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Judgment of the Court of Justice in Case C-255/01

Panagiotis Markopoulos and Others v Ypourgos Anaptyxis, Soma Orkoton Elegkton

ACCOUNTANTS PREVIOUSLY APPROVED IN A MEMBER STATE AND POSSESSING QUALIFICATIONS EQUIVALENT TO THOSE REQUIRED BY THE HOST MEMBER STATE MAY BE EXEMPTED FROM THE REQUIREMENT TO PASS AN EXAMINATION IN ORDER TO PRACTISE THEIR PROFESSION

However, the right of a Member State to approve professional persons who had not been approved but who possessed a certain professional experience, without requiring them first to pass an examination of professional competence, was limited to a period of one year from the date of application of the national provisions implementing the Eighth Directive, and no later than 1 January 1990.

The Eighth Council Directive¹ on the approval of persons responsible for carrying out the statutory audits of accounting documents (annual accounts of companies or consolidated financial accounts of groups of undertakings) had to be transposed into national law before 1 January 1988. It lays down the general rule that an examination of professional competence must evaluate candidates' theoretical knowledge, and their ability to apply it in practice to such auditing.

Nevertheless, by way of derogation from that general rule, a Member State may approve persons who have acquired qualifications, outside that Member State, equivalent to those required by the Directive.

Moreover, the transitional rules provide that - for up to a year after the implementation of the internal measures transposing the directive - professional persons who have not been granted approval by an individual act, but who are however qualified to carry out the statutory auditing of the accounts referred to in the Eighth Directive and who have performed that activity until that date, may be approved by the Member State.

Before the Eighth Directive was adopted, the abovementioned audit activity was reserved in

¹ Eighth Council Directive 84/253/EEC of 10 April 1984 (OJ 1984 L 126, p. 20).

Greece exclusively to those who - after passing a competition - were enrolled in the Institute of Certified Accountants. That institute was subsequently replaced by the Institute of Certified Auditors, in which the members of the former institute were enrolled as of right.

Pursuant to the national transitional provisions, adopted on the basis of the Eighth Directive, 60 candidates (who had not been members of the Institute of Certified Accountants) were enrolled in the new Institute of Certified Auditors², as holders of diplomas certifying completion of higher studies who had carried out audits in Greece for 18 years and were responsible for auditing work in Greece on 1 January 1989, or else as having been approved in another Member State of the Union (or in one of certain other countries³) and having 10 years' experience of auditing work, of which at least three years in Greece, at 1 January 1989.

Mr Markopoulos and Others (who were members of the old Institute of Certified Accountants) brought legal proceedings challenging that decision. The Simvoulío tis Epikratias (Council of State) has asked the Court of Justice to clarify the scope of the right (provided for by the directive) for a Member State to approve certain auditors without their first having to pass an examination of professional competence and whether, in respect of persons approved in another Member State, the exemption from an examination could be justified.

With regard to the power of Member States to approve certain professional persons who have not been approved by an individual act, but who are qualified to carry out the statutory auditing of the accounts referred to in the Eighth Directive and did so until that date, the Court explains, first, that the **transitional provisions** that provide for that power are addressed to **all the Member States**. Exercise of the power conferred by those provisions is limited only by the conditions which they specify and **it is not necessary to consider whether or to what extent the national rules** before the adoption of the Eighth Directive **laid down the requirement of passing an examination**.

Until one year after the application of the domestic transposition provisions, the Member States may therefore **approve persons qualified** to carry out the statutory auditing of accounting documents **who were doing so at that date**, without requiring them to pass an examination of professional competence.

Although the deadline for its transposition was 1 January 1988, the directive itself authorises the Member States to put back until 1 January 1990 the application of the provisions necessary to complete transposition.

The combined effect of the transitional provisions and the deadline of 1 January 1990 is to achieve a balance between the ultimate purpose of the directive (to establish a harmonised body of Community rules) and the legitimate protection of professional persons who had not been approved by individual act but who were already carrying on the activity in question, by allowing the Member States the period of a year to adopt transitional provisions in favour of those professional persons.

Therefore, a Member State could not, by virtue of that rule, approve such professional persons, without requiring them first to have passed an examination of professional competence, **after the expiry of a period of a year starting to run from the date of application of the national provisions** transposing the directive, **which date may in no**

² On the basis of Article 3a of Law 2231/94.

³ Canada, Australia, United States, New Zealand, South Africa.

circumstances fall after 1 January 1990.

With regard to the right of Member States to approve persons who have obtained, outside the host Member State, qualifications equivalent to those required by the directive, the Court goes on to observe that **the Eighth Directive is concerned with the determination** by the host Member State **of the equivalence of the “qualifications”** obtained in whole or in part in another Member State. The word “qualifications” allows the authorities of the host Member State to make an overall assessment of the abilities of the person concerned but does not oblige them to require the person in question to have passed the examination in that or another Member State.

Since the directive does not cover “recognition of the approval given to nationals of other Member States”, the assessment of whether qualifications are equivalent is based on a **factual assessment** which is not restricted only to qualifications gained under the rules in force before the Eighth Directive was adopted, and that assessment must not be dependent upon the moment at which those qualifications were gained (before or after implementation of the Eighth Directive).

In the absence of specific provisions to regulate the assessment of equivalence, the competent authorities must carry out that assessment, **observing the rules of the EC Treaty** and, in particular, the rules on freedom of establishment.

In practice, the Member State must take into consideration the diplomas acquired in another Member State, by comparing the abilities certified by those diplomas with the knowledge and qualifications required by the national rules.

If they **correspond wholly**, the Member State must recognise that diploma as fulfilling the requirements laid down by the national provisions. If they **correspond only in part**, the host Member State is entitled to require the person concerned to show that he or she has acquired the knowledge and qualifications which are lacking. It will have to 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.

So far as the approvals granted in the present case are concerned, since they were based on provisions of national law transposing the Eighth Directive, it is for the national court to determine whether they were granted in accordance with the principles identified by the Court.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: FR, GR, EN, DE

The full text of the judgment may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

It can in principle be consulted after midday (CET) on the day judgment is delivered.

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