OPINION OF ADVOCATE GENERAL MISCHO

delivered on 17 September 2002 [1]

I — Introduction

1. The Amtsgericht (Local Court) Augsburg (Germany) has asked the Court to give a preliminary ruling on the interpretation of Articles 49 EC, 50 EC, 54 EC and 55 EC and 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 23-40 (Industry and small craft industries). [2]

2. That question was referred in proceedings pending before the Amtsgericht Augsburg concerning an administrative penalty imposed on Mr Schnitzer by the city of Augsburg for infringements of the German legislation against black market work. Mr Schnitzer had contracted a Portuguese undertaking to carry out large-scale plastering work in Germany, which it did without being entered on the German Skilled Trades Register.

1 — Original language: French.

2 — OJ, English Special Edition, 1963-1964, p. 148.

II — Legal framework

A — *Community law*

3. The first paragraph of Article 49 EC provides:

'Within the framework of the provisions set out below, restrictions on freedom to provide services within the Community shall be prohibited in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended.'

4. The third paragraph of Article 50 EC provides that, '[w]ithout prejudice to the provisions of the chapter relating to the right of establishment, the person providing a service may, in order to do so, temporarily pursue his activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals'.

5. On 18 December 1961, the Council adopted, on the basis of Articles 54(1) and 63(1) of the EC Treaty (now, after amendment, Article 44(1) EC and Article 52(1) EC), two General Programmes for the abolition of restrictions on freedom of establishment and freedom to provide services. [3] In order to facilitate implementation of those programmes, the Council adopted *inter alia* Directive 64/427. That directive provides essentially for a system of mutual recognition of occupational experience acquired in the Member State of origin and is applicable to both establishment and provision of services in another Member State.

6. Article 3 of Directive 64/427 provides:

'Where, in a Member State, the taking up or pursuit of any activity referred to in Article 1(2) 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.

3 — OJ, English Special Edition, Second Series IX, p. 7 and p. 3 respectively.

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.'

7. Article 4 of Directive 64/427 provides:

'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.'

8. Directive 64/427, which was in force at the material time in the main proceedings, was repealed by Directive 1999/42/EC of the European Parliament and of the Council of 7 June 1999 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 systems for the recognition of qualifications. [4] The wording of Article 4 of that directive, read together with Annex A, Part One, List I thereof (which makes express reference to Directive 64/427), is the same as that of Article 3 of Directive 64/427.

B — *National law*

9. In Germany, skilled trade activities are governed by the Handwerksordnung (Skil-

4 — OJ 1999 L 201, p. 77.

led Trades Order).[5] The version of that order in force at the material time in the main proceedings was that of 24 September 1998. Under the first sentence of Paragraph 1(1) of the Handwerksordnung, only natural or legal persons or partnerships entered on the Handwerksrolle (Skilled Trades Register) are authorised to pursue a skilled trade activity in an independent capacity. That entry constitutes professional authorisation to pursue the activity in question.

10. Under the first sentence of Paragraph 7(1) of the Handwerksordnung, 'any person who has passed the master's examination in the skilled trade to be carried on by him or in a related craft or trade shall be entered on the Skilled Trades Register [...]'.

11. The first sentence of Paragraph 8(1) of the Handwerksordnung provides that '[i]n exceptional cases, authorisation for entry on the Skilled Trades Register shall be granted if the applicant to be entered is able to show the knowledge and skill required to pursue in an independent capacity the skilled trade to be carried on by him'.

12. Paragraph 9 of the Handwerksordnung authorises the Federal Minister for the Economy to determine the conditions under which nationals of other Member States may obtain such exceptional authorisation to be entered on the Skilled Trades Register apart from the cases provided for in Paragraph 8(1) of that order. It was on the basis of that provision that the Minister for the Economy adopted on 4 August 1966 the regulation governing the conditions for entering nationals of other Member States of the European Economic Community on the Skilled Trades Register.[6] That regulation transposed into German law the provisions of Article 3 and Article 4(2) and (3) of Directive 64/427.

III — The dispute in the main proceedings and the question referred for a preliminary ruling

13. By decision of 28 August 2000, the city of Augsburg imposed an administrative penalty on Mr Schnitzer for infringement of Paragraph 1(1)(3) and Paragraph 2 of the Gesetz zur Bekämpfung der Schwarzarbeit (Law to combat black market work). That law provides for the imposition of an administrative penalty not only on all persons who to a significant extent *provide* services or *carry out* work themselves without being entered on the Skilled Trades Register, but also on all persons who to a significant extent *have* such services *provided* or such work *carried out* by entrusting them to persons who are not entered on that register. It was under the latter heading that Mr Schnitzer was the subject of the aforementioned decision.

5 — BGBl. 1998 I, p. 3074.

6 — BGBl. 1966 I, p. 469.

14. According to the national court, the company which Mr Schnitzer, as its managing director, legally represents 'is alleged to have contracted the Portuguese firm Codeigal-Construção, Decoração e Isolamentos de Portugal Lda, 3680 Oliveira de Fredes, to carry out large-scale plastering work in the region of southern Bavaria between November 1994 and November 1997. That company was not entered on the German Skilled Trades Register until 27 November 1997 [...]. The charge laid by the administrative authority is that, between November 1996 [sic] and October 1997, the time of the application, the firm carried out work falling within the German definition of plastering with a total value of DEM 539 537.65 without the required German permit'.

15. Mr Schnitzer challenged the administrative decision before the Amtsgericht Augsburg. That court points out that the Court has already held, in its judgment in *Corsten*,[7] in which an undertaking in a Member State wished to provide services in the host Member State on a one-off basis, that the requirement of entry on the Skilled Trades Register is inconsistent with Community law where it is likely to delay, complicate or make more expensive exercise of the right to freedom to provide services. In view of certain passages in that judgment, the national court considers it possible that the Court may regard that entry requirement as being likewise unjustified where such an undertaking carries out work in Germany over a longer period of time.

16. Consequently, the Amtsgericht Augsburg decided to stay proceedings and refer the following question for a preliminary ruling under Article 234 EC:

'Is it compatible with EC law on the freedom to provide services for a Portuguese undertaking, which in its country of origin fulfils the conditions for carrying on a commercial activity, to have to satisfy further — albeit purely formal — conditions (in this case registration on the Skilled Trades Register), in order to carry on that activity in Germany not just on a short-term basis but for a longer period?'

IV — Analysis

17. In view of the duration of the activities carried on in Germany by the Portuguese undertaking, the question arises, firstly, whether that company has in fact opened an establishment in that Member State. I share the Commission's view that there

7 — Case C-58/98 [2000] ECR I-7919.

would then be no doubt about the obligation of entry on the Skilled Trades Register. [8]

Establishment

18. It is not always easy to distinguish between establishment and freedom to provide services. That much is clear just from reading the case-law of the Court.

19. In its judgment in *Gebhard*, [9] the Court held that a person may be established in more than one Member State (paragraph 24) and that establishment exists where that person pursues a professional activity on a stable and continuous basis in another Member State where he holds himself out from an established professional base to, amongst others, nationals of that State (paragraph 28).

20. In the same judgment, the Court held that 'where the provider of services moves to another Member State, the provisions of the chapter on services, in particular the third paragraph of Article 60 [now the third paragraph of Article 50 EC], envisage that he is to pursue his activity there on a temporary basis' (paragraph 26). It added that 'the temporary nature of the activities... has to be determined in the light, not only of the duration of the provision of the service, but also of its regularity, periodicity or continuity. The fact that the provision of services is temporary does not mean that the provider of services within the meaning of the Treaty may not equip himself with some form of infrastructure in the host Member State (including an office, chambers or consulting rooms) in so far as such infrastructure is necessary for the purposes of performing the services in question' (paragraph 27).

21. It certainly will not be easy to determine in a particular case whether what is involved is an office serving as infrastructure for the provision of services or an established professional base that constitutes a second establishment.

22. Professor Mota Campos, [10] who is cited by the Portuguese Government in its observations on this case, drew the following distinction, which I consider to be sensible:

'... the exercise by an economic operator of the right of establishment implies an installation which is permanent and stable (or at least one set up with the intention of its

8 — See in that respect my Opinion of 7 May 2002 in Case C-79/01 *Payroll Data Services and Others*, [2000] ECR I-8923.

9 — Case C-55/94 [1995] ECR I-4165.

10 — Mota Campos, J., *Direito Comunitário, Volume III, O Ordenamento Económico*, p. 332.

being permanent), and which forms the centre of the professional activity pursued in the State of establishment in connection with unspecific customers.

The mere provision of services, on the other hand, presupposes the performance of one or more services or professional acts of a sporadic nature, the recipients of which are specific customers attracted from a stable installation situated in the State where the provider of services is established.'

23. In the view of the Portuguese Government, the undertaking in question provided a service for a certain period for *one* customer undertaking situated in another Member State, but from a stable installation in its State of origin, which is the State where the provider of services is established and where the centre of its activities is located.

24. On the other hand, however, the question also arises whether the Portuguese undertaking did in fact provide services to 'unspecific customers', namely all the customers for whom Mr Schnitzer in turn provided services? Could Mr Schnitzer be considered to have acted as an agent for the Portuguese undertaking? Could Mr Schnitzer's undertaking be regarded as the Portuguese undertaking's second established professional base? Was the Portuguese undertaking able to store its equipment there for more than a year, or even for several years? Did the employees of the Portuguese undertaking remain in Germany from November 1996, or even from November 1994, returning to Portugal only on leave? These are some of the factors that the national court will have to examine in order to determine the status of the Portuguese undertaking with regard to the Treaty.

25. It is also important to point out in this context that the Court has consistently held that '... a Member State cannot be denied the right to take measures to prevent the exercise by a person providing services whose activity is entirely or principally directed towards its territory of the freedom guaranteed by Article 59 for the purpose of avoiding the professional rules of conduct which would be applicable to him if he were established within that State...'. [11]

26. On another occasion the Court, before reiterating that right, observed that '... an insurance undertaking of another Member State which maintains a *permanent presence* in the Member State in question comes within the scope of the provisions of the Treaty on the right of establishment, even if that presence does not take the form of a branch or agency, but consists merely of an office managed by the undertaking's own staff or *by a person who is independent but*

11 — Judgment in Case 33/74 *Van Binsbergen* [1974] ECR 1299, paragraph 13. See also the judgments in Case 130/88 *Van de Bijl* [1989] ECR 3039, paragraph 26; Case C-211/91 *Commission* v *Belgium* [1992] ECR I-6757, paragraph 12; Case C-148/91 *Veronica Omroep Organisatie* [1993] ECR I-487, paragraph 12; and Case C-23/93 *TV10* [1994] ECR I-4795, paragraph 20.

authorised to act on a permanent basis for the undertaking, as would be the case with an agency.... [S]uch an insurance company cannot therefore avail itself of [the provisions concerning freedom to provide services] with regard to its activities in the Member State in question'. [12]

27. However, were the Amtsgericht Augsburg to conclude that the Portuguese firm cannot be regarded as having established itself in Germany, it would have to examine the matter from the point of view of freedom to provide services.

Freedom to provide services

28. It should be pointed out that Directive 64/427 applies to both establishment and freedom to provide services.

29. Article 4(3) of that directive reads as follows:

'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'. [13]

30. As is already clear from Articles 43 EC and 50 EC, persons or undertakings providing services or establishing themselves in another Member State must therefore, in principle, fulfil the conditions imposed by that Member State on its own nationals.

31. However, the Court takes the view, which it reiterated in the *Corsten* judgment, cited above, that a Member State cannot make the provision of services in its territory subject to compliance with all the conditions required for establishment and thereby deprive of all practical effectiveness the provisions of the Treaty whose object is, precisely, to guarantee the freedom to provide services. [14]

32. In *Corsten*, cited above, the Court accepted that the objective of guaranteeing the quality of skilled trade work and of

12 — Judgment in Case 205/84 *Commission* v *Germany* [1986] ECR 3755, paragraph 21. Emphasis added.

13 — Emphasis added.

14 — See, *inter alia*, the judgment in Case C-76/90 *Säger* [1991] ECR I-4221, paragraph 13, and the judgment in *Commission* v *Germany*, cited above, paragraph 26.

protecting those who have commissioned work, as relied on by the German authorities, is an overriding requirement relating to the public interest capable of justifying a restriction on freedom to provide services (paragraph 38). [15]

33. However, it also considered that the rules in question, 'even though they apply regardless of the nationality of the providers of services and appear apt to ensure attainment of objectives which all seek to maintain the quality of the services provided, go beyond what is necessary to attain such objectives' (paragraph 40).

34. The Court then ruled as follows:

'45 Even if the requirement of entry on that Register, entailing compulsory membership of the Chamber of Skilled Trades for the undertakings concerned and therefore payment of the related subscription, could be justified in the case of establishment in the host Member State, which is not the situation in the main proceedings, the same is not true for undertakings which *intend* to provide services in the host Member State *only on an occasional basis, indeed perhaps only once.*

46 The latter are liable to be dissuaded from going ahead with their plans if, because of the compulsory requirement that they be entered on the Register, the authorisation procedure is made lengthier and more expensive, so that the profit anticipated, at least for small contracts, is no longer economically worthwhile. *For those undertakings*, therefore, the freedom to provide services, a fundamental principle of the Treaty, and likewise Directive 64/427 are liable to become ineffective'. [16]

35. In the operative part of that judgment, however, the Court made no further reference to services provided only once, or even on an occasional basis, but held generally that 'Article 59 of the EC Treaty (now, after amendment, Article 49 EC) and Article 4 of Directive 64/427... preclude rules of a Member State which make the carrying out on its territory of skilled trade work by providers of services established in other Member States subject to an authorisation procedure which is likely to delay or complicate exercise of the right to freedom to provide services, if examination of the conditions governing access to the activities concerned has been carried out in accordance with the directive and it has been established that those conditions are

15 — In its judgment in Case C-264/99 *Commission* v *Italy* [2000] ECR I-4417, concerning haulage activities, the Court was unable to establish the existence of such an overriding requirement.

16 — Emphasis added.

satisfied. Furthermore, any requirement of entry on the trades register of the host Member State, assuming it was justified, should neither give rise to additional... expense nor entail compulsory payment of subscriptions to the chamber of trades'.

36. The national court asks whether those rules apply only where services are provided on an occasional basis or also where numerous services are provided over a long period.

37. The Portuguese Government considers, in that connection, that 'the German authorities cannot... argue, in order better to safeguard their interests, that, where the services in question are provided over a longer period, a quantification which the German law itself does not lay down, undertakings must be entered on the German Skilled Trades Register. There is no point in seeking to draw such a distinction, since the relevant German legislation makes no provision for it. That distinction is thus a covert barrier to the freedom to provide services in the Community area.... Accordingly, the concept of the provision of services, which necessarily includes a time factor, does not lend itself to quantification of the periods of time to be taken into consideration for the purposes of applying different rules of law, since this would infringe the stand-still clause contained in Article 49 itself'.

38. The Austrian Government likewise considers that 'the duration of the provision of services (if longer) cannot constitute a sufficient ground for requiring entry on a skilled trades register, thereby departing from the Court's findings in this respect. Whether the services provided in a particular instance last for a week or a year (as would, for example, the construction of a hospital or any other similar large-scale project) depends on the type of service in question. There is no standard duration on the basis of which an activity can be classified as the provision of a service.... In this case, the fact that the activities were carried on over a longer period could merely be an indication that what is involved is no longer the provision of a service but an activity that falls within the rules on freedom of establishment, in which case more stringent requirements would be justified.... However, where an activity of longer duration is concerned..., the authorities of the Member State in question are at liberty to provide for the keeping, for purely administrative purposes, of lists of undertakings recognised as possessing the requisite qualifications under the relevant rules of Community law'.

39. The Austrian Government therefore proposes an alternative to the entry of undertakings from other Member States on the trades register of the host Member

State. That alternative would certainly be practicable. The Member State in question could thus issue the undertaking with a certificate showing that it fulfils the conditions laid down by Directive 64/427 for the provision of services. That document could be used as proof in the event of subsequent checks on other building sites. That Member State could at the same time enter the undertaking on a special list of all the undertakings having received such a certificate, and thus have an overview of all the foreign undertakings authorised to provide services.

40. As against that, a Member State such as the Federal Republic of Germany could, however, raise the objection that, for reasons of tradition, transparency and the uniformity of its system, it considers it essential to keep a single register of all the undertakings — whether national or foreign — authorised to pursue a given profession in its national territory.

41. I do not see how Community law could preclude the maintenance of such a tradition, given that the procedure for entry on the Skilled Trades Register does not entail the disadvantages criticised by the Court in the *Corsten* judgment, cited above.

42. Moreover, potential users of the services in question could also benefit from being able to consult a single well-known register in order to check whether an undertaking with which they intend to conclude a contract has the necessary qualifications.

43. Finally, the Community legislature even seems to consider the entry of foreign undertakings on the Skilled Trades Register to be in the interests of those undertakings. After all, Council Directive 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),[17] adopted the same day as Directive 64/427, and to which reference is made in the *Corsten* judgment, cited above, provides as follows:

'Article 5

1. Member States shall ensure that beneficiaries under this directive have the right to join professional or trade organisations under the same conditions and with the

17 — OJ, English Special Edition, 1963-1964, p. 155.

same rights and obligations as their own nationals.'

44. It follows from the rest of that article that chambers of trades constitute such professional organisations.

45. In my opinion, the Court should therefore abandon the hesitation it again expressed in the *Corsten* judgment, cited above, with regard to whether entry on the Skilled Trades Register is justified *per se*. If entry on such a register gives rise neither to extra delay in comparison with the monitoring procedure laid down by the directive, nor to additional administrative expense, the requirement of entry should be permissible regardless of the foreseeable duration of the work.

46. It remains to be seen whether, in the case of multiple services provided over a long period, it is possible at a certain point in time to require payment of a subscription to the chamber of trades.

47. The Commission, for its part, does not draw such a distinction between entry on the Skilled Trades Register, the administrative costs of entry and the payment of a subscription to the chamber of trades, but it adopts a very elaborate position. In its view, it is necessary to take as a starting point the criteria established by the Court in paragraph 46 of the grounds of the *Corsten* judgment, cited above. According to the Commission, 'this case shows that the analysis required under paragraph 46 cannot readily be conducted *ex ante*. After all, it is not inconceivable that an undertaking exercising its freedom to provide services within the common market may initially have taken up an activity in the host country with a view in fact to pursuing it only occasionally or on a one-off basis. What is now perceived, *ex post*, to be an on-going activity may, *ex ante*, or at least for a certain time at the outset, never have been intended as such and may very well have developed into one as a result of follow-up commissions based on the good reputation earned by the activity originally pursued only occasionally or on a one-off basis. The court hearing the substance of the case must therefore determine, on an analysis of the objectively-established facts, from what point an undertaking that provided services for a certain period of time could no longer assume that the *Corsten* judgment gave grounds for doubts as to the compatibility of the requirement of entry on the Skilled Trades Register with the EC Treaty. The longer the activity is pursued and the more clearly foreseeable it is *ex ante* that the activity will continue to be pursued by the provider of services, the sooner the requirement of entry on the Skilled Trades Register will have to be regarded as compatible with primary Community law'.

48. The Commission therefore starts from the principle that entry on the Skilled Trades Register may be required of a

person who provides services more than occasionally and that it falls to the national court, on the basis of the very subtle psychological evaluation which the Commission outlines, to determine the point at which that can be considered to be the case. If I have understood the Commission correctly, entry on that register under those circumstances may then trigger the payment of administrative costs and the obligation to pay a subscription to the chamber of trades.

49. The Commission's approach may seem attractive. After all, where a foreign undertaking carries out a whole series of commissions spread over a year or more, an exception to the principle under the third paragraph of Article 50 EC to the effect that a person providing a service must likewise be subject to the rules in force in the host country ceases to be justified. Thus, where the contested formalities are completed long after the work has begun, they can obviously no longer have the effect of delaying that work.

50. The undertaking may even have derived some form of indirect benefit from the services which the chamber of trades procures for the sector as a whole. If the subscriptions to the chamber of trades are calculated as a percentage of turnover, they will not have a deterrent effect.

51. After a long period of activity in the host country, the formality in question can hardly therefore be regarded as having the effect of '... depriv[ing] of all practical effectiveness the provisions of the Treaty whose object is, precisely, to guarantee the freedom to provide services...'. [18]

52. In that time the undertaking will in any event have had to familiarise itself with the host country's arrangements for collecting value added tax and will have had to contact the income tax authorities. In other words, the idea that the cross-border provision of services can be effected without the slightest administrative inconvenience is unrealistic.

53. It should, however, be pointed out that the Commission's approach would lead to the creation, in addition to undertakings considered to be established and undertakings providing services on an occasional basis, of a third category of undertakings, namely those providing multiple services over a long period of time, for which there is no basis under the Treaty.

54. Moreover, the assessments regarding the intention that the undertaking might have had when it began to provide services

18 — See the *Säger* judgment, cited above, paragraph 13.

in the host country, as advocated by the Commission, strike me as rather difficult to carry out.

55. I consider, therefore, that it would be preferable to adopt the following principles:

56. Firstly, any undertaking wishing to pursue activities in another Member State for the first time may be subject to the requirement of entry on the Skilled Trades Register provided that such entry follows automatically from the procedure for verifying qualifications laid down by Directive 64/427 and entails neither additional costs nor the payment of a subscription to the chamber of trades.

57. That follows, by converse implication, not only from the *Corsten* judgment, cited above, but also from the approach adopted by the Community legislature in Article 22(1) of Council Directive 85/384/EEC of 10 June 1985 on the mutual recognition of diplomas, certificates and other evidence of formal qualifications in architecture, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services, [19] at issue in Case C-298/99. [20]

58. The third subparagraph of Article 22(1) of that directive provides that 'Member States may, so as to permit the implementation of the provisions relating to professional conduct in force in their territory, require automatic temporary registration or pro forma registration with a professional organisation or body or in a register, provided that this registration does not delay or in any way complicate the provision of services or impose any additional costs on the person providing the services'.

59. Secondly, if it subsequently transpires that the activity pursued by the undertaking, because of its duration, continuity and the multiplicity of contracts performed, has ultimately taken on the characteristics of an establishment, the undertaking may be subject to the payment of subscriptions to the chamber of trades.

60. Under Article 2 of Directive 64/427, Member States are to ensure that any beneficiary of the directive 'be provided,

19 — OJ 1985 L 223, p. 15.

20 — Case C-298/99 *Commission* v *Italy* [2002] ECR I-3129, concerning access to the profession of architect.

before he establishes himself or before he begins to pursue any activity on a temporary basis, with information as to the rules governing the occupation which he proposes to pursue'.

61. Article 2 of Directive 1999/42 provides, similarly, that Member States are to ensure that the beneficiaries 'be provided, before they establish themselves or before they begin to provide services, with information as to the rules governing the occupation which they propose to pursue'.

62. The manager of an undertaking will therefore know by then that, as soon as his activity fulfils the essential criteria for establishment, he will be obliged to pay subscriptions.

63. What conclusions can be drawn from the foregoing for the purposes of the dispute in the main proceedings?

64. If the national court concludes that the authorisation procedure which the Portuguese undertaking is accused of having failed to follow is such as to delay or complicate exercise of the right to freedom to provide services, inasmuch as it has been established that the conditions governing access to the activities concerned have been met and the requirement of entry on the Skilled Trades Register gives rise to additional administrative costs and entails the compulsory payment of subscriptions to the chamber of trades, it will conclude from this that the procedure in question is incompatible with Community law and that Mr Schnitzer cannot be penalised because the Portuguese undertaking failed to follow it.

65. However, before drawing a definitive conclusion, the national court must also determine, 'having regard to the duration, regularity, periodicity and continuity of [the Portuguese undertaking's] activities, whether the activity which it pursues in Germany is of a temporary nature for the purposes of the Treaty'.[21] If it became apparent that that activity had at some point ceased to be temporary or that it was entirely or principally directed towards Germany, the requirement of entry on the Skilled Trades Register (including the requirement to pay subscriptions to the chamber of trades) would apply without restriction and Mr Schnitzer could be penalised.

21 — See the judgment in Case C-3/95 *Reisebüro Broede* [1996] ECR I-6511, paragraph 22.

V — Conclusion

66. In the light of the foregoing considerations, I propose that the following answer be given to the question referred by the Amtsgericht Augsburg:

(1) Articles 49 EC, 50 EC, 54 EC and 55 EC, and Article 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 23-40 (Industry and small craft industries) do not preclude rules of a Member State which make the carrying out on its territory of skilled trade work by providers of services established in other Member States subject not only to examination of the conditions governing access to the activities concerned but also to a requirement of entry on the Skilled Trades Register where such entry is not such as to delay or complicate exercise of the right to freedom to provide services and entails neither additional administrative costs nor the compulsory payment of subscriptions to the chamber of trades.

(2) Where the activities of the person or undertaking on the territory of the host Member State have been pursued over a long period, on a virtually continuous basis and under a whole series of contracts, it falls to the competent court to determine at what point in time the situation must be regarded as establishment and must, therefore, give rise to the payment of subscriptions to the chamber of trades.