



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMISSION INTERPRETATIVE COMMUNICATION  
CONCERNING THE APPLICATION OF THE SINGLE MARKET RULES  
TO THE SECTOR OF FAIRS AND EXHIBITIONS**

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## **INTRODUCTION**

An age-old European tradition, an economic practice that has shown uninterrupted growth in recent years, fairs and exhibitions constitute a sector that generates considerable economic activity in the European Community, as the following figures demonstrate: 300 major cities currently host a total of 3 500 fairs and exhibitions annually. Close on 450 000 exhibitors and 63 million visitors are recorded each year. The sector provides direct full-time employment for an estimated 70 000 people and, more generally, is said to account for more than 800 000 jobs. The importance that firms attach to fairs and exhibitions in the context of their own economic development can also be measured in budget terms, with an estimated 10-20% of their marketing expenditure going to such events.

Fairs and exhibitions play a multi-faceted role.

By bringing together supply and demand at a given geographical location for a certain period and, in some cases, at regular intervals, fairs and exhibitions are a concrete expression of the market concept.

They are first and foremost a sales promotion instrument, supplementary to, but distinct from, advertising in that they bring together the supply of, and demand for, goods and services put on display in an environment favourable to operators.

They also bring to the fore relationships between players operating on the market and provide an opportunity to highlight their industrial and technological dynamism. Fairs and exhibitions thus provide participants with an opportunity to find out more about the market, identify new trends, assess the situation of their competitors and make new contacts. Their growth is tied to the development of an increasingly complex, open and diversified economy in which there is a growing need for communication and information to help optimise consumer choice.

Although each Member State can lay down the conditions under which a fair or exhibition may be held and the arrangements for taking part as an exhibitor, any national measures adopted in laying down such requirements must be compatible with the principles of Community law, in particular as regards the functioning of the single market. Several cases referred to the Commission have shown, however, that these principles are not always adhered to. In accordance with the principle of subsidiarity, the Commission is not considering putting forward any proposals for legislation in this respect. On the other hand, following contacts with, and at the request of, players in the fairs and exhibitions sector, it feels the time has come to set out and clarify Community law as currently applicable pursuant to the EC Treaty and the case-law of the Court of Justice. It is for the Commission, in accordance with its duties and responsibilities under the Treaty of Rome (Article 155) to ensure that the barriers to the organization of this economic activity are effectively removed for the benefit of Europe and of its citizens.

Needless to say, this communication is not aimed at national measures of a purely private nature adopted by economic operators or groups of economic operators involved in fairs and exhibitions. Such measures can, where appropriate, be scrutinized in the light of the Treaty rules on competition (Articles 85 *et seq.*)<sup>1</sup>.

By publishing this communication, the Commission is conducting an exercise in transparency and clarification of the Community rules which it is required to enforce. It is proposing to all the players concerned, national administrations and economic operators, a reference instrument that spells out the legal framework in which those who operate in this sector will find a guarantee of the fundamental freedoms granted to them under the rules governing the internal market.

Chapter I defines the scope of this communication, since one of the features of the fairs and exhibitions sector is the diversity and number of events concerned. Chapter II sets out the essential legal principles of the internal market that govern the various aspects of fairs and exhibitions. Chapter III deals with the specific implications of those principles as far as fairs and exhibitions are concerned, namely (A) arrangements governing the holding and licensing of fairs and exhibitions, (B) access of exhibitors to fairs and exhibitions and (C) conditions under which goods are displayed and services are offered.

## **I. FAIRS AND EXHIBITIONS COVERED BY THE PRESENT COMMUNICATION**

1. This Communication covers fairs and exhibitions that constitute events with a commercial purpose at which a group of economic operators exhibit jointly and temporarily goods or offer services that are only occasionally the subject of direct selling, with removal of the goods or completion of the service contract.

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<sup>1</sup> The European Commission has already adopted several formal decisions pursuant to Article 85 of the Treaty. The following can be cited as examples: Decision 88/477/EEC of 11.7.1988, British Dental Trade Association - BDTA, OJ L 233, 23.8.1988, p. 15, Decision 87/509/EEC of 18.9.1987, Internationale Dentalschau - IDS, OJ L 293, 16.10.1987, p. 58 and Decision 86/499/EEC of 30.9.1986, VIFKA, OJ L 291, 15.10.1986, p. 46.

It should also be pointed out that, in the case of freedoms under the single market, the prohibition of discrimination based on nationality applies not only to measures adopted by the public authorities but also to rules adopted by non-public associations or bodies that are aimed at collective regulation of economic activities and that this principle entails, for persons subject to the jurisdiction concerned, rights which the national authorities are duty-bound to uphold (see, in this connection, the judgments of 12.12.1974 in Case 36/74 *Walrave* [1974] ECR 1405 and of 15.12.1995, Case C-415/93 *Bosman* [1995] ECR I-4921).

Generally speaking, fairs tend to take place at regular intervals whereas exhibitions tend to be sporadic.

Depending on their specific nature, fairs and exhibitions include the following in particular:

- (a) major trade fairs: general exhibitions that are not limited to specific categories of products and that are open to the public at large;
  - (b) specialist (by virtue of the products displayed) shows and exhibitions normally reserved for a specialized or professional audience;
  - (c) exhibitions that, given the number of exhibitors, the geographical area concerned, the selection of products, and the fact that the events in question are not held at regular intervals, can be described as "minor". They match the interests of a group of economic operators who decide to display their products in a given place and at a given time outside the circuit of major fairs and international shows ("open house" exhibitions...).
2. The following should not, however, be included in the scope of this Communication:
- (a) international and world fairs governed by the Paris Convention of 22 November 1928;
  - (b) exhibitions that are held for educational, scientific or information purposes and involve no commercial transaction, and artistic events;
  - (c) markets covered by Council Directive 75/369/EEC of 16 June 1975 on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of itinerant activities<sup>2</sup>.

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<sup>2</sup> OJ L 167, 10.3.1975, p. 29. By virtue of Article 2, the Directive applies in particular to the buying and selling of goods by itinerant tradesmen, hawkers or pedlars "in covered markets other than from permanently fixed installations and in open-air markets".

## II. SINGLE-MARKET FREEDOMS THAT MUST GOVERN FAIRS AND EXHIBITIONS: GENERAL PRINCIPLES

1. **Basic rules under Community law that are particularly relevant in this respect: the right of establishment, the freedom to provide services and the free movement of goods**

In the context of the functioning of the single market without internal frontiers, the regulation and the holding of fairs and exhibitions in Member States give rise to questions regarding in particular three fundamental freedoms under the Treaty of Rome: the right of establishment, the freedom to provide services and the free movement of goods. These three freedoms are underpinned by Articles 52, 59 and 30 of the Treaty respectively<sup>3</sup>, as interpreted by the Court of Justice of the European Communities, which eliminate national restrictions that are liable to obstruct them and in particular direct or indirect discrimination based on nationality. Before going into the specific legal aspects and the practical implications of the application of these three freedoms in the fairs sector, it is advisable to set out the basic principles which, in accordance with case-law, are common to those three freedoms, and to clarify the measures concerned.

### 2. **Type of national measure covered**

In the case of measures that may be scrutinized in the light of Articles 52, 59 and 30 of the EC Treaty, it must be emphasized that these Articles of the Treaty of Rome apply to national measures construed liberally<sup>4</sup>, namely:

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<sup>3</sup> *Article 52:* Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be abolished by progressive stages in the course of the transitional period. Such progressive abolition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 58, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital.

*Article 59:* Within the framework of the provisions set out below, restrictions on freedom to provide services within the Community shall be progressively abolished during the transitional period in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended.

The Council may, acting by a qualified majority on a proposal from the Commission, extend the provisions of this Chapter to nationals of a third country who provide services and who are established within the Community.

*Article 30:* Quantitative restrictions on imports and all measures having equivalent effect shall, without prejudice to the following provisions, be prohibited between Member States.

<sup>4</sup> Judgment of 9.5.1985 in Case 21/84 *Commission v France* [1985] ECR 1355; Judgment of 24.11.1982 in Case 249/81 *Buy Irish* [1982] ECR 4005; Judgment of 25.7.1991 in Joined Cases C-1/90 and C-176/90 *Advertising of alcoholic drinks* [1991] ECR I - 4151.

- instruments adopted by public authorities or bodies which have a private legal form, but whose functioning is decisively influenced by the authorities, e.g. via representatives of the public authorities, the appointment of directors, the funding of the body, etc.<sup>5</sup>;
- administrative practices adopted by the national authorities: they may constitute instruments prohibited under Community law if they correspond to consistent and uniform behaviour on the part of those authorities;
- incitement by a public authority<sup>6</sup> which, although not binding on the people to whom it is addressed, is liable to fall within the scope of the prohibition under Articles 52, 59 and 30. Even non-binding measures may contravene these Articles if they affect the behaviour of economic operators by resorting to discrimination based on the origin of the goods or of the services.

Moreover, Articles 52, 59 and 30 of the Treaty are applicable at every level of government: central, regional, provincial and local.

### 3. Accepted exemptions from basic rules applicable under Community law: necessity and proportionality

Although they are liable to constitute a barrier to one or more fundamental freedoms enshrined in Articles 52, 59 and 30 of the EC Treaty, some national measures may nevertheless be justified if they satisfy requirements as to necessity and proportionality. In any event, the following observations are without prejudice to the specific notion of right of establishment, which cannot simply be interpreted by reference to the interpretation of Article 59.

#### (a) *Necessity*

The restrictive national measures must first of all meet the need to safeguard legitimate interests provided for in the Treaty<sup>7</sup>, in particular public policy, public security or public health.

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<sup>5</sup> These instruments may also be caught by Article 85 of the EC Treaty - Judgment of 30.1.1985 in Case 123/83 *BNIC v Clair* [1985] ECR 391.

<sup>6</sup> Case 249/81 *Buy Irish* cited in footnote 4.

<sup>7</sup> *Article 56(1)*: The provisions of this Chapter and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action providing for special treatment for foreign nationals on grounds of public policy, public security or public health.

*Article 36*: The provisions of Articles 30 to 34 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

Other legitimate interests have been recognized under the case-law of the Court of Justice by way of overriding requirements in the interest of the general good in the case of services<sup>8</sup> or, where appropriate, establishment<sup>9</sup>, or overriding requirements in the case of goods<sup>10</sup>. Consumer protection is a typical example<sup>11</sup>.

Protection of the environment and the fairness of commercial transactions, as regards goods, may also be cited as examples.

**(b) Proportionality**

The measures must also be in keeping with the proportionality principle.

Any restrictive effects of measures liable to act as a barrier to the right of establishment, to the provision of services or to trade at intra-Community level must not only be necessary to achieving the objective concerned; they must also not be excessive in relation to the legitimate objective pursued. For example, a measure could well prove disproportionate if the objective pursued were attainable via a measure that was less restrictive vis-à-vis the abovementioned Community freedoms<sup>12</sup>.

**4. Direct effect and primacy**

Articles 52, 59 and 30 of the EC Treaty are directly applicable<sup>13</sup>. This means that economic operators may invoke them in cases brought before national courts. Moreover, Community law takes precedence over national law. Accordingly, national courts are, by virtue of Community law and of well-established precedents of the Court of Justice of the European Communities, obliged, where appropriate, to disregard laws or administrative practices of the Member States that are contrary to Community law. These principles of primacy and direct applicability underpin the rights which the Community's legal system gives individuals and which national courts must uphold.

**5. Procedural safeguards**

The Community's economic operators enjoy, in connection with the freedom to provide services, with the right of establishment and with the free movement of goods, certain procedural guarantees in their dealings with public authorities. It would thus be contrary to Community law to introduce licensing procedures that were not easily accessible, speedy, represented more than a reasonable cost to the economic operator and did not provide that economic operator with a guarantee of

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<sup>8</sup> Judgment of 25.7.1991 in Case C-76/90 *Dennemeyer* [1991] ECR I - 4221.

<sup>9</sup> Judgments of 31.3.1993 in Case C-19/92 *Kraus* [1993] ECR I - 1663 and of 30.11.1995 in Case C-55/94 *Gebhard* [1995] ECR I-4165.

<sup>10</sup> Judgments of 20.2.1979 in Case 120/78 *Rewe* [1979] ECR 649 and of 6.5.1986 in Case 304/84 *Muller* [1986] ECR 1511.

<sup>11</sup> Judgment of 4.12.1986 in Case 252/83 *Commission v Denmark* [1986] ECR 3713.

<sup>12</sup> See abovementioned *Kraus* and *Rewe* cases cited in footnotes 9 and 10 respectively.

<sup>13</sup> Judgment of 21.6.1974 in Case 2/74 *Reyners* [1974] ECR 631; Judgment of 3.12.1974 in Case 33/74 *Van Binsbergen* [1974] ECR 1299; Judgment of 22.3.1977 in Case 74/76 *Iannelli and Volpi* [1977] ECR 557.

a decision on his application that duly states the grounds on which it is based and is subject to judicial review<sup>14</sup>.

Moreover, any sanctions applied to economic operators from the Community on grounds of non-compliance with national rules must be non-discriminatory and, at all events, must not be excessive in relation to the objective pursued<sup>15</sup>.

### III. SPECIFIC IMPLICATIONS OF THESE GENERAL PRINCIPLES FOR FAIRS AND EXHIBITIONS

#### A. ARRANGEMENTS UNDER WHICH FAIRS AND EXHIBITIONS ARE HELD AND LICENSED

*Economic operators from the Community must be allowed to organize and hold fairs and exhibitions anywhere in the Community.*

Generally speaking, the pursuit of a cross-border economic activity on a self-employed basis is governed by Article 52 or by Article 59 of the EC Treaty, depending on whether the cross-border activity is permanent (right of establishment) or of a temporary and/or part-time nature (freedom to provide services).

In the case of fairs and exhibitions, these principles signify that an economic operator from the Community has the right to hold events of that type on a regular basis in another Member State (e.g. by becoming established there or working through an operational structure), or to choose to operate only occasionally in another Member State in one or more specific events.

Consequently, some measures governing the *organization* of events of this type could well, irrespective of the country of origin of the exhibitors, of the goods which are to be displayed or of the services which will be offered on the occasion of a fair, be incompatible with Article 52 and/or Article 59 of the EC Treaty<sup>16</sup>, as the case may be.

Certain implications of applying the abovementioned general principles as regards the holding of fairs and exhibitions should therefore be pointed out.

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<sup>14</sup> Judgment of 14.7.1983 in Case 174/82 *Sandoz* [1983] ECR 2445; judgment of 15.10.1987 in Case 222/86 *Heylens* [1987] ECR 4097.

<sup>15</sup> Judgment of 11.11.1981 in Case 203/80 *Casati* [1981] ECR 2595.

<sup>16</sup> See Commission Interpretative Communication of 9 December 1993 concerning the free movement of services across frontiers (93/C 334/03).



***A.1 Abolition of any discrimination (direct or otherwise) based on nationality or place of residence that acts against an organizer of fairs/exhibitions***

First of all, the host Member State cannot make the ability to carry on activities relating to the holding of fairs/exhibitions or the conditions under which such activities are carried on subject to requirements that discriminate according to the nationality or place of residence of the organizer.

This basic legal guarantee also applies, by virtue of Article 58 of the Treaty<sup>17</sup>, to any company formed in accordance with the legislation of another Member State and wishing to carry on its cross-border activity via an agency, branch or subsidiary.

Accordingly, the host Member State must (e.g. when it grants a licence) treat in the same way as a national any Community company which has a secondary establishment there; allowing Member States to treat a company differently simply because its registered office is in another member State would deprive Article 58 - under which a firm may have more than one centre of economic activity in the Community - of all meaning.

It is worth pointing out that, in accordance with well-established precedents of the Court of Justice concerning the right of establishment and the freedom to provide services, the equal treatment rule prohibits not only overt discrimination based on nationality but also all forms of hidden discrimination which, by applying other outwardly neutral distinguishing criteria, in fact produce the same result.

***A.2 The right to hold private fairs and exhibitions: incompatibility of national rules restricting such activities to certain operators***

Any Community operator who satisfies the necessary professional requirements must be allowed to pursue the activity in question in any Member State of the Union.

National rules that generally prohibit the organization or holding of fairs/exhibitions and reserve those rights for certain entities, in particular official entities, entities controlled by the public authorities or entities whose managerial or supervisory bodies are, if only partly, composed, designated or endorsed by public authorities, would therefore generally be incompatible.

Similarly, it would be wrong to prescribe that such an activity is to be carried on solely by non-profit-making entities or by firms whose sole purpose is to organize fairs and exhibitions since such a restriction would not satisfy the necessity and proportionality criteria.

Another type of barrier that is incompatible with the fundamental freedoms concerned would be that normally arising from rules limiting the use of the terms "fairs" and/or "exhibitions" to official events and prohibiting their use for any other type of event.

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<sup>17</sup> *Article 58: 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 cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making.*

On the other hand, while "fair" and "exhibition" are general terms whose indiscriminate use must be permitted for all events and competitions of the same nature, be they public or private, the fact of restricting the term "official" to certain events is not *per se* contrary to Community law.

Similarly, the competent public authorities could impose specific requirements - non-discriminatory, of course - on official fairs/exhibitions held under their control, e.g. by drawing up a national or local sectoral plan or a calendar of official events, by prohibiting several fairs of the same type from being held simultaneously or by setting up *ad hoc* bodies or committees.

As a rule, however, the right to hold fairs of a private nature under non-discriminatory conditions - i.e. without one event being treated more favourably than another as regards in particular the conditions under which it is held and promoted and the conditions under which exhibitors and visitors have access to it and can participate in it - must be safeguarded.

The unquestioned right of the authorities to draw up a calendar of official events cannot, therefore, automatically rule out the possibility of organizing a private fair or exhibition simply because it is to be held at a point in time that is too close to that of another event. The task of examining to what extent it is advisable to hold the event falls to the organizers, without there being any need to dictate the standpoint of the administrative authorities. Moreover, the market itself will act as a form of regulatory machinery.

Nor would it be permissible to authorize a fair to be held subject to an exclusive requirement to the effect that the equipment used must be in strict conformity with national rules, such a requirement being contrary to the principle of mutual recognition.

### ***A.3 Formalities and procedural aspects of the organization and holding of fairs and exhibitions: need for a favourable national regulatory framework***

If operators are to benefit fully from these freedoms at cross-border level, the formal right to organize and hold fairs and exhibitions must be supplemented by an accessible and impartial national legal framework as regards formalities and procedures.

While according to the case-law of the Court of Justice, the exercise of a basic right recognized by the Treaty itself cannot be subjected to the discretion of a national administrative authority<sup>18</sup>, it would in principle be legitimate to specify that the organization and holding of a fair or exhibition are to be subject to a prior authorization procedure designed to verify objectively whether certain essential requirements, such as solvency, integrity and professionalism, are being met by the organizer, the object being to ensure that the service being provided is of the necessary quality and that the safety and security of the people and goods present at the event are maintained.

Such authorization must, however, be granted by the competent authorities of the Member State hosting the fair or exhibition and under a procedure in keeping with the guarantees available to economic operators under Community law.

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<sup>18</sup> Judgment of 31.1.1984 in Joined Cases 286/82 and 26/83 *Luisi and Carbone v Ministero del Tesoro* [1984] ECR 377.

This means above all that the procedure must be accessible to the operators concerned, who must in particular be enabled easily to identify the authorities they are to approach.

Next, only bodies safeguarding and representing general interests must be involved in the decision to grant an authorization, which must be made in circumstances of absolute impartiality.

Doubts as to compatibility with the Treaty might subsist as regards, for instance, State or local rules on the granting of authorizations under which there was no guarantee of independence and impartiality on the part of the decision-making body.

It is essential to ensure that the composition and decisions of authorities called upon to act in this field are impartial, so as not to render illusory the exercise of one of these freedoms recognized by the Treaty itself.

Similarly, it would not in principle be justified to require, under an authorization procedure, that organizers of private fairs and exhibitions communicate to the competent authorities confidential information that was not essential to administrative supervision.

Moreover, any decision to reject an application for authorization must duly state the reasons on which it is based, so that the person to whom it is addressed can be aware of those reasons, can appeal against the decision and can test its validity in the light of Community law. In addition, sanctions imposed on a Community operator for failure to comply with certain national rules must be non-discriminatory and must not be excessive in relation to the gravity of the infringement, so as not to create a barrier to free movement in the internal market.

Finally, the procedure conducted before the competent authorities of the host Member State must take account of differences between, on the one hand, operators wishing to become established and engage in activities relating to the organization and holding of fairs on a permanent basis and, on the other, operators in other Member States who wish to engage only temporarily or occasionally in such activities. The latter group of operators can be required to satisfy only simplified formalities and requirements that are legally and economically compatible with the simple provision of a service.

#### ***A.4 Specific aspects relating to the organization and holding of fairs and exhibitions in the context of the freedom to provide services***

The authorities of the Member State in which a service is received may apply to a provider established in another Member State only those national provisions that, being applicable without distinction, are justified on the basis of overriding requirements relating to the general interest (e.g. the safety and security of exhibitors and visitors, or consumer protection), provided that the resulting restriction is proportionate (i.e. not excessive and not replaceable by less coercive alternatives) and in so far as the general interest is not already afforded sufficient or equivalent protection under rules applied to the operator in the Member State in which he is established<sup>19</sup>.

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<sup>19</sup> Judgment of 18.3.1980 in Case 52/79 *Procureur du Roi v Marc J.F.C. Debaux and Others* [1980] ECR 833; judgment of 4.12.1986 in Case 205/84 *Commission v Germany* [1986] ECR 3755.

It also has to be recalled that, in accordance with Community Law, economic operators must be entitled to move with their workers in order to offer their services in a different Member State. In this context, European Parliament and Council Directive 96/71/EC of 16 December 1996<sup>20</sup>, concerning the posting of workers in the framework of the provision of services, which has to be implemented by 16 December 1999, provides that the services provider which sends workers to the territory of another Member State will have to comply with a "hard core" of minimal and compulsory rules concerning employment and work conditions in force in the host Member State.

The following, for instance, would accordingly be regarded as barriers in the field of fairs and exhibitions:

- (a) rules which, as part of a procedure for authorizing the holding of a fair or exhibition, required firms established in another Member State to fulfil all the requirements applicable under the legislation of the host Member State without due account being taken of the checks and controls that had already taken place and the obligations already fulfilled in the Member State of origin. Professionals and firms from other Member States must not, therefore, be required to satisfy a second time requirements they have already fulfilled in the Member State in which they are established;
- (b) a provision adopted by a host Member State that restricts the activity concerned to public or private entities approved or officially recognized at national or local level;
- (c) making the provision of a service subject to a requirement whereby the operator must be established, i.e. have a seat or at least permanent facilities, in the Member State where the service is to be provided; such a requirement of establishment would run counter to the freedom under Article 59, a basic Treaty provision specifically aimed at abolishing restrictions on the freedom to provide services by persons established in a Member State other than that of the person to whom the service is to be provided<sup>21</sup>.

A public authority would not be allowed to invoke administrative reasons for requiring that operators be established in the Member State where a service is to be provided; in accordance with well-established precedents of the Court of Justice<sup>22</sup>, considerations of an administrative nature cannot in principle be used to justify an exemption from Community rules, let alone prevent the exercise of one of the fundamental freedoms recognized by the Treaty.

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<sup>20</sup> OJ L 18, 21.1.1997, p. 1.

<sup>21</sup> Judgment of 26.11.1975 in Case 39/75 *Coenen and Others v Sociaal-Economische Raad* [1975] ECR 1547; judgment of 10.2.1982 in Case 76/81 *SA Transporoute et Travaux v Minister of Public Works* [1982] ECR 417.

<sup>22</sup> Judgment of 3.2.1983 in Case 29/82 *F. Van Luijpen en Zv BV* [1983] ECR 151.

## B. ACCESS OF EXHIBITORS TO FAIRS AND EXHIBITIONS

Exhibitors established in another Member State must, without being subject to discriminatory or unjustified restrictions, be allowed access to fairs and exhibitions held anywhere in the Community.

Economic operators from the Community who wish to display their products or offer their services at a fair or exhibition held in another Member State benefit from non-discriminatory treatment by comparison with nationals of each Member State; and they do so on a twofold basis: first as economic operators (traders or service providers) and secondly as recipients of services provided in the host Member State as part of the organization and holding of events of that type<sup>23</sup>.

By virtue of this principle:

- laws or rules that automatically restrict participation in all fairs and/or exhibitions to certain categories of economic operators and thus exclude from the outset any other economic operator would be contrary to the rules of the Treaty. Such measures would, from the outset, rule out any possibility of fairs and exhibitions being opened up to other categories of economic operators likely to be interested in events of that type, which essentially serve a promotional purpose (e.g. those working in the field of tourism or in retail/marketing);
- national rules could conceivably restrict or prevent the participation of exhibitors in a fair only for duly substantiated reasons, e.g. where an event is being held in a specialized sector (the highly specific nature of some fairs and exhibitions presupposes that only certain categories of economic operators will take part);
- membership of the official distribution network for the product the exhibitor wishes to put on display must not constitute a precondition of access to a fair or exhibition;
- a complete ban on the sale of goods and services at fairs might also prove excessively restrictive and dissuasive in the case of operators seeking to combine promotional and commercial activities.

Moreover, the Commission takes the view that any national rules allowing organizers, acting arbitrarily or according to ill-defined criteria, to restrict access to a fair to certain categories of exhibitors give rise to doubts as to the conditions under which operators can take part. Those doubts which are unlikely to afford a sufficient level of legal certainty, or to safeguard properly the rights arising from the Treaty of Rome.

At all events, any decision whereby an operator from the Community is not admitted to, or is excluded from, a fair or exhibition must be substantiated and must be open to judicial review.

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<sup>23</sup> Judgment of 31.1.1984 in Joined Cases 286/82 and 26/83 - see footnote 18; judgment of 2.2.1989 in Case 186/87 *Cowan v Trésor Public* [1989] ECR 195; judgment of 20.10.1993 in Joined Cases C-92/92 and C-326/92 *Phil Collins v IMTRAT Handelsgesellschaft MBH and Patricia Im- und Export Verwaltungsgesellschaft and Leif Emanuel Kraul v EMI Electrola GmbH* [1993] ECR I-5145.

C. CONDITIONS UNDER WHICH PRODUCTS ARE EXHIBITED AND SERVICES ARE OFFERED

*The display, on the occasion of a fair or exhibition, of goods and/or services lawfully produced/provided in a Member State cannot be made subject to compliance with the rules in force in the host Member State or with unwarranted formalities.*

The basic principles of free movement of goods and freedom to provide services in the Community also have significant implications as regards the conditions under which (a) goods are displayed and (b) services are offered at fairs and exhibitions.

(a) Conditions under which goods are displayed

1. *The goods displayed do not have to comply with the rules in force in the country where the exhibition takes place*

It follows from the case-law of the Court of Justice that any product lawfully manufactured and/or placed on the market in a Member State and which offers levels of protection equivalent to those required under the legislation of the Member State must, without restriction, be allowed to be sold on the same basis and under the same conditions as (domestic) products declared to be in conformity with national standards<sup>24</sup>.

This principle applies to products displayed with a view to sale. It would follow therefore that it would be disproportionate to require that products for display only, and not for sale, have always to comply with the rules of the country where they are displayed.

2. *No certification or document establishing equivalence is required at the exhibition stage*

In the absence of harmonisation at Community level, the Court of Justice accepted that, before the first placing on the market of a product from another Member State in which it has been lawfully manufactured and/or marketed<sup>25</sup>, or before the provision of a service lawfully supplied in another Member State, a Member State remains free to subject a product which has already been approved to a fresh scrutiny and approval procedure. The Court pointed out, however, that the Member State is in such circumstances required to alleviate the checks carried out.

It should be pointed out that where the product is intended solely to be displayed at a fair where there is no provision for direct selling, it would not appear that legitimate interests such as safeguarding health and safety, protecting the consumer, etc. can be invoked in order to justify a fresh scrutiny or approval procedure.

In the case of products on display at a fair, to require from the outset type-approval or a certificate of equivalence or approval would give rise to unwarranted costs and delay, since the products on display might never be put on sale.

<sup>24</sup> Judgment of 20.2.1979 in Case 120/78 *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein* [1979] ECR 649.

<sup>25</sup> Judgment of 28.1.1986 in Case 188/84 *Commission v France* [1986] ECR 419.

At all events, the products will be of limited interest to potential buyers if the exhibitor cannot, where the product has not already been certified or has not already been found to be equivalent, provide at the time of the sale a guarantee, type-approval certificate or statement of equivalence, that its equivalence has been established. That is why the Commission takes the view that operators should be allowed to choose whether or not to have their products certified before the latter are displayed at fairs or exhibitions. On the other hand, such a requirement would, if it were to be imposed, have to be regarded as excessive.

3. *Prohibition of measures which might, in the eyes of the public, disparage a product on display which comes from another Member State*

A measure which tends to disparage products from other Member States in the eyes of the public is contrary to Article 30<sup>26</sup>. Thus an obligation to indicate that the product is not in conformity with national provisions in the Member State where the event takes place is liable to be such a measure.

If the product displayed is not in conformity with any national legislation nor with Community provisions in a harmonized area, and if those provisions lay down that the interested consumer is to be informed thereof (as in the case of certain "new approach" directives such as Council Directive 93/42/EEC of 14 June 1993<sup>27</sup> "medical devices", Council Directive 89/392/EEC of 14 June 1992<sup>28</sup> "machinery", Council Directive 89/686/EEC of 21 December 1989<sup>29</sup> "personal protective equipment", etc.), then the obligation to indicate this must be considered compatible with Community law.

On the other hand, if the product displayed is in conformity with the legislation of a Member State, this obligation would appear to be unwarranted and excessive in the light of the Treaty rules.

The Commission recalls that such provisions, although apparently applicable without distinction, are liable to have a greater effect on products from other Member States. Products manufactured in the Member State where the exhibition is being held will normally be in conformity with the rules in force there and are accordingly less likely to be covered by such a measure. On the other hand, products from other Member States will generally have been manufactured in accordance with rules which differ from those applicable in the Member State of destination and are therefore likely to be affected by such rules.

In addition, the Commission would recall that a fair or exhibition is designed to promote products and gauge the reactions of potential buyers before the products are placed on the market. A visitor is in a position to ask the exhibitor to provide the relevant information on the product on display, including whether or not it is in conformity with the national rules applicable.

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<sup>26</sup> Judgment in Case 222/82 *Apple and Pear Development Council v K.J. Lewis Ltd and Others* [1983] ECR 4083.

<sup>27</sup> OJ L 169, 12.7.1993, p. 4.

<sup>28</sup> OJ L 183, 29.6.1989, p. 9.

<sup>29</sup> OJ L 399, 30.12.1989, p. 18.

#### **4. *Labelling and market preparation of the product***

The products displayed do not, as a rule, have to be subject to an obligation concerning labelling in conformity with national rules since they are marketed only at a later stage. There is therefore no risk that they might be cheated or adversely affected by the products. Similarly, presentation of the product in its final packaging should be required only when it is actually placed on the market.

#### **5. *Prohibition of restrictions based on the origin of the goods***

Any regulation or practice on the part of a public authority which gives domestic products exclusive access to all - or some - fairs constitutes a discriminatory measure liable to be contrary to the rules of the Treaty and to partition the Internal Market.

Events of a local, regional or national nature or relating to specific products can, of course, be organized. However, the basic regulations as well as any State measures concerning these goods must not mean that products or exhibitors from other Member States can be systematically excluded from the outset.

Thus, arrangements that give preference to, or favour, domestic products rather than products from other Member States would also constitute measures liable to be contrary to Community law, even if they operate to the disadvantage of certain domestic products as well.

National, regional, provincial or local origin can be invoked as distinguishing criteria or as criteria for restricting the access of products to an event only if those products are protected by geographical specifications or marks indicating origin by virtue of Council Regulation (EEC) No 2081/92 of 14 July 1992 relating to the protection of geographical specifications or marks of origin of agricultural products and foodstuffs<sup>30</sup>.

#### **6. *Prohibition of restrictions on parallel imports***

In the field of the free movement of goods, the fact that the Court of Justice of the European Communities has condemned restrictions on parallel imports<sup>31</sup> highlights the incompatibility with Community law of any ban on the display of products brought in as parallel imports, i.e. not via the product's official distribution channels.

Such restrictions would not be justified under the law on trade marks. The Court of Justice has ruled that the main purpose of trade marks is to guarantee the exclusive right of the proprietor of a mark to use that mark for the first placing of a product on the market, thereby protecting it against competitors wishing to take advantage of the position of the firm or the reputation of a brand by making unlawful use of it<sup>32</sup>.

Consequently, once a product protected under trade mark rights is lawfully placed on the Community market by the proprietor of the trade mark or with his consent, the rights concerned lapse. It would therefore be wrong to prevent free movement of the product in the same way as on a domestic market. This would not, however, be allowed to prevent

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<sup>30</sup> OJ L 208, 24.7.1992, p. 1.

<sup>31</sup> Judgment of 20.5.1976 in Case 104/75 *De Peijper* [1976] ECR 613.

<sup>32</sup> Judgment of 31.10.1974 in Case 16/74 *Centrafarm BV v Winthrop BV* [1974] ECR I 183.



the application of the sanctions applicable in cases of infringement of the law relating to trade marks as defined by the Court of Justice of the European Communities.

(b) Conditions under which services are offered

The above principles relating to the display of goods also apply *mutatis mutandis* when services are displayed, promoted or offered at fairs or exhibitions.

In particular, under the basic rule of mutual recognition, a service lawfully provided in one Member State must in principle be allowed and indeed displayed in another Member State unless a proportional restrictive measure is justified by the need to protect a legitimate interest which is not already afforded an equivalent safeguard in the Member State of origin.

In essence, mutual recognition does not allow a national law to prevent a service lawfully provided in another Member State from being freely offered simply because the conditions under which it is provided are different in the Member State where the service provider is established. Since there may be no overlapping between the conditions laid down by the host Member State and the equivalent legal requirements already fulfilled in the Member State of establishment, the competent authority of the host Member State must take into account the controls and checks already carried out in the Member State in which the service provider is established (see III.A.4).

Still proceeding by analogy with what was stated earlier regarding the conditions under which goods are displayed, it must be pointed out that compulsory approval and other requirements and formalities generally imposed by the host Member State on services shown to the public at fairs would prove even less acceptable in the context of an event where there is no direct selling or supply to the public, or in the context of an exhibition the visitors to which would be experienced professionals.