



EU Law Concentrate: Law Revision and Study Guide (8th edn)
Matthew Homewood and Clare Smith

p. 155 **7. Freedom of establishment and freedom to provide and receive services** 

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Abstract

This chapter focuses upon Article 49 TFEU and the Freedom of establishment and Article 56 TFEU and the freedom to provide services. The chapter explores the meaning and scope of the concepts including application to both natural and legal persons alongside an analysis of the content of rights afforded and the equal treatment provisions therein. Consideration is also given to derogations to the freedoms on the grounds of public policy, public security, and public health (Articles 52 and 62 TFEU) and the official authority exception within Articles 51 and 62 TFEU.

Keywords: EU law, TFEU, establishment, services, official authority exception, non-discrimination, natural persons, legal persons

The assessment

Freedom of establishment and freedom to provide services are an integral part of the internal market and the four fundamental freedoms. The extent to which they are covered as a distinct area of study differs from course to course with some institutions covering relevant legislation as part of the wider topic of free movement of persons. Where courses do focus on these areas as a discrete topic, essay-type questions often focus on the distinction between establishment and services or the difference in the law relating to natural or legal persons. Problem questions are likely to cover both freedom of establishment and freedom to provide services, requiring you to identify the issues raised and to set out and apply relevant legislation and case law to the circumstances of characters within the question, with a view to advising of the rights contained within this important area of EU law. As with free movement of persons, you will often be expected to consider limitations and exceptions.

p. 156 **Key facts**

- Article 49 TFEU concerns the freedom of establishment and implies the permanent or semi-permanent settlement for economic persons.
- Freedom of establishment can be enjoyed by self-employed (natural) persons and by companies (legal persons).
- A fundamental right of equal treatment applies prohibiting both direct and indirect discrimination and those measures which hinder or otherwise make the exercise of such right less attractive, unless justified.
- Articles 56–57 TFEU concern the freedom to provide services.
- Wholly internal situations are not covered by the rules.
- Associated services should normally be provided for remuneration.
- There is a corresponding right of freedom to receive services.
- A fundamental right of equal treatment applies prohibiting both direct and indirect discrimination and those measures which prohibit, impede, or render less advantageous the exercise of such right, unless justified.
- Derogations to the freedom of establishment and freedom to provide services can be found on the grounds of public policy, public security, and public health (Articles 52 and 62 TFEU) and in the official authority exception within Articles 51 and 62 TFEU.

p. 157 **Distinguishing between ‘establishment’ and ‘provision of services’**

Freedom of establishment includes the rights of individuals and companies to pursue activities in another Member State, for instance setting up and managing a business or practising a profession, on a permanent basis. Where a person is established in one state and provides services into another, this constitutes the **provision of services**.

Direct effect

Reyners v Belgium (Case 2/74) and *Van Binsbergen v Bestuur van de Bedrijfsvereniging voor de Metaalnijverheid* (Case 33/74) confirmed the direct effect of [Articles 49 and 56], respectively. These Treaty rights are not conditional on the adoption of directives defining their scope.

Freedom of establishment

Article 49 TFEU sets out the principle of freedom of establishment. This freedom comprises the right for EU citizens and companies to establish themselves in any Member State for a commercial purpose and, when they are already established in a Member State, to set up secondary establishments in another Member State.

Meaning of ‘establishment’

Establishment implies the permanent or semi-permanent settlement of a person or a company in another Member State for economic reasons. The concept is a broad one, as confirmed by the Court of Justice in *Gebhard (Case C-55/94)*, ‘allowing an EU national to participate, on a stable and continuous basis, in the economic life of a Member State other than his state of origin and to profit therefrom, so contributing to economic and social interpenetration within the Union, in the sphere of activities of self-employed persons’.

Indeed, it has been decided that:

an insurance undertaking of another Member State which maintains a permanent residence 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 authorised to act on a permanent basis for the undertaking, as would be the case with an agency.
(Commission v Germany (Case 205/84))

However, a presence in a host Member State is required. In *Stauffer (Case C-386/04)*, it was held that it was generally necessary to have secured a permanent presence in the host Member State and that where immovable property, such as a factory was purchased and held, that property should be actively managed.

p. 158 **Beneficiaries**

Natural persons

The concept of a self-employed person is not defined in the TFEU but, as with the concept of ‘worker’, it is defined widely.

Jany (Case C-268/99) concerned Czech and Polish women working as prostitutes in the Netherlands. They paid rent and received a monthly income which was declared to the relevant tax authorities. The Court of Justice considered whether a prostitute could be considered to be a self-employed person and, in so doing, concluded that a self-employed person provides a service outside any relationship of subordination concerning the choice of that activity, working conditions, and conditions of remuneration, and does so under their own responsibility in return for remuneration paid to that person directly and in full. In applying these criteria, it is clear that a prostitute could be considered a self-employed person for the purposes of Article 49 TFEU.

Legal persons

According to Article 54 TFEU, companies or firms means ‘companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making’.

This wide definition excludes non-profit-making organisations (such as charities) meaning that both companies and self-employed persons must pursue economic activities. It should be noted that a company which fails to make a profit but whose activities are intended to do so is nevertheless still pursuing economic activities and therefore still comes within this definition.

The nationality of a company is determined by reference to the Member State in which it has its seat according to its statute. In *Segers* (Case 79/85) the Court stated that the fact that a company conducted its business through an agency, branch, or subsidiary solely in another Member State, is immaterial. As confirmed by *Centros* (Case C-212/97), when a company is formed in accordance with the law of a Member State and has its registered office, central administration, or principal place of business somewhere in the EU, it is established in the Member State according to which law it is formed even in cases where no business is conducted by the company in that Member State.

Rights

Rights of entry and residence

Directive 2004/38 reaffirms the rights of entry and residence for natural persons. Such rights for legal persons also exist but they are contained in Article 49 TFEU.

Prohibition of discrimination

For natural and legal persons exercising the right of establishment, the general non-discrimination provision in Article 18 TFEU is supplemented by Article 49, which includes the right to pursue activity ‘under the conditions laid down for its own nationals by the law of the country where such establishment is effected’. Clearly, this provision prohibits direct discrimination on grounds of nationality. However, equal treatment can be problematic when applied to rules concerning professional conduct and qualifications, which may hinder or make less attractive the exercise of free movement rights, particularly where individuals who comply with home state requirements find a host state’s requirements difficult or impossible to satisfy.

Non-discriminatory restrictions

Rules of professional conduct

Gebhard set out the principles to be applied to rules of professional conduct.

Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di Milano (Case C-55/94) [1995] ECR I-4165

Facts: Gebhard, a lawyer qualified in Germany, faced disciplinary proceedings for practising in Italy under the title avvocato, in contravention of Italian legislation.

Held: The Court of Justice confirmed that an EU national exercising the right of establishment in another Member State must comply with the relevant requirements, such as the use of a professional title. However, 'measures liable to hinder or make less attractive the exercise of fundamental freedoms guaranteed by the Treaty' must be non-discriminatory, justified in the general interest, and suitable for and proportionate to their objective.

Looking for extra marks?

Gebhard indicates that Article 49 TFEU extends beyond inequality of treatment, to include restrictions raising unnecessary obstacles to freedom of establishment. Any measures hindering or making less attractive the exercise of rights, including those which are equally applicable to host state nationals, must be **objectively justified** and proportionate.

Professional qualifications

Like professional conduct rules, national professional qualification requirements can seriously hinder free movement, for they may not be easily met by non-nationals.

Thieffry v Conseil de l'Ordre des Avocats à la Cour de Paris (Case 71/76) [1977] ECR 765

Facts: Thieffry, a Belgian advocate, was refused admission to the Paris Bar because he did not hold the necessary French qualifications.

Held: The Court of Justice held that, since France officially recognised Thieffry's Belgian qualifications as equivalent, this was an unjustified restriction on freedom of establishment.

p. 160 ↵ Where qualifications are not recognised as equivalent, they must be compared with national requirements and, if equivalent, accepted. If not, evidence of the necessary knowledge and experience may be required (*Vlassopoulou v Ministerium für Justiz (Case 340/89)*).

Mutual recognition of qualifications

Alongside these case law developments, the EU is moving towards harmonisation in this area. The harmonisation programme will be considered later in this chapter.

Freedom to provide services

Under Article 56 TFEU ‘restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the service is intended’.

Meaning of ‘services’

According to Article 57 TFEU, services fall within the scope of the Treaty if ‘normally provided for remuneration’. They include industrial, commercial, and professional activities (Article 57 TFEU); for instance, legal services (*Van Binsbergen (Case 33/74)*), insurance services (*Safir v Skattemyndigheten i Dalarnas Lan (Case C-118/96)*), and medical services (*Geraets-Smits v Stichting Ziekenfonds and HTM Peerbooms v Stichting CZ Groep Zorgverzekeringen (Case C-157/99)*). Service provision includes the situation where the provider does not physically move from the state of establishment, for example the provision of telephone marketing services in another Member State (*Alpine Investments BV v Minister of Finance (Case C-384/93)*).

In *Grogan*, abortion services were held to fall within Article 57 but a free ‘information service’ about London abortion clinics lacked the necessary economic dimension.

Society for the Protection of Unborn Children Ltd v Grogan (Case C-159/90) [1991] ECR I-4685

Facts: The SPUC challenged the practice of a students’ union in Ireland, where abortion is illegal, to supply information, free of charge, about abortion services provided lawfully by London clinics.

Held: The Court of Justice held that since the information was not distributed on behalf of the economic operators (the clinics), the students’ ‘information service’ fell outside the scope of ‘services’. Accordingly, the prohibition of the students’ activity did not infringe EU law.

In view of the sensitive nature of the abortion issue in Ireland, it is likely that the Court’s reasoning was strongly influenced by policy considerations.

p. 161 Requirement of a cross-border element

Article 56 TFEU, like the other EU freedoms, does not apply to purely internal situations and, as such, a cross-border element is required. An example of this can be found in *Jägerskiöld*.

Jägerskiöld (Case C-97/98) [1999] ECR I-7319

Facts: According to Finnish law, a fishing licence which Mr Gustafsson had paid for gave him the right to fish even in private waters. When Mr Gustafsson fished in Mr Jägerskiöld's (private) waters, Mr Jägerskiöld complained, arguing that Finnish law breached EU law on (amongst other things) the free movement of services.

Held: The Court of Justice held that the provisions on the freedom to provide services could apply in theory but they did not apply to activities which were confined in all respects within a single Member State such as those in the case concerned. The proceedings were between two Finnish nationals, both established in Finland, concerning the right of Mr Gustafsson to fish in waters belonging to Mr Jägerskiöld and situated in Finland. Such a situation did not present any link to one of the situations envisaged by EU law in the field of the free provision of services.

The requirement is often easily satisfied with a wide interpretation given by the Court of Justice.

Deliège (Cases C-51/96 & 191/97) [2000] ECR I-2549

Facts: Ms Deliège believed that the Belgian Judo Federation selection officers frustrated her career development contrary to EU law and her right to provide services. It was argued however, that the selection rules of the Belgian Judo Federation did not involve a cross-border element.

Held: Whilst confirming that the Treaty provisions on the freedom of services did not apply to activities which were confined in all respects within a single Member State, the Court held that the fact that an athlete participates in a competition in a Member State other than that in which she is established would satisfy the requirement in the circumstances of the case.

Remuneration

Article 57 TFEU states that 'Services shall be considered to be "services" within the meaning of the Treaties where they are normally provided for remuneration'. According to *Belgium v Humbel (Case 263/86)*, 'the essential characteristic of remuneration ... lies in the fact that it constitutes consideration for the service in question, and is normally agreed upon between the provider and the recipient of the service'. In the case itself, it was clear that courses under a national education system would not satisfy this but if education is provided by an institution which seeks to make a profit and if it is paid for mainly from private funds, it could do so (*Wirth (Case C-109/92)*).

Recipients of services

The TFEU makes no reference to recipients of services. The right of Member State nationals to enter and remain in another Member State for the purpose of receiving services, originally contained in Directive 73/148, currently arises from the general provisions on entry and residence in Directive 2004/38. It will be recalled that, under the Directive, all Union citizens are entitled to enter and remain in another Member State for up to three months, without conditions, and to stay for more than three months, provided they have the required degree of financial independence.

The Court of Justice has recognised that Article 56 includes the right to receive, as well as to provide, services. In early decisions, it held that ‘recipients of services’ included persons travelling to other Member States for medical treatment and for education and business purposes (*Luisi and Carbone v Ministero del Tesoro (Cases 286/82 & 26/83)*). Cowan concerned a recipient of tourist services.

Cowan v Le Trésor Public (Case 186/87) [1989] ECR 195

Facts: Cowan, a British national who had been violently attacked whilst on a visit to Paris, was refused the compensation to which a French national would have been entitled in those circumstances. He challenged this decision, relying on the Treaty right in [Article 18 TFEU].

Held: The Court held that tourism was a service and that tourists were entitled to equal treatment under [Article 18], including equal access to criminal injuries compensation.

The rights of recipients of services may be restricted, as for workers and others with free movement rights, on grounds of public policy, public security, or public health, considered later in this Chapter.

Rights

Rights of entry and residence

The right to move and reside has been discussed in detail in Chapter 6 and earlier in this Chapter in relation to freedom of establishment. The provisions are contained within Directive 2004/38.

It should be noted, however, that whilst establishment means integration into a national economy, the freedom to provide services enables a self-employed person to exercise his/her activity in another Member State (*Gebhard (Case C-55/94)*). The provider of the services need not, as a matter of principle, reside in the other Member State and such provision of services often involves temporary and/or occasional pursuit of economic activities.

Prohibition of discrimination

Article 57 TFEU prohibits both direct and indirect discrimination. Direct discrimination is usually easy to identify and concerns discrimination on grounds of nationality by the fact that a person is established in a different Member State from the one in which services are being provided (*Gouda (Case C-288/89)*).

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FDC (Case C-17/92) [1993] ECR I-2239

Facts: Spanish law provided that film distributors were granted a licence to dub foreign-language films on condition that they distributed a Spanish film at the same time.

Held: The relevant Spanish law breached Article 56 TFEU as it amounted to direct discrimination. The measure meant that producers of national films had a guarantee of distribution which was not afforded equally to producers established in other Member States.

Van Binsbergen (mentioned earlier) provides an example of an indirectly discriminatory measure where a Dutch rule, requiring legal representatives to be resident in the Netherlands, was found to breach EU law because, although it could be objectively justified on the ground of professional rules of conduct connected with the administration of justice, it was disproportionate.

Non-discriminatory restrictions

Like restrictions on the right of establishment, measures that apply equally to national and non-national service providers will nonetheless infringe Article 56 if they are likely to prohibit or impede the relevant activity, though such measures may be objectively justified.

Säger v Dennemeyer & Co Ltd (Case C-76/90) [1992] ECR I-4221

Facts: Under German legislation, licences for the provision of legal services were available to patent agents but not to persons who, like Dennemeyer (who was based in the UK) offered only patent renewal services.

Held: The Court of Justice held that [Article 56] not only requires the abolition of discrimination on grounds of nationality but also restrictions that are 'liable to prohibit or otherwise impede' the provision of services. Such restrictions are compatible with [EU] law only where they are justified by imperative reasons in the public interest, equally applicable to national and non-national providers insofar as the interest is not protected by rules applying in the non-national provider's state of origin, and proportionate.

Similar principles have been applied outside the context of professional rules of conduct and qualifications, for instance in *Schindler*.

HM Customs and Excise v Schindler (Case C-275/92) [1994] ECR I-1039

Facts: UK Customs and Excise confiscated invitations to participate in a German lottery on the grounds that they contravened national lotteries legislation.

Held: The Court of Justice, finding that lottery activities constitute services, held that although the legislation applied without distinction to national and non-national lotteries, it was likely to ‘prohibit or otherwise impede’ the provision of lottery services and therefore infringed [Article 56]. Such legislation would, however, be justified by ‘overriding considerations of public interest’ (here, the protection of the consumer, the prevention of crime and fraud, and the restriction of demand for gambling), provided it was proportionate.

p. 164 Restrictions on freedom to provide services

Article 56 rights are, according to Article 57, exercised ‘under the same conditions as are imposed by that state on its own nationals’. As with the right of establishment, Member States may impose restrictions on the freedom to provide services provided they are objectively justified. *Van Binsbergen* defined the scope of permissible justification.

Van Binsbergen v Bestuur van de Bedrijfsvereniging voor de Metaalnijverheid (Case 33/74) [1974] ECR 1299

Facts: A Dutch national, qualified as an advocate in the Netherlands, who was advising a client concerning proceedings in a Dutch court, was informed, on moving to Belgium, that he could no longer represent his client. Under Dutch rules only lawyers established in the Netherlands had rights of audience before certain tribunals.

Held: The Court of Justice held that requirements imposed on persons providing services—particularly rules relating to organisation, qualifications, professional ethics, supervision, and liability—are compatible with EU law provided they are equally applicable to host state nationals, objectively justified in the public interest, and proportionate.

In *Criminal Proceedings against Webb (Case 279/80)*, in the later ‘insurance’ cases (*Commission v Germany (Re Insurance Services) (Case 205/84)*, *Commission v Ireland (Re Co-insurance Services) (Case 206/84)*, *Commission v France (Case 220/83)*, *Commission v Denmark (Re Insurance Services) (Case 252/83)*), and in *Säger v*

Dennemeyer (Case C-76/90), the Court of Justice held that Member States must also take account of any relevant rules applying to the service provider in the state of establishment. Thus, a distinction is made between persons who are permanently established in a host state, who should in principle be bound by rules applying to nationals, and those who operate there on a temporary basis as service providers. In relation to the latter, ‘double’ regulation will be more difficult to justify.

Looking for extra marks?

In developing the principles relating to equally applicable restrictions, objective justification, and proportionality under Articles 49 and 56 the Court of Justice has moved towards a ‘rule of reason’ approach similar to that applied to restrictions on the free movement of goods under *Cassis de Dijon* (discussed in Chapter 5). The focus has shifted towards the prohibition and potential for objective justification of rules, whether discriminatory or not, which prohibit or impede interstate trade or freedom of movement.

p. 165 Harmonisation: rules relating to establishment and services

Mutual recognition of qualifications

To address the problems associated with the recognition of qualifications, an EU programme of harmonisation was started, comprising of the adoption of 12 sectoral directives setting out the requirements for particular trades and professions.

Progress was slow, so a new approach was taken with Directive 89/48, which related to professions other than those already covered by the sectoral directives. The Directive provided for mutual recognition of qualifications, on the basis that an individual who held a higher education diploma on completion of at least three years’ professional education and had undertaken the necessary professional training was entitled to pursue that profession in another Member State. Directive 89/48 was supplemented by Directive 92/51, covering diplomas awarded on completion of one-year post-secondary courses, and Directive 99/42, which extended the mutual recognition principle to a range of industrial and professional areas, replacing some of the earlier sectoral directives.

Almost all of the existing harmonising legislation was replaced and consolidated by Directive 2005/36. This directive covers ‘regulated professions’ and applies to all EU citizens seeking to practise, as employed or self-employed persons, in Member States other than that in which their qualification was obtained. Directive 2005/36 aims to liberalise the provision of services; it retains the existing systems of mutual recognition and recognition of qualifications covered by the previous sectoral directives and simplifies administrative procedures.

Directive 2006/123: the ‘Services Directive’

Directive 2006/123, referred to as the ‘Services Directive’, aims to remove barriers to cross-border service provision and to simplify associated procedures. The Directive, which covers both services and establishment, was adopted after a long and drawn-out process during which significant objections were raised. The main opposition centred on the ‘country of origin’ principle, entailing the regulation of service providers by their state of origin rather than by the state in which services were provided.

The ‘country of origin’ principle was eventually abandoned and, in its place, the adopted text incorporates the principles on the provision of services established by the Court of Justice. Article 16 of the Services Directive provides for free access to, and free exercise of, a service activity within another Member State, subject to the application of non-discriminatory, necessary, and proportionate restrictions. Article 16 adds to these existing principles a list of acceptable justifications for host state requirements: public policy, public security, public health, the protection of the environment, and rules on conditions of employment. It could well be that the Court of Justice will treat this list as non-exhaustive, permitting further justifications as it has done, for instance, in relation to the free movement of goods under the *Cassis de Dijon* rule of reason.

- p. 166 ↵ Directive 2006/123 simplifies administration and procedures. In particular, businesses are able to obtain information and complete administrative formalities through ‘points of single contact’ in the host state, instead of dealing with different authorities, and are able to do this online. Customers benefit from requirements concerning the quality of services, such as the availability of information on prices and quality. The Directive expressly excludes certain kinds of services from its scope, including some sectors already covered by legislation, such as financial services and transport, as well as other sectors such as social services and health care.

Derogations to the freedom of establishment and the freedom to provide services

The official authority exception

Article 51 TFEU states that ‘the provisions of this Chapter shall not apply, so far as any given Member State is concerned, to activities which in that State are connected, even occasionally, with the exercise of official authority’. Whilst Article 62 TFEU states that the ‘provisions of Articles 51 to 54 shall apply to the matters covered by this Chapter’.

The relevant TFEU Chapters referred to are Chapter 2 (Right of establishment) and Chapter 3 (Services).

In *Reyners* the Court of Justice clarified the scope of the official authority exception.

Reyners v Belgian State (Case 2-74) EU:C:1974:68

Facts: A Dutch national was the holder of a legal qualification giving the right to take up the profession of an ‘avocat’ (lawyer) in Belgium and the question at issue was whether only those activities inherent in this profession which were connected with the exercise of official authority were excepted from the application of the Chapter on the right of establishment, or whether the whole profession was excepted because it comprised activities connected with the exercise of this authority.

Held: The Court of Justice held that the ‘official authority’ exception to freedom of establishment must be restricted to those of the activities referred to which in themselves involve a direct and specific connection with the exercise of official authority and that activities such as consultation, legal assistance, and representation and defence of parties in court would not fit this description.

Consistent with other restrictions on fundamental freedoms within the Treaty, the Court of Justice has construed the official authority exception narrowly (*Commission v Greece (Case C-306/89)*, *Commission v Italy (Case C-272/91)*, *Commission v Belgium (Case C-47/08)*).

Public policy, public security, and public health

Article 52 TFEU and Article 62 TFEU provide that the provisions relating to rights associated with freedom of establishment and freedom of services are subject to derogations on grounds of public policy, public security, and public health. The regulation of these derogations is found in Directive 2004/38 for natural persons and p. 167 within Directive 2006/123 (the ‘Services Directive’) for legal persons. ↵

Omega (Case C-36/02) [2004] ECR I-9609

Facts: German authorities made an order prohibiting simulated killing in the course of a laser game on the basis of the game jeopardising public order, with human dignity being one of the principles safeguarded.

Held: The Court of Justice held that the protection of human dignity constituted a ground of public policy which could justify the restriction on the freedom to provide services. In relation to whether the measure satisfied the requirement of proportionality, the Court held that as the prohibition concerned only commercial exploitation of the variant of the game which involved playing at killing people, the prohibition did not go beyond that necessary to attain the objective pursued.

Gourmet International (Case C-405/98) [2001] ECR I-1795

Facts: Advertising restrictions were put into place relating to alcoholic beverages above a certain percentage alcohol content.

Held: Such restrictions, even if non-discriminatory, had a particular effect on the cross-border supply of advertising space and thereby constituted a restriction on the freedom to provide services. Such a restriction could be justified, however, by the protection of public health.

Implications of Brexit

The Trade and Cooperation Agreement (discussed in more detail elsewhere) regulating the future relationship between the EU and the UK contains little substance on the services sector, especially in financial services and important issues have been postponed until further negotiations.

Key cases

CASE	FACTS	PRINCIPLE
Cowan v Le Trésor Public (Case 186/87) [1989] ECR 195	Cowan, a British national who had been violently attacked whilst on a visit to Paris, was refused the compensation to which a French national would have been entitled in these circumstances. He challenged this decision, relying on the Treaty right in [Article 18] .	The Court held that tourism was a service and that tourists were entitled to equal treatment under [Article 18] , including equal access to criminal injuries compensation.
↳ Gebhard (Case C-55/94) [1995] ECR I-4165	A German national resided in Italy with his wife, an Italian national. He decided to practise in Milan without having registered with the Milan Bar as required and was suspended for failing to register. Was he 'established' for the purposes of EU law?	'Establishment' is given a wide meaning and the applicant was 'established' for the purposes of EU law.
HM Customs and Excise v Schindler (Case C-275/92) [1994] ECR I-1039	UK Customs and Excise confiscated invitations to participate in a German lottery on the ground that they contravened national lotteries legislation.	The Court of Justice, finding that lottery activities constitute services, held that although the legislation applied without distinction to national and non-national lotteries, it was likely to 'prohibit or

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CASE	FACTS	PRINCIPLE
		otherwise impede' the provision of lottery services and therefore infringed [Article 56].
Jägerskiöld (Case C-97/98) [1999] ECR I-7319	According to Finnish law, a fishing licence which Mr Gustafsson had paid for gave him the right to fish even in private waters. When Mr Gustafsson fished in Mr Jägerskiöld's (private) waters, Mr Jägerskiöld complained, arguing that Finnish law breached EU law on (amongst other things) the free movement of services.	The Court of Justice held that the provisions on the freedom to provide services could apply in theory but they did not apply to activities which were confined in all respects within a single Member State such as those in the case concerned.
Jany (Case C-268/99) [2001] ECR I-8615	Whether Czech and Polish prostitutes working in the Netherlands were self-employed persons.	They were self-employed for the purposes of EU law. It is interpreted widely.
Omega (Case C-36/02) [2004] ECR I-9609	German authorities made an order prohibiting simulated killing in the course of a laser game on the basis of the game jeopardizing public order, with human dignity being one of the principles safeguarded.	The Court of Justice held that the protection of human dignity constituted a ground of public policy which could justify the restriction on the freedom to provide services.
Reyners v Belgian State (Case 2-74) ECLI:EU:C:1974:68	Whether only those activities inherent in a Dutch national's profession which were connected with the exercise of official authority were excepted from the application of the Chapter on the right of establishment.	The Court of Justice held that the 'official authority' exception to freedom of establishment must be restricted to those of the activities referred to which in themselves involve a direct and specific connection with the exercise of official authority.
↳ Säger v Dennemeyer & Co Ltd (Case C-76/90) [1992] ECR I-4221	Under German legislation, licences for the provision of legal services were available to patent agents but not to persons who, like Dennemeyer (who was based in the UK), offered only patent renewal services.	The Court of Justice held that [Article 56] not only requires the abolition of discrimination on the ground of nationality but also restrictions that are 'liable to prohibit or otherwise impede' the provision of services.
Society for the Protection of Unborn Children Ltd v Grogan (Case C-159/90) [1991] ECR I-4685	The SPUC challenged the practice of a students' union in Ireland, where abortion is illegal, to supply information, free of charge, about abortion services provided lawfully by London clinics.	The Court of Justice held that since the information was not distributed on behalf of the economic operators (the clinics), the students' 'information service' fell outside the scope of

CASE	FACTS	PRINCIPLE
		'services'. Accordingly, the prohibition of the students' activity did not infringe EU law.
<i>Thieffry v Conseil de l'Ordre des Avocats à la Cour de Paris (Case 71/76) [1977] ECR 765</i>	A Belgian advocate was refused admission to the Paris Bar because he did not hold the necessary French qualifications.	The Court of Justice held that since France officially recognized Thieffry's Belgian qualifications as equivalent, this was an unjustified restriction on freedom of establishment.
<i>Van Binsbergen v Bestuur van de Bedrijfsvereniging voor de Metaalnijverheid (Case 33/74) [1974] ECR 1299</i>	A Dutch national, qualified as an advocate in the Netherlands who was advising a client concerning proceedings in a Dutch court, was informed, on moving to Belgium, that he could no longer represent his client.	The Court of Justice held that requirements imposed on persons providing services are compatible with EU law provided they are equally applicable to host state nationals, objectively justified in the public interest, and proportionate.

Exam questions

Problem question

Gerry owns a specialist butcher shop in Madrid, Spain. It has been successful for a number of years and he has identified premises in Portugal where he can expand his business to. Unfamiliar with Portuguese food standards regulations, he contacts the (fictitious) Portuguese Butchery Association (PBA) which offer free advice on all such matters. However, he is dismayed to receive notification from the PBA that as he is not a Portuguese national, he is not able to obtain the free advice offered.

Advise Gerry on his rights under EU law in relation to all aspects of this scenario.

p. 170 Essay question

EU provisions on freedom of establishment provide unconditional rights that apply only to individuals.

Critically assess the accuracy of this statement, with reference to relevant cases.

Online resources

This chapter is accompanied by a selection of online resources to help you with this topic, including:

- An outline answer <https://iws.oupsupport.com/ebook/access/content smith-concentrate8e-student-resources smith-concentrate8e-chapter-7-outline-answers-to-essay-questions?options=showName> to the essay question
- An outline answer <https://iws.oupsupport.com/ebook/access/content smith-concentrate8e-student-resources smith-concentrate8e-chapter-7-outline-answers-to-problem-questions?options=showName> to the problem question
- Further reading <https://iws.oupsupport.com/ebook/access/content smith-concentrate8e-student-resources smith-concentrate8e-chapter-7-further-reading?options=showName>
- Multiple-choice questions <https://iws.oupsupport.com/ebook/access/content smith-concentrate8e-student-resources smith-concentrate8e-chapter-7-multiple-choice-questions?options=showName>

Concentrate Q&As

For more questions and answers on EU Law, see the *Concentrate Q&A: EU Law* by Nigel Foster.

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Related Books

View the Essential Cases in EU law

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