

Opinion of Advocate General Jacobs delivered on 16 September 1999

Hugo Fernando Hocsman v Ministre de l'Emploi et de la Solidarité

Reference for a preliminary ruling: Tribunal administratif de Châlons-en-Champagne – France

Article 52 of the EC Treaty (now, after amendment, Article 43 EC) - Council Directive 93/16/EEC - Community national holding an Argentine diploma recognised by the authorities of a Member State as equivalent in that State to a university degree in medicine and surgery - Obligations of another Member State with respect to an application to practise medicine on its territory

Case C-238/98

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Opinion of the Advocate-General

1. The question in this case concerns the extent to which a Member State may be required to take account, for the purpose of granting authorisation to practise medicine, of the experience and qualifications of a Community national whose basic medical qualification was obtained in a country outside the Community but has been recognised in another Member State, particularly where that person has subsequently obtained a specialist medical qualification in that other Member State.

The facts and the main proceedings

2. The facts, as they appear from the order for reference and the various observations submitted to the Court, are as follows.

3. Dr Hocsman was originally of Argentine nationality. In 1986, he acquired Spanish and in 1998, after the commencement of the proceedings before the national court, French nationality.

4. He holds a medical diploma issued in 1977 by the University of Buenos Aires, Argentina. In 1980, that diploma was recognised by the Spanish Ministry of Universities and Research as being equivalent for academic and professional purposes to the Spanish basic medical qualification of Licenciado en Medicina y Cirugía, and Dr Hocsman was authorised to practise medicine in Spain on the same terms as a holder of the Spanish qualification. Since 1981, he has been registered as a member of the Col·legi Oficial de Metges de Barcelona (Barcelona Medical Association).

5. In 1982, Dr Hocsman was awarded the qualification of specialist medical practitioner in urology, for academic purposes, by the Spanish Ministry of Education and Science, and a specialist diploma in urology by the University of Barcelona. In 1986, the Ministry of Education and Science conferred validity for professional purposes on the university diploma following Dr Hocsman's acquisition of Spanish nationality. Various certificates attest to his having completed medical internships prior to obtaining those qualifications, and thereafter to his having held various posts as resident, then assistant, in Spain and, since 1990, France, in each case specialising in urology.

6. It appears that Dr Hocsman's employment as a hospital doctor in France was on the basis of a series of fixed-term contracts under rules which allowed public establishments to engage, in a supervised capacity, persons holding medical qualifications obtained outside the Community or the European Economic Area. Those rules were repealed in 1995, with the result that his contract could no longer be renewed when it next expired. Dr Hocsman has consequently been unemployed, we were told at the hearing, since late 1997.

7. In 1996, Dr Hocsman applied to be enrolled in the Ordre des Médecins, the French medical association, with a view to being able to practise his medical specialty in a self-employed capacity. He was informed by the Ordre that his Argentine diploma could not be recognised as a result of the Directive of 25 July 1978 of the Council of the European Communities, in particular Article 7 thereof. That appears to be a reference to Article 7 of Council Directive 78/686/EEC (concerning dentists) as interpreted by the Court in Tawil-Albertini.

8. On 11 April 1997, apparently following advice given to him in the letter refusing him enrolment in the Ordre des Médecins, Dr Hocsman applied to the Minister for Health for individual authorisation to practise medicine as a urologist in France.

9. The response to that request seems to have come in a letter of 27 June 1997 from the Ministry of Employment and Solidarity, confirming that:

... Mr Hocsman does not meet the requirements for the practice of medicine in France ...

In Tawil-Albertini ... the Court of Justice ... interpreted Article 7 of Council Directive 78/686 ... The Court held that Article 7 does not require Member States to recognise diplomas, certificates and other evidence of formal qualifications which do not testify to dental training acquired in one of the Member States of the Community.

That interpretation may be transposed to the Community rules concerning the practice of medicine; consequently, the diploma issued to Mr Hocsman in Argentina and recognised by the Spanish authorities as equivalent to the Spanish diploma does not entitle him to practise medicine in France.

...

10. Dr Hoczman challenged the decision of 27 June 1997 before the Tribunal Administratif, Châlons en Champagne, which on 23 June 1998 held that neither the EC Treaty nor the Directive required a Member State to recognise a qualification which does not provide evidence of medical training acquired in a Member State, so that the decision of the Ministry of Employment and Solidarity was not vitiated by an error of law. However, under Article 52 of the EC Treaty (now, after amendment, Article 43 EC) as interpreted by the Court of Justice, where a person requests admission to a profession to which access depends upon the possession of a diploma or professional qualification, the Member State must take account of qualifications which that person has acquired in order to exercise the same profession in another Member State, by comparing the knowledge and abilities certified by those qualifications and those required by the national rules. The Tribunal stayed proceedings and sought a preliminary ruling by the Court on

whether an equivalence accorded by one Member State means that another Member State is required to verify, on the basis of Article 52 of the EC Treaty, whether the experience and qualifications evidenced thereby correspond to those required for the award of national diplomas and other formal qualifications, in particular where the person benefiting from such equivalence holds a diploma providing evidence of specialist training acquired in a Member State and included in the scope of a directive concerning the mutual recognition of diplomas.

11. Written observations have been submitted by Dr Hoczman, the Finnish, French, Italian, Spanish and United Kingdom Governments, and the Commission. At the hearing oral submissions were made on behalf of Dr Hoczman, the French, Italian, Netherlands and Spanish Governments, and the Commission.

12. At the hearing, the Commission stated that an appreciable number of medical practitioners find themselves in difficulties similar to those of Dr Hoczman and are the source of numerous complaints, and the French Government provided approximate figures of some 300 to 400 recognitions of foreign medical diplomas per annum in recent years, with some 1 200 foreign-qualified doctors practising in France. It is thus clear that, whilst the Court's ruling can only be a response to the question posed in this particular case, its repercussions will be of wider import.

The relevant Community law provisions

13. Under Article 52 of the EC Treaty (now, after amendment, Article 43 EC), ... restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be abolished ... (... prohibited in the amended version).

14. Article 57 of the EC Treaty (now, after amendment, Article 47 EC) provides for the adoption of Council directives regarding the mutual recognition of qualifications and the coordination of national requirements for the taking-up and pursuit of self-employed activities in general. It goes on to specify:

3. In the case of the medical ... professions, the progressive abolition of restrictions shall be dependent upon coordination of the conditions for their exercise in the various Member States.

15. In the field of mutual recognition of medical diplomas and the coordination of laws relating to the practice of medicine, various Council directives have been in force since 1975. The legislation presently in force is Directive 93/16 (the Directive).

16. Pursuant to Article 2 of the Directive, Each Member State shall recognise the diplomas, certificates and other evidence of formal qualifications awarded to nationals of Member States by the other Member States in accordance with Article 23 and which are listed in Article 3, by giving such qualifications, as far as the right to take up and pursue the activities of a doctor is concerned, the same effect in its territory as those which the Member State itself awards.

17. The list in Article 3 includes the Spanish *Título de Licenciado en Medicina y Cirugía*. Article 23 provides that Member States are to require persons wishing to take up and pursue a medical profession to hold one of the qualifications in medicine referred to in Article 3 and lays down certain minimum criteria for the training to which that qualification attests; in particular, the course must comprise at least six years or 5 500 hours of theoretical and practical instruction.

18. Comparable rules relating to specialist qualifications are provided for in Articles 4, 5 and 24 of the Directive. Pursuant to Article 4, Member States are to recognise and give effect to the qualifications in specialised medicine listed in Article 5 and awarded to nationals of Member States by the other Member States in accordance with, inter alia, Article 24.

19. Article 5 lists, for Spain, the *Título de Especialista* (professional qualification of specialist) awarded by the Ministry of Education and Science and specifies urology as an area of specialised medicine to which Articles 4 and 5 apply. Article 24 lays down minimum requirements which such qualifications must meet; in particular they must entail completion of at least six years' study and they may be awarded only to persons possessing one of the basic qualifications in medicine referred to in Article 3, awarded following completion of a period of medical training as referred to in Article 23.

20. Thus, under those provisions of the Directive, one Member State must recognise a basic medical qualification awarded in another Member State provided that it meets certain minimum standards. The same holds for specialist qualifications meeting certain minimum standards, provided that the basic training stipulated by the Directive has itself been completed.

21. Three other provisions of the Directive should be mentioned. Under Article 9(2), specialist qualifications acquired in Spain or Portugal on completion of training which commenced before 1 January 1986 and which do not satisfy all the minimum training requirements specified are none the less to be recognised where evidence of

a sufficient period of subsequent practice is produced. (In 1992, Dr Hocsman obtained a certificate from the Spanish Ministry of Education and Science attesting that his specialist diploma, although obtained after only two years' training, was one of the kind referred to in the directive then applicable and that he had subsequently practised as a specialist for a period of six years, thus complying with the requirements of Article 9(2) of that directive for his specialist qualification to be recognised elsewhere in the Community.)

22. Article 23(5) provides: 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 authorise holders of diplomas, certificates or other evidence of formal qualifications which have not been obtained in a Member State to take up and pursue the activities of a doctor.

23. In that connection, it may be noted that a current Commission proposal for amendments to the Directive contains the following provision: Member States shall take account of diplomas, certificates and other evidence of formal qualifications of ... doctor obtained by the holder outside the European Union in cases where those diplomas, certificates and other evidence of formal qualifications have been recognised in a Member State, as well as of training undergone and/or professional experience gained in a Member State.

24. Finally, Article 20(3) provides: Member States shall see to it that, where appropriate, the persons concerned acquire, in their interest and in that of their patients, the linguistic knowledge necessary to the exercise of their profession in the host country.

25. Thus, in addition to the obligation to recognise medical qualifications meeting specified minimum requirements, Member States must also, in certain limited circumstances, recognise periods of practice as partly compensating for certain failures to meet those requirements, with specific regard to length of training, and must ensure that practitioners possess appropriate linguistic knowledge. And whilst mutual recognition of the appropriate Community qualifications is compulsory, recognition of those issued outside the Community is not.

The position under the Directive

26. Although the Tribunal Administratif has not expressly referred a question regarding the Directive itself, it is helpful to begin by examining its relevance. All of the Member States submitting observations as well as the Commission consider that, pursuant to the Directive, there is no obligation incumbent on any Member State to recognise a basic medical qualification obtained outside the Community, even where that qualification has been recognised as equivalent in another Member State.

27. In that regard, Articles 2 and 23(1) of the Directive make reference to the diplomas, certificates and other evidence of formal qualifications listed in Article 3, possession of which is a condition for obtaining recognition in another Member State. Thus in my view a person who does not hold such a basic medical qualification cannot come within the ambit of the mutual recognition provisions of the Directive. Although it is not for the Court to decide the facts of the case, it appears undisputed that Dr Hocsman does not hold a qualification listed in Article 3, but rather a basic medical qualification from outside the Community which has been recognised by one Member State, Spain, as being equivalent to a qualification that does appear in that list.

28. This view is given further support by Article 23(5), from which it is clear that a Member State is free, but not obliged, to recognise a non-Community qualification and that under the Directive such recognition has no effect beyond its territory. Indeed, it is noteworthy that the aim of the proposed amendment is to provide that account must be taken of such qualifications.

29. As several of the parties submitting observations point out, that result is confirmed by the decisions of the Court in *Haim I* and *Tawil-Albertini*, both of which concerned a coordinating directive in the area of dentistry containing provisions comparable to those of the Directive.

30. *Haim I* involved an application by a Community national to be exempted from a requirement to complete a preparatory training period before becoming eligible to practise within the national social security scheme. The Court ruled that Directive 78/686 did not prevent a Member State from imposing such a training period on a person holding a non-Community qualification, even where it had been recognised by another Member State as equivalent to a qualification named in the directive and the person had been authorised to practise in that other Member State.

31. Similarly, *Tawil-Albertini* concerned an application to practise as a dentist in one Member State where the person in question held a non-Community qualification that had been recognised by at least one other Member State. The Court held that Directive 78/686/EEC does not require Member States to recognise diplomas, certificates and other evidence of formal qualifications which do not testify to dental training acquired in one of the Member States of the Community.

32. An additional feature of the present case is that the person in question apparently holds a specialist qualification that is named in the Directive.

33. There is some dispute on this point, as the Spanish Government claims that Dr Hocsman's diploma is not such a qualification. Its initial contention that the diploma was merely a university degree, not a professional qualification, was withdrawn at the hearing, since it was contradicted by a letter dated 12 April 1986 from the Ministry of Education and Science, conferring validity for professional purposes on the university diploma that Dr Hocsman had previously acquired. However, the Spanish Government maintained that the specialist diploma was awarded after only two years' training and thus did not fall within the scope of the Directive. It seems to me, though, that the diploma might have fallen within the scope of the Directive by virtue of Article 9(2) of the Directive and Dr Hocsman's subsequent period of practice in Spain, had Dr Hocsman's basic medical qualification been of the kind referred to in Articles 3 and 23.

34. In fact, it matters little what the actual status of the specialist qualification is for the purpose of determining the legal position under the Directive in the present circumstances. In my view the fact that a basic qualification was not obtained in a Member State precludes the possibility of relying on the mutual recognition provisions for specialist qualifications, even if a specialist qualification was itself obtained in a Member State.

35. Article 4 subjects the compulsory recognition of specialist qualifications to the conditions set out in, *inter alia*, Articles 5 and 24. Articles 24(1)(a) and 24(2) make it clear that a specialist qualification of the sort capable of generating an obligation of recognition presupposes the possession of a basic qualification that has itself been obtained in a Member State. It is clear from the Directive as a whole and from its preamble that the aim is to ensure the coordination of standards at all levels as a prerequisite for compulsory mutual recognition. Thus, recognition at the level of specialist diplomas presupposes, in the scheme of the Directive, that a sufficient degree of coordination has been achieved.

36. I therefore take the view that, where a person holds a basic medical qualification from outside the Community and a specialist qualification granted by a Member State on the basis of its voluntary recognition of that basic qualification, other Member States are not required under the Directive to recognise either of those qualifications. I therefore now turn to consider the Treaty provisions.

The position under Article 52 of the EC Treaty (now, after amendment, Article 43 EC)

37. As a preliminary matter, a view put forward by the Italian and Spanish Governments, and espoused by the French Government at the hearing, is that the Court's case-law on Article 52 of the EC Treaty is not applicable to the present case. It is argued that freedom of establishment with respect to the medical professions can take place only within the framework of Article 57(3) (now, after amendment, Article 47(3) EC) and is a matter now exhaustively regulated by the Directive. The case-law on the former article, by contrast, relates to professions such as lawyers (Vlassopoulou) and estate agents (Aguirre Borrell), at a time when no coordinating directive had yet been adopted with regard to those professions. That case-law is thus irrelevant with regard to the practice of medicine.

38. In my view those arguments must be rejected.

39. The Treaty itself already prohibits restrictions on freedom of establishment for Community nationals. The role of directives is to create a framework of common minimum standards within which mutual recognition of professional qualifications obtained within the Community becomes not only possible, but even compulsory. Thus the purpose of Article 57(3) of the EC Treaty is not to permit freedom of establishment for the medical professions in the first instance, but simply to ensure that systematic mutual recognition of qualifications does not take place without coordination of provisions governing the exercise of those professions. It does not supplant the basic right to freedom of establishment provided by Article 52 of the EC Treaty for all professions, whether medical or otherwise.

40. Indeed, in the Vlassopoulou and Aguirre Borrell cases the Court held that in laying down that freedom of establishment is to be attained by the end of the transitional period, Article 52 of the Treaty thus imposes an obligation to attain a precise result, the fulfilment of which had to be made easier by, but not made dependent on, the implementation of a programme of progressive measures.

41. Furthermore, a basic right under the Treaty does not lapse simply because a directive has been adopted in a particular professional area. As the Commission notes in its observations, it would be paradoxical if a directive could restrict freedom of establishment by taking away a right that certainly would have existed under the Treaty in the absence of that directive. Indeed, as set out below, in Haim I the Court considered the rights of the applicant under the Treaty even though a coordinating directive had been adopted in the area in question.

42. It is true that the current Commission proposal to amend the Directive specifically inserts a requirement to take account of non-Community qualifications which have been recognised in a Member State. In my view, however, the Italian Government is incorrect to argue from this that there is no such requirement at present. On the contrary, the sixth recital in the preamble to the proposal makes it clear that the amendment is to bring the Directive into line with the judgment in Haim I - that is to say, with the situation already prevailing under the Treaty.

43. Since neither Article 57(3) of the EC Treaty nor the Directive taken in conjunction with that article overrides the right to freedom of establishment under Article 52, the case-law in that regard remains applicable.

44. In Vlassopoulou, the Court held that:

16 ... a Member State which receives a request to admit a person to a profession to which access, under national law, depends upon the possession of a diploma or a professional qualification must take into consideration the diplomas, certificates and other evidence of qualifications which the person concerned has acquired in order to exercise the same profession in another Member State by making a comparison between the specialised knowledge and abilities certified by those diplomas and the knowledge and qualifications required by the national rules.

17 That examination procedure must enable the authorities of the host Member State to assure themselves, on an objective basis, that the foreign diploma certifies that its holder has knowledge and qualifications which are, if not identical, at least equivalent to those certified by the national diploma. That assessment of the equivalence of the foreign diploma must be carried out 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 to which the diploma relates ...

...

19 If that comparative examination of diplomas results in the finding that the knowledge and qualifications certified by the foreign diploma correspond to those required by the national provisions, the Member State must recognise that diploma as fulfilling the requirements laid down by its national provisions. If, on the other hand, the comparison reveals that the knowledge and qualifications certified by the foreign diploma and those required by the national provisions correspond only partially, the host Member State is entitled to require the person concerned to show that he has acquired the knowledge and qualifications which are lacking.

20 In this regard, the competent national 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.

21 If completion of a period of preparation or training for entry into the profession is required by the rules applying in the host Member State, those national authorities must determine 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.

45. That result was confirmed in the cases of Aguirre Borrell, Haim I and Aranitis. In Haim I, in particular, the Court held that account must be taken of Mr Haim's professional experience, including that which he had acquired as a dental practitioner in the social security system of another Member State, and ruled that it is not permissible under Article 52 of the Treaty for the competent authorities of a Member State to refuse appointment as a dental practitioner of a social security scheme to a national of another Member State who has none of the qualifications mentioned in Article 3 of Directive 78/686/EEC, but who has been authorised to practise, and has been practising, his profession both in the first and in another Member State, on the ground that he has not completed the preparatory training period required by the legislation of the first State, without examining whether and, if so, to what extent, the experience already established by the person concerned corresponds to that required by that provision.

46. The Treaty rules on freedom of establishment apply to a person in Dr Hocsman's position by virtue of his being, at the material time, a national of one Member State seeking to pursue his profession, for which he possesses qualifications, in another Member State. Those rules require there to be no restriction on such a person's freedom of establishment.

47. The fact that Dr Hocsman has since acquired French nationality, either in addition to or in place of his Spanish nationality, is of no significance here. The Court has repeatedly held that Member States may not refuse to grant the benefit of Community law to those of their nationals who have exercised their right to freedom of movement and subsequently returned to their State of origin. The entitlement obviously applies a fortiori in the case of a Community national who has acquired the nationality of the host Member State during the course of his residence there.

48. It is clear, furthermore, that the Treaty provisions are intended to eliminate not only discrimination on grounds of nationality, but also obstacles to freedom of movement which may derive from differences in national requirements concerning qualifications.

49. It is necessary, therefore, for the Member State in which authorisation to practise is sought to take account of all the factors on the basis of which the person in question has been able to pursue his profession in the Community. In the present case, those factors include Dr Hocsman's basic medical qualification (recognised by Spain), his specialist qualification and his long practical experience. Moreover, they include (and here there is an analogy with the cases of Haim and Fernández de Bobadilla) experience in the Member State whose authorisation is sought, namely Dr Hocsman's employment as a urologist in French hospitals apparently without interruption from 1990 to 1997.

50. It follows further from the case-law that, when comparing the knowledge and qualifications of a Community national with those required by the national provisions, the national authorities must act in accordance with a procedure which respects the requirements of Community law concerning the effective protection of the fundamental freedoms conferred by the Treaty on Community nationals. The person concerned must be able to ascertain the reasons for any decision taken by those authorities in connection with that comparison and any such decision must be capable of being made the subject of judicial proceedings in which its legality under Community law can be reviewed.

51. In the present case, that means that any refusal to authorise Dr Hocsman to practise medicine as a urologist in France must be accompanied by a clear and challengeable statement of the grounds on which he was considered to fall short of the requisite standard. From the decision contested before the national court, no such statement appears to have been given, at least as regards any assessment of his qualifications and experience.

52. If, however, having carried out their assessment, the French authorities were to consider that Dr Hocsman's qualifications did not fully correspond to those required for practice as a urologist in France, then they should, as envisaged in paragraph 19 of the Court's judgment in Vlassopoulou, give him the opportunity to show that he has acquired the knowledge and qualifications which are lacking.

53. In circumstances such as the present, where a person possesses verifiable qualifications and experience - in particular qualifications and experience acquired in a Member State and, a fortiori, in the host Member State - it is clear that any examination must be confined to an assessment of knowledge and qualifications of which insufficient evidence is available. It may not serve as a pretext for submitting the person in question to a full examination in all the basic and specialist medical subjects required, which would constitute a denial in practice of the principles of freedom of movement enshrined in the Treaty and expounded in the Court's case-law.

The linguistic question

54. In connection with that last consideration, I turn finally to an ancillary aspect of this case raised not by the national court but by Dr Hocsman, who claims that he would find it very difficult to sit an examination in general medicine in French. It is, however, an aspect which touches upon questions of possible discrimination or undue restriction on freedom of establishment.

55. The Directive lays down the requirement of having or acquiring the linguistic knowledge necessary to the exercise of their profession in the host country. That requirement is an issue, in relation to the equivalent provision of Directive 78/686, in Haim II, a sequel to Haim I in which Mr Haim seeks damages from the German State in respect of the restrictions placed on his career by the refusal to authorise him to practise in the national social security system. Judgment has not yet been delivered in that case, but Advocate General Mischo has considered the question with thoroughness in his Opinion, with which I broadly agree.

56. I am, most importantly, in full agreement with the view that any assessment of the linguistic abilities of the person concerned must comply with the principle of proportionality. Advocate General Mischo stresses two aspects which may legitimately be taken into account: the ability to communicate with patients and the ability to cope with the administrative work entailed by the social security system. Whilst the latter is an aspect of specific relevance to the Haim II case, I think it is one which no medical practitioner in the Community today can escape and which may legitimately serve as a criterion for deciding whether a person may be admitted to practise as such in a Member State. I would add the ability to communicate accurately and effectively with professional colleagues as a similar criterion.

57. However, it should be specified that any test or examination which proved necessary might be discriminatory or disproportionate if it required any linguistic performance (such as essay-writing) not normally part of a doctor's work. The Court has not been informed what linguistic criteria Dr Hocsman may be required by the French authorities to fulfil, but there is a suggestion in Article L.356(2) of the French Code de la Santé Publique (Public Health Code) that a test referred to as composition française may in some circumstances be imposed. In the case of all tests or examinations imposed on a person in Dr Hocsman's position, it would be for the national authorities and courts (with the possibility, if necessary, of recourse to this Court) to assess whether the criteria tested were proportionate and appropriate. Where a person has in fact already been practising in the host Member State for a number of years without displaying any linguistic inadequacy, a language test on the sole basis of which he could be disqualified might well infringe the principle of proportionality.

Conclusion

58. In view of all the above considerations, I am of the opinion that the question referred by the Tribunal Administratif, Châlons en Champagne, should be answered as follows:

Where a Community national who possesses qualifications which give entitlement to practise medicine in one Member State moves to a second Member State and seeks authorisation to practise there, but recognition of those qualifications by the authorities of the second Member State is not compulsory under the relevant Community legislation, those authorities are required in accordance with Article 52 of the EC Treaty (now Article 43 EC) to take account of all of that person's relevant qualifications and experience when assessing whether such authorisation is to be granted.

If such qualifications and experience do not correspond fully to the national requirements, the authorities of the second Member State should give the person concerned the opportunity to prove that he possesses the knowledge and qualifications lacking but may not impose any tests which are not proportionate for that purpose.

If, on the basis of the assessment made, authorisation is refused, that refusal must be in a form which clearly indicates the reasons on which it is based and is capable of being made the subject of judicial proceedings in which its legality under Community law can be reviewed.