

Such measures, although they may not directly regulate or curb the right of establishment, nevertheless constitute disadvantages for those exercising such Treaty rights.

(c) ESTABLISHMENT OF COMPANIES

Article 48 EC provides:

Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community shall, for the purposes of this Chapter, be treated in the same way as natural persons who are nationals of Member States.

'Companies or firms' means companies or firms constituted under civil or commercial law, including co-operative societies, and other legal persons governed by public or private law, save for those which are non-profit making.

Although this Article requires companies to be treated in the same way as nationals for the purposes of the Treaty provisions on freedom of establishment, this is not strictly possible, given the differences between natural and legal persons. It may be easier, for example, to recognize what is a primary as opposed to a secondary establishment in the case of the registered office of a company and one of its subsidiaries or branches, than it is in the case of a professional who has two places of practice in different Member States.⁸² Further, despite the many company law directives which have been adopted, considerable differences in the way the various Member States regulate companies and their activities remain.

The definition of a company in Article 48 is wide, referring to 'legal persons governed by private or public law'. However, it excludes non-profit-making companies even though non-profit-making economic activities may be covered by Article 43.⁸³ The exclusion of non-profit-making companies can be compared with the exclusion from the scope of the Treaty of workers who are not remunerated, and services which are not provided for remuneration. These exclusions reflect what is still the predominantly commercial focus of these provisions, despite the changes made in other areas by the TEU and the despite the increasing focus on 'citizenship' as a category to cover most of the free movement chapters of the Treaty.⁸⁴

(i) *When is a Company 'Established' in a Member State?*

It is clear that, so long as a company is formed in accordance with the law of a Member State and has its registered office there and its principal place of business *somewhere* in the Community, it will be established in the first Member State within the meaning of the Treaty. The ECJ made it clear in *Segers* that this would hold true even if the company conducted no business of any kind in that Member State, but instead conducted its business through one of

Gustavsson, n. 67 above. See also Case C-410/96 *André Ambry* [1998] ECR I-7875 concerning restrictions imposed on travel agencies arranging security with a financial institution in another Member State to ensure a guarantee agreement is concluded with a credit institution situated in the host Member State.

⁸² V. Edwards, 'Secondary Establishment of Companies—The Case Law of the Court of Justice' (1998) 18 YBEL 221.

⁸³ Case C-70/95 *Sodemare*, n. 15 above.

⁸⁴ The fact that a company is non-profit-making does not however mean that it is not engaged in economic activity. For an illustration of this point in a different context see Case C-382/92 *Commission v. United Kingdom* [1994] ECR I-2435, para. 45, and see the cases on cross-border access to health care in the context of services, n. 183 below.

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the various forms of secondary establishment—such as a subsidiary, branch, or agency—in another Member State.⁸⁵

This was affirmed in *Centros*, where the ECJ ruled that a company was lawfully established in the UK even though it had never traded there, and that the Danish authorities were not justified in restricting its right to a secondary establishment in the form of a branch in Denmark.⁸⁶

In the *Insurance Services* case, the Court held that even an office managed for a company by an independent person on a permanent basis would amount to establishment in that Member State.⁸⁷ This latter form of establishment would amount to a secondary establishment, since the registered office or seat of the company and its principal place of business would presumably be elsewhere in the Community. A company has a right of secondary establishment only if it already has its principal place of business or central or registered office within the Community.

(ii) Court-led Liberalization in the Absence of EU Harmonization

While companies are not covered by Directive 2004/38 on citizens (nor were they by its predecessor Directive 73/148), governing the right of natural persons to leave their Member State, the ECJ ruled in the *Daily Mail* case that companies enjoy similar rights under the Treaty.⁸⁸ However, *Daily Mail* also ruled that the Treaty provisions on freedom of establishment did not give companies an unfettered right to move their registered offices or their central management and control to another Member State, whilst retaining an establishment in the first Member State. On the contrary, the Court ruled that the Member State from which the company wishes to move its registered offices or central place of administration is entitled to subject the company to certain conditions. In this particular case, the UK could legitimately require a company which wished to transfer its central management and control to the Netherlands first to settle its taxes and even to wind up the company in the UK. The reason given by the Court for this was that the laws of the Member States on what constitutes the place of incorporation or the 'real seat' of the company are not harmonized, and that different Member States may legitimately have different views and different ways of regulating how a transfer of head office may be effected.⁸⁹

The general question underlying *Daily Mail*, i.e. to what extent a company can rely on Article 43 when it seeks to set up various forms of establishment in more than one Member State which have different systems of corporate regulation, given the continued absence of EU harmonization, was revisited just over ten years later in *Centros*. This time the restriction was imposed not by the State in which the company had its primary establishment (which was

⁸⁵ Case 79/85 *Segers*, n. 80 above, para. 16.

⁸⁶ Case C-212/97 *Centros*, n. 20 above. For commentaries see W.-H. Roth (2000) 37 *CMLRev.* 147 and P. Cabral and P. Cunha (2000) 25 *ELRev.* 157.

⁸⁷ Case 205/84 *Commission v. Germany*, n. 13 above, para. 21. Compare Case C-386/04 *Centro di Musicologia Walter Stauffer v. Finanzamt München für Körperschaften* [2006] ECR I-8203, paras. 18–20.

⁸⁸ Case 81/87 *R. v. HM Treasury and Commissioners of Inland Revenue, ex p. Daily Mail and General Trust plc* [1988] ECR 5483.

⁸⁹ Art. 220 EC recognized the need for the adoption of agreements for the mutual recognition of companies and the retention of legal personality in the event of transfer of their seats from one country to another, but the Convention on the Mutual Recognition of Companies, which was adopted pursuant to this Art. in 1968, did not come into force. For a recent discussion of this and related matters see J. Wouters, 'European Company Law: Quo Vadis?' (2000) 37 *CMLRev.* 257.

again the UK), but by the State in which the company sought to conduct business through a secondary establishment, which in this case was Denmark.

Case C-212/97 Centros Ltd. v. Erhvervs- og Selskabsstyrelsen
[1999] ECR I-1459

[Note ToA renumbering: Arts. 52, 54, and 58 are now Arts. 43, 44, and 48 EC]

The facts concerned a company which was registered (and therefore had its primary establishment) in the UK, but which had never traded there. It had chosen the UK in which to register because UK law imposed no requirements on limited liability companies as to the provision for, or the paying-up of, a minimum share capital. The main purpose of establishing in the UK was to conduct business in Denmark, whose minimum capital requirement laws were considerably stricter, through a branch. The Danish Board of Trade and Companies refused to register the branch on the ground that Centros was not in fact seeking to establish a branch in Denmark, but rather a principal establishment, while circumventing legitimate national rules including those on the paying-up of minimum capital. The Board claimed that, had the establishment in the UK been genuine, in the sense that the company was actually trading there, it would not have refused to register a branch in Denmark. The initial question for the ECJ was therefore whether the company could rely on Article 43 to plead infringement of the right to secondary establishment. Two possible arguments against such a right were raised in the case. First, the Danish government argued that Centros was seeking to abuse EC rights of establishment; and, secondly, following the reasoning in *Daily Mail*, the absence of harmonization of national corporate laws seemed to militate against permitting Centros to rely on Article 43.

THE ECJ

21. Where it is the practice of a Member State, in certain circumstances, to refuse to register a branch of a company having its registered office in another Member State, the result is that companies formed in accordance with the law of that other Member State are prevented from exercising the freedom of establishment conferred on them by Articles 52 and 58 of the Treaty.

22. Consequently, that practice constitutes an obstacle to the exercise of the freedoms guaranteed by those provisions.

23. According to the Danish authorities, however, Mr and Mrs Bryde cannot rely on those provisions, since the sole purpose of the company formation which they have in mind is to circumvent the application of the national law governing formation of private limited companies and therefore constitutes abuse of the freedom of establishment. In their submission, the Kingdom of Denmark is therefore entitled to take steps to prevent such abuse by refusing to register the branch.

24. It is true that according to the case-law of the Court a Member State is entitled to take measures designed to prevent certain of its nationals from attempting, undercover of the rights created by the Treaty, improperly to circumvent their national legislation or to prevent individuals from improperly or fraudulently taking advantage of provisions of Community law...

25. However, although, in such circumstances, the national courts may, case by case, take account—on the basis of objective evidence—of abuse or fraudulent conduct on the part of

the persons concerned in order, where appropriate, to deny them the benefit of the provisions of Community law on which they seek to rely, they must nevertheless assess such conduct in the light of the objectives pursued by those provisions. . . .

26. In the present case, the provisions of national law, application of which the parties concerned have sought to avoid, are rules governing the formation of companies and not rules concerning the carrying on of certain trades, professions or businesses. The provisions of the Treaty on freedom of establishment are intended specifically to enable companies formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community to pursue activities in other Member States through an agency, branch or subsidiary.

27. That being so, the fact that a national of a Member State who wishes to set up a company chooses to form it in the Member State whose rules of company law seem to him the least restrictive and to set up branches in other Member States cannot, in itself, constitute an abuse of the right of establishment. The right to form a company in accordance with the law of a Member State and to set up branches in other Member States is inherent in the exercise, in a single market, of the freedom of establishment guaranteed by the Treaty.

28. In this connection, the fact that company law is not completely harmonised in the Community is of little consequence. Moreover, it is always open to the Council, on the basis of the powers conferred upon it by Article 54(3)(g) of the EC Treaty, to achieve complete harmonisation.

29. In addition, it is clear from paragraph 16 of *Segers* that the fact that a company does not conduct any business in the Member State in which it has its registered office and pursues its activities only in the Member State where its branch is established is not sufficient to prove the existence of abuse or fraudulent conduct which would entitle the latter Member State to deny that company the benefit of the provisions of Community law relating to the right of establishment.

30. Accordingly, the refusal of a Member State to register a branch of a company formed in accordance with the law of another Member State in which it has its registered office on the grounds that the branch is intended to enable the company to carry on all its economic activity in the host State, with the result that the secondary establishment escapes national rules on the provision for and the paying-up of a minimum capital, is incompatible with Articles 52 and 58 of the Treaty, in so far as it prevents any exercise of the right freely to set up a secondary establishment which Articles 52 and 58 are specifically intended to guarantee.

While the principles of law expressed in *Centros* were familiar principles long articulated by the ECJ in the context of freedom of establishment, their application to this factual situation and with this outcome caused considerable surprise, in particular amongst company lawyers, generating a vast commentary from practitioners and scholars alike. The fact that the particular manoeuvre engaged in by the company to choose its preferred regulatory environment within the EU internal market (the UK), even while conducting its business on a different geographic part of the market (Denmark), was not caught by the 'avoidance' or 'abuse' exception was unexpected.

Far from constituting an *abuse* of Article 43, the ECJ ruled that deliberate choice of a Member State with lenient legislative requirements concerning incorporation in order to enjoy the right of secondary establishment more freely in a Member State with stricter incorporation requirements was simply an exercise of the rights inherent in the notion of freedom of establishment.⁹⁰ Further, the absence of legislative harmonization, which had been used by

⁹⁰ For discussion of the ECJ's similar approach to allegations of abuse in the context of the rights of citizenship and the rights of free movement of workers see Ch. 21, 749, 755–756, 779, and Ch. 23, 855.

the ECJ in *Daily Mail* as a reason for declaring Article 43 to be inapplicable to the facts of that case, was deemed in paragraph 28 of *Centros* to be irrelevant, and indeed gave the Court occasion to point to the availability to Member States of the option of adopting EC harmonizing legislation in this area of company law.⁹¹

There were other options (including by virtue of the existence of EC legislation governing corporate accounting and disclosure) open to Member States seeking to protect creditors, or to counter fraud or to prevent unjustified corporate evasion of *legitimate* regulatory requirements, which would be less restrictive than imposing the full range of its company law requirements on a branch whose primary establishment was lawfully in another Member State. However, apart from mentioning the possibility of measures to enable public creditors to secure sufficient guarantees, the ECJ did not indicate what other sorts of restrictions would be acceptable and proportionate.

The case has been described as reflecting a judicial 'willingness to break down the remaining constraints to the free movement of companies in the Community' and as 'opening the door to competition among national rules as an alternative approach to ensure the completion of the internal market',⁹² while others have noted that it nonetheless left the ruling in *Daily Mail* for the moment untouched.⁹³

Centros was followed by the *Überseering*⁹⁴ and *Inspire Art*⁹⁵ rulings which confirmed and extended the *Centros* approach. *Überseering* was a company incorporated in the Netherlands under Dutch law, where it had its registered office. It then sought to transfer its centre of administration to Germany, and its entire share capital was bought by German shareholders. Unlike the position of the UK in the *Daily Mail* case, this did not create any problem for the Netherlands, which did not seek to prevent the company from transferring its administration, nor to deny the validity of its continued incorporation under Dutch law. German law, however, would not recognize the legal capacity of a company incorporated in the Netherlands and therefore would not permit it to appear before the German courts. German law followed the 'company seat principle' rather than the 'incorporation principle' as the relevant factor of connection for a company, and since *Überseering* had moved its real seat from the Netherlands to Germany, German law would not recognize the company's legal capacity unless it re-incorporated under German law. Put more simply, in the absence of EU harmonization of national laws regarding the connecting factor for the purposes of incorporation, Germany did not recognize *Überseering*'s incorporation in the Netherlands.

Although the ECJ distinguished the *Daily Mail* case on its facts (where the restriction on the company's right to retain legal personality in the event of a transfer of registered office or centre of administration was imposed by the Member State of incorporation), the reality is that the reasoning in *Überseering* clearly moves away from the underlying broad rationale in *Daily Mail*. *Überseering* establishes that, despite the lack of harmonization of the laws governing the connecting factor for incorporation, a company which is legitimately incorporated in one Member State and which moves its centre of administration to another State cannot be

⁹¹ For a similar dismissal of the relevance, for the freedom of establishment of companies, of the fact that EU law in the field of cross-border mergers had not been harmonized see Case C-411/03 *Sevic Systems* [2005] ECR I-10805, para. 26. For comment see P. Behrens (2006) 43 *CMLRev.* 1669.

⁹² P. Cabral and P. Cunha, 'Presumed Innocent': Companies and the Exercise of the Right of Establishment under Community Law' (2000) 25 *ELRev.* 157; S. Deakin, 'Two Types of Regulatory Competition: Competitive Federalism versus Reflexive Harmonisation. A Law and Economics Perspective on *Centros*' (1999) 2 *CYELS* 231.

⁹³ W. Roth (2000) 37 *CMLRev.* 147, 153-155.

⁹⁴ Case C-208/00 *Überseering v. NCC* [2002] ECR I-9919.

⁹⁵ Case C-167/01 *Kamer van Koophandel en Fabrieken voor Amsterdam v. Inspire Art Ltd.* [2003] ECR I-10155.

denied recognition of its legal personality by the latter. While the Court accepted that the enhancement of legal certainty, protection of creditors and minority investors, and legitimate fiscal requirements could in principle provide grounds to justify rules restricting the freedom of establishment, the German rule in question which denied the legal capacity of *Überseering* amounted to an outright denial of freedom of establishment and was disproportionate.

The case of *Inspire Art* tested another of the questions which was left open by *Überseering*, i.e. whether a restriction on a company's secondary establishment which is less drastic than an outright denial of the right of establishment might be compatible with Article 43.⁹⁶ In this case, Dutch legislation sought to impose regulatory requirements on a company which was incorporated in the UK, including minimum share capital requirements and directors' liability requirements. Once again, while the ECJ accepted in principle the argument that restrictive regulations could be justified in the interests of protecting creditors and investors, or ensuring an effective tax inspection system, the rules at issue in the case were found to be disproportionate and unnecessary.

Underlying this important series of cases on the right of establishment of companies is the familiar mutual-recognition rationale which we have seen in many areas of EU internal market law. In the context of Articles 43 and 48, it implies that a Member State should recognize the legitimacy of a company's incorporation (and primary establishment) under the laws of another Member State and should not impose unnecessary restrictions on the right of secondary establishment within its territory.

(iii) *Direct Taxation Rules as Restrictions on the Freedom of Establishment of Companies*

While many of the cases before the ECJ have concerned restrictions or disadvantages imposed by Member States on companies—or on the employees of companies⁹⁷—whose registered offices were in another Member State, there have also been many cases involving restrictions—and in particular tax restrictions—imposed by States on companies whose registered office is within that State, but which have subsidiaries or branches in other Member States.

In *Commission v. France*, the Court drew an analogy between the location of the registered office of a company and the place of residence of a natural person.⁹⁸ It ruled that discrimination in tax laws against branches or agencies in a Member State by taxing them on the same basis as companies whose registered office is in that State yet not giving them the same tax advantages as such companies was an infringement of Article 43. Neither the lack of harmonization of the tax laws of the different Member States nor the risk of tax avoidance by companies could justify the restriction. According to the ECJ, Article 43 'expressly leaves traders free to choose the appropriate legal form in which to pursue their activities in another Member State and that freedom of choice must not be limited by discriminatory tax provisions'.⁹⁹ According to the

⁹⁶ *Ibid.*

⁹⁷ Case 79/85 *Segers*, n. 80 above. See also Case 93/89 *Commission v. Ireland* [1991] ECR I-4569, Art. 43 requiring nationals of other Member States who owned a vessel registered in Ireland to establish a company in Ireland. For similar vessel registration cases see Case C-221/89 *Factortame*, n. 3 above; Case C-246/89 *Commission v. United Kingdom* [1991] ECR I-4585; Case C-334/94 *Commission v. France*, n. 80 above; Case C-151/96 *Commission v. Ireland*, n. 80 above, Case C-299/02 *Commission v. Netherlands* [2004] ECR I-9761. For a controversial pending case see Case C-438/05 *International Transport Workers Federation v. Viking Line* [2006] OJ C60/16.

⁹⁸ Case 270/83 *Commission v. France*, n. 81 above, para. 18.

⁹⁹ *Ibid.*, para. 22. See also Case C-330/91 *R. v. Inland Revenue Commissioners, ex p. Commerzbank AG* [1993] ECR I-4017; Case C-1/93 *Halliburton Services BV v. Staatssecretaris van Financiën* [1994] ECR I-1137; Case C-253/03 *CLT-UFA SA v. Finanzamt Köln-West* [2006] ECR I-1831.

Court, 'it is their corporate seat . . . that serves as the connecting factor with the legal system of a Member State, like nationality in the case of natural persons'.¹⁰⁰

Nevertheless, the ECJ has accepted that a distinction based on the location of the registered office of a company or the place of residence of a natural person may, under certain conditions, be justified in an area such as tax law.¹⁰¹ In *Futura*, it was permissible for a Member State to impose conditions as regards the keeping of accounts and the location where losses were incurred on a non-resident company (which had a branch but not a main establishment in the state) for the purposes of assessing liability to tax and allowable losses, although the specific restrictions imposed by Luxembourg in the case were closely scrutinized for proportionality, and the accounting requirement—even in the absence of harmonized Community rules in this area—was found to be excessively restrictive.¹⁰²

In recent years there has been a significant amount of important litigation, including the high-profile *Marks & Spencer* case and a series of other test cases, to clarify the applicability and scope of Article 43 to a range of corporate taxation laws directed at cross-border situations—governing matters such as tax credits, deductibility of losses (group relief), and taxation of dividends—as they are applied to companies which are established in more than one Member State.¹⁰³ The Court has ruled that while States may in appropriate circumstances treat resident companies differently from non-resident companies, and resident companies with non-resident subsidiaries differently from resident companies with resident subsidiaries, and foreign-sourced dividends differently from domestic-sourced dividends, as far as direct taxation rules are concerned, this is always subject to the requirement of demonstrating reasonable and proportionate justification. While the Court has accepted that goals such as preventing tax avoidance or preventing companies from benefiting twice from rules governing tax relief may be legitimate objectives, it has continued to apply strict scrutiny to the national laws which claim to be necessitated by such objectives.

(d) SUMMARY

- i. Despite restrictive early case law on the point, Article 43 may be invoked by a national in his or her Member State of establishment so long as there is a Community element present. This element often consists of the fact that the individual has obtained a qualification or professional training in another Member State, so long as the situation involves no attempted 'abuse' of Community rights. The notion of abuse or evasion of legitimate control remains hypothetical and largely unspecified.

¹⁰⁰ Case C-330/91 *Commerzbank*, n. 99 above, para. 18. See also Case C-264/96 *ICI v. Colmer* [1998] ECR I-4695, para. 20; Case C-307/97 *Compagnie de Saint-Gobain v. Finanzamt Aachen-Innenstadt* [1999] ECR I-6161, para. 35; Cases C-397 and 410/98 *Metallgesellschaft Ltd. v. Internal Revenue* [2001] ECR I-4727, para. 42.

¹⁰¹ Case 270/83 *Commission v. France*, n. 81 above, para. 19. See also Case C-279/93 *Schumacker*, n. 79 above; Case C-80/94 *Wielockx*, n. 79 above; Case C-107/94 *Asscher*, n. 11 above; Case C-311/97 *Royal Bank of Scotland v. Greece* [1999] ECR I-2651. Compare Case C-264/96 *ICI*, n. 100 above; Case C-200/98 *X and Y v. Riksskatteverket* [1999] ECR I-8261; Case C-9/02 *de Lasteyrie du Saillant* [2004] ECR I-2409.

¹⁰² Case C-250/95 *Futura Participations SA Singer v. Administration des Contributions* [1997] ECR I-2471. For indirect tax discrimination against companies having their principal place of business in other Member States see, e.g., Case C-254/97 *Société Baxter v. Premier Ministre* [1999] ECR I-4809; Case C-436/00 *X and Y v. Riksskatteverket* [2002] ECR I-10829; Case C-334/02 *Commission v. France* [2004] ECR I-2229.

¹⁰³ See, e.g., Case C-446/03 *Marks & Spencer v. Hasley* [2005] ECR I-10837; Case C-253/03 *CLT-UFA*, n. 99 above; Case C-347/04 *Rewe-Zentralfinanz v. Finanzamt Köln-Mitte*, 29 Mar. 2007; Case C-374/04 *Test Claimants in Class IV of the ACT Group Litigation v. Inland Revenue*, 12 Dec. 2006; Case C-196/04 *Cadbury Schweppes plc v. Inland Revenue* [2006] ECR I-7995; Case C-446/04 *Test Claimants in the FII Group Litigation*, 12 Dec. 2006; Case C-524/04 *Test Claimants in the Thin Cap Group Litigation v. Inland Revenue*, 13 Mar. 2007.

- ii. Despite the importance of equal treatment and non-discrimination in the field of establishment, the ECJ adopts broadly the same approach to freedom of establishment as it does in other areas of free movement. In other words, any obstacle to the right of establishment in a Member State, whether or not it has a differential impact on nationals and non-nationals, is caught by Article 43 unless it can be justified.
- iii. The law governing establishment of companies is more complex than that governing natural persons, mainly due to the differences between national company laws. Rather than await legislative harmonization at EU level, the ECJ has required host States to permit companies validly incorporated in another State, even under a very different corporate law regime, to exercise rights of secondary establishment in a host State without imposing undue regulatory restrictions.
- iv. Tax restrictions on companies established in more than one Member State, which seek to combine the advantages and minimize the disadvantages of different tax regimes within the different States in which they are established, have been regularly and successfully challenged in recent years.

4. FREE MOVEMENT OF SERVICES

We have seen that the right of establishment entails the pursuit of an economic activity from a fixed base in a Member State for an indefinite period. Freedom to provide services under EU law, on the other hand, entails the carrying out of an economic activity for a temporary period in a Member State in which either the provider or the recipient of the service is not established.

According to the *Insurance Services* case, if a person or an undertaking maintains a *permanent* base in a Member State, even if only an office, it cannot avail itself of the right to provide services in that State but will be governed by the law on freedom of establishment.¹⁰⁴ In *Gebhard*, however, we saw that the ECJ acknowledged that the provision of services did not necessarily cease to be *temporary* simply because the provider might need to equip herself with the necessary infrastructure—e.g., an office or chambers—to perform those services.¹⁰⁵ Thus what is relevant in order to determine whether a self-employed person is covered by the Treaty provisions on establishment or services is not the mere existence of an office in a Member State, but rather the temporary or permanent nature of the economic activities carried on there.

Further, the Court has ruled that if someone directs most or all of his or her services at the territory of a particular Member State, but maintains his or her place of establishment outside that State in order to evade its professional rules (the abuse/evasion theory), that person may in certain circumstances be treated as being established within the Member State, and thus covered not by Article 49 but by Article 43 instead.¹⁰⁶ In such a case the professional rules

¹⁰⁴ Case 205/84 *Commission v. Germany*, n. 13 above, para. 21. The earlier decision in Case 39/75 *Coenen v. Sociaal-Economische Raad* [1975] ECR 1547, was somewhat contradictory on this point.

¹⁰⁵ Case C-55/94 *Gebhard*, n. 14 above, para. 27.

¹⁰⁶ Case 33/74 *Van Binsbergen*, n. 9 above, para. 13. See also Case 205/84 *Commission v. Germany*, n. 13 above, para. 22. For an example of a justified state restriction to prevent an abuse where a provider of services was established outside the Netherlands in order to evade broadcasting regulations, yet was directing its services at the Netherlands, see Case C-148/91 *Vereniging Veronica Omroep Organisatie v. Commissariaat voor de Media* [1993] ECR I-487; Case C-23/93 *TV10 SA v. Commissariaat voor de Media* [1994] ECR I-4795. Contrast Cases C-369 and 376/96 *Arblade*, n. 58 above, para. 32.