerned requires'.

The Commission also cites two judgments in which the Court considered the question of the recognition of diplomas by the Member States in the absence of directives adopted under Article 57. In its judgment in the *Thieffry* case, the Court stated that where freedom of establishment in a Member State can be assured on the basis of national legislation or national practice it was incumbent upon the competent public authorities to ensure that such practices or legislation were applied in accordance with the objective defined by the provisions of the Treaty relating to freedom of establishment.

In the judgment which it gave in Case 226/86 *Unectef* V *Heylens* [1987] ECR 4097, the Court had to determine whether a decision refusing to recognize the equivalence of a diploma issued in another Member State had to be reasoned and whether it was capable of legal challenge. It held that the assessment of equivalence in a recognition procedure under national law 'must be effected exclusively in the light of the level of knowledge and qualifications which its holder can be assumed to possess in the light of that diploma, having regard to the nature and duration of the studies and practical training which the diploma certifies that he has carried out'.

In the Commission's view, it must be deduced from the judgment in *Heylens* that the Member States must also take into account the qualifications acquired by the applicant in another Member State, even if, in the case of a specific profession, their own national law does not provide for a special procedure for the recognition of diplomas. Consequently, the Member States must take steps to ensure that there is an appropriate procedure for comparing the qualifications of the applicant with the national requirements. Whether there is equivalence of qualifications enabling recognition to be granted will depend on the result of that comparison. If the equivalence is not complete, it must be examined to what extent the application of the national rules on admission may be relaxed: a re-examination of existing and proven qualifications should be avoided.

The Commission considers that this approach to the problem may be adapted for use with regard to the profession of lawyer. In this regard, it refers to Paragraph 112 of the Richtergesetz which, in conjunction with Paragraph 92(2) of the German Law on Expelled Persons and Refugees (Bundesgesetzblatt 1971 I, p. 1565 and 1807), makes it possible for diplomas obtained by certain expelled persons and refugees to be recognized as equivalent. It also points out that in French law there is a special simplified procedure for admission to the profession of avocat for nationals of other Member States.

In the Commission's view, this interpretation of Articles 5 and 52 of the EEC Treaty does not make the adoption of directives based on Article 57 superfluous. This is clear from an examination of Direction 89/48/EEC which will regulate situations similar to that which underlies the reference for a preliminary ruling as soon as it has been transposed into national law. That directive is based on the principle that higher-education diplomas affording access to regulated professions are comparable to a great extent. Article 3 of the directive therefore prescribes recognition for such diplomas. However, the directive does not overlook the fact that substantial differences may exist with regard to both the duration of training and its content. That is why, in Article 4, it allows the host Member State to require something in return from an applicant, in the form of either professional experience where there is a substantial difference in the training period or an adaptation period or aptitude test where there is a substantial difference of content. The Commission considers that the directive thus represents a step forward in the actual attainment of freedom of establishment in relation to the present legal position because it provides for legal certainty and regulates in a precise way the possibilities open to the host Member State in cases where the applicant's qualifications do not correspond to the national requirements.

The Commission proposes that the following reply should be given to the question submitted to the Court:

'1. Article 52 of the Treaty must be interpreted as meaning that, in the absence of Community rules governing the matter, a Member State whose legislation makes access to the profession of lawyer subject to possession of the qualifications for holding judicial office under national law may in principle also impose that requirement on lawyers from other Member States who assert the right of establishment guaranteed by the Treaty in order to establish themselves as lawyers in the territory of the first-mentioned Member State.

2. However, in accordance with Article 5 of the Treaty, the Member States in applying their provisions governing admission are obliged to take into account the qualifications acquired by the applicant in another Member State in so far as they correspond to the qualifications required by national law.'

Gordon Slynn
Judge-Rapporteur