OPINION OF ADVOCATE GENERAL MISCHO

delivered on 16 March 2000 [1]

I — The facts and applicable national law

1. Grandvision Belgium SA (hereinafter 'Grandvision') is a limited company under Belgian law with its head office in Brussels. It was set up in 1990 by the Netherlands company VE Holdings BV under the name Vision Express Belgium. It is in fact controlled by Vision Express UK Ltd, a company established under English law, and is part of a group of companies which markets optical products and services.

2. In 1991 the l'union professionnelle belge des médécins spécialistes en ophtalmologie et chirugie oculaire (Belgian Association of Ophthalmologists and Eye Surgeons) (hereinafter the 'UPBMO') lodged a complaint and an application for damages against Grandvision on the ground, in particular, that it was practising medicine unlawfully. The company had circulated advertising material offering its customers eyesight examinations which would serve, among other things, to reveal any intraocular hypertension (computer tonometry), to ascertain the condition of the retina (retinoscopy), to gauge the field of vision or to check the condition of the cornea, the conjunctiva, the eyelids and tear ducts (biomicroscopy), in the same way as Vision Express UK Ltd, which carries out examinations of this kind entirely within the law.

3. Following a criminal investigation, proceedings against Mr MacQuen, a United States national, and Mr Pouton, a British national, who had in turns been deputy directors of Grandvision, Mr Antoun, an optician of British nationality, and Ms Godts, a secretary of Belgian nationality, and Grandvision itself, as the party civilly liable, were instituted before the Tribunal de première instance de Bruxelles, sitting in criminal matters.

4. The applicable national law consists of the Royal Decree of 30 October 1964 on the optical profession, [2] as subsequently amended, and Royal Decree No 78 of

1 — Original language: French.

2 — Royal Decree establishing the conditions governing the exercise of the profession of optician and spectacle-maker in skilled trade undertakings, small and medium-sized businesses and small-scale industries, *Moniteur Belge* of 24 December 1964, amended by the Royal Decrees of 16 September 1966, 14 January 1975, 3 October 1978 and 2 March 1988, *Moniteur Belge* of 17 March 1988.

10 November 1967 on the practice of medicine. [3]

5. According to Article 2(1) of the Royal Decree of 30 October 1964:

'The profession of optician shall ... consist in the habitual and independent exercise of one or more of the following activities:

(a) the offering to the public, sale, maintenance and repair of optical articles — designed to correct and/or compensate vision;

(a)a the trial, adaptation, sale and maintenance of artificial eyes;

(b) the making-up of prescriptions issued by ophthalmologists for the purpose of correcting vision.'

6. By judgment of 28 June 1989, [4] the Belgian Cour de cassation (Court of Cassation) ruled that this provision was to be interpreted having regard to the provisions of Royal Decree No 78 on the practice of medicine.

7. Article 2(1), first subparagraph, of Royal Decree No 78 provides: 'No person may operate as a medical practitioner unless he or she holds the statutory qualification of medical doctor, surgeon or obstetrician obtained in accordance with the legislation on the conferment of academic titles and the syllabus for university examinations, unless that person has been lawfully exempted from that requirement and also satisfies the conditions laid down by Article 7(1) or (2)'.

8. The second subparagraph of Article 2(1) of Royal Decree No 78 provides: 'The unlawful practice of medicine shall consist in the habitual performance, by a person who does not satisfy all of the requisite conditions under the first subparagraph of the present paragraph, of any act involving, or stated to involve, in regard to a human being, an examination of that person's state of health, detection of disease and deficiencies, establishment of a diagnosis, introduction or administration of treatment for a pathological state, whether physical or mental, real or imaginary, or vaccination'.

9. The Cour de cassation ruled in that judgment that, 'while opticians who are not

3 — Royal Decree No 78 on exercise of medical, nursing and paramedical professions and on the medical committees dealing with the prevention of the unlawful practice of medicine, *Moniteur Belge* of 14 November 1967.

4 — Judgment Cass. b., 28 June 1989, Pas. b. 1989, I-1182.

medical doctors are authorised to perform acts designed to correct defects of a purely optical nature, whether or not they use equipment or instruments for that purpose, they are none the less prohibited from examining the state of vision of their clients otherwise than by using a method under which the patient alone determines the sight defects from which he suffers, *inter alia* on the basis of printed scales which may be incorporated in a control instrument and which the patient himself corrects by choosing, as the optician proposes, the lenses which satisfy him. The optician is obliged to advise his client to consult an ophthalmologist if the indications thus obtained leave any doubt as to the nature of the defect which has been established'.

10. The Tribunal de première instance de Bruxelles was unsure whether the Belgian legislation, as thus construed, was compatible with the freedoms recognised by Community law concerning establishment, the provision of services and the movement of goods, and decided to stay proceedings in order to refer to the Court for a preliminary ruling the following questions concerning Article 5 of the EC Treaty (now Article 10 EC) and Articles 30, 52 and 59 of the EC Treaty (now, after amendment, Articles 28 EC, 43 EC and 49 EC):

'1. Is a prohibition, arising from the interpretation or the application of a provision of national law, restraining opticians in other Member States from offering within a Member State, for the correction of purely optical defects, services consisting of an objective eyesight examination, that is to say otherwise than by using a method by which the client himself determines the eyesight defects and sees to the correction to be made, compatible with Articles 5, 52 and 59 of the EC Treaty?

2. Are obstacles within a Member State to the marketing of equipment which enables an objective eyesight examination to be carried out with a view to correcting purely optical defects, such as, for example, an autorefractor, arising from the ban imposed by national law on opticians established in other Member States preventing them from offering, within that Member State, services consisting of an objective eyesight examination, that is to say a non-subjective examination, for the correction of purely optical defects, compatible with Article 30 of the EC Treaty?'

II — The first question

1. *Preliminary observations*

11. The UPBMO contends that the main proceedings relate to a purely internal

situation which, in the absence of any factor connecting it with Community law, does not fall within the scope of that law.

12. It is well established that Community law in general, and the provisions on fundamental freedoms in particular, do not apply to activities in which all the relevant aspects are confined within a single Member State. [5]

13. In the present case, however, it is clear from the findings of the national court, as set out in points 1 and 3 above, that the case before it involves sufficient transfrontier elements. The Court therefore has jurisdiction to rule on the two questions referred to it.

14. Having resolved this preliminary issue, it is now necessary to determine which provisions of Community law fall to be applied in this case.

15. Article 5 of the Treaty is not among those provisions, since it imposes on Member States a general obligation to ensure the performance in good faith of the obligations arising from the Treaty. These obligations are explained in greater detail in other provisions of the Treaty, to which reference may be made.

16. Keeping strictly to the wording of the first of the questions referred for a preliminary ruling, the reader is given to understand that the dispute in the main proceedings concerns opticians established in one Member State who are prohibited, by the national rules of another Member State, applied in conformity with their interpretation by the courts, from carrying out certain eyesight examinations within that second Member State.

17. Put this way, the question has to be considered in the light of the provisions of Article 59 of the Treaty, that is to say, in relation to the rules governing the freedom to provide services.

18. It appears from the facts of the case as set out in the judgment of the national court that the main proceedings do not relate to activities carried out temporarily in Belgium by the British parent company, but to those of a Belgian limited company established in Belgium.

19. Grandvision is thus carrying out its activities under the freedom of establishment conferred on it by Article 58 of the EC Treaty (now Article 48 EC), and not

5 — Case C-23/93 *TV10* [1994] ECR I-4795, paragraph 14.

under the freedom to provide services, which is covered by Article 59 of the Treaty.

20. It should also be borne in mind that the provisions of the chapter on services are in any event subordinate to those of the chapter on the right of establishment. [6]

21. Although it is settled case-law that 'within the framework of the task given to it by Article 177 of the Treaty, the Court of Justice has no jurisdiction to decide the application of the Treaty to a given case', nevertheless 'the need to reach a useful interpretation of Community law enables it to extract from the facts of the main dispute the details necessary for the understanding of the questions submitted and the formulation of an appropriate reply'. [7]

22. The first of the questions referred for a preliminary ruling should therefore be understood as seeking essentially to ascertain whether Article 52 of the Treaty, on freedom of establishment, means that national legislation prohibiting opticians from carrying out the examinations described in the question cannot be applied to a company from another Member State which has exercised its freedom of establishment.

6 — Case C-55/94 *Gebhard* [1995] ECR I-4165, paragraph 22.

7 — Joined Cases 253/78 and 1/79 to 3/79 *Giry and Guerlain and Others* [1980] ECR 2327, paragraph 6.

2. Does the national legislation in question constitute a barrier to freedom of establishment?

(a) The arguments of the parties

23. Grandvision submits that the Belgian legislation, if applied according to the interpretation given by the Belgian Cour de cassation, prevents opticians from other Member States from carrying out in Belgium, within a regular practice, the objective eyesight examinations which they may lawfully carry out in their State of origin.

24. Those rules, it argues, therefore constitute a barrier to freedom of establishment, and make it less attractive to set up in business in Belgium.

25. If applied in its own case, those rules would prevent the Vision Express group from carrying on its activities in Belgium in accordance with its commercial system, which is founded on standard basic equipment and a common commercial policy.

26. However, it is clear from the *Gebhard* judgment, cited above, and from those in *Bosman*, *Centros* and *Kraus* [8] that national rules which may hinder or render less attractive the exercise of the guaranteed fundamental freedoms cannot be justified under Community law unless they meet four conditions: they must be applied in a non-discriminatory manner; they must be justified by overriding reasons based on the general interest; they must be appropriate for ensuring that their objective is attained; and they must not go beyond what is necessary to attain that objective.

27. In the present case, the rules in question, although not discriminatory, cannot be justified by considerations of public health protection. Grandvision argues that in Belgium opticians receive adequate training, they refrain from making diagnoses, particularly diagnoses stating that there is no pathological defect, and they have the necessary financial resources to acquire the best equipment. There is no evidence that if opticians were to carry out the examinations in question there would be a risk to public health. This conclusion is all the more warranted by the fact that the Belgian authorities disagree on whether opticians are entitled to carry out examinations of this kind. In July 1990 the national sickness and invalidity insurance institute sent out a circular requiring opticians to provide the best optical and optometrical service, including optical measuring (objective and subjective optometry) and analysis of the visual function, with the help of specific instruments, failing which they could incur liability for professional negligence. Those, however, are acts which, according to the above-mentioned judgment of the Cour de cassation, they are prohibited from carrying out.

28. UPBMO, in contrast, takes the view that the principles laid down in the *Bouchoucha* [9] case should be applied by analogy. In that case the Court held that where there is no harmonisation of the national laws relating to the practice of medicine and medical activities, the State may restrict a paramedical activity to persons qualified as doctors of medicine. Under this principle, it falls to Member States to decide which actions pertaining to human sight are reserved to ophthalmologists. This solution reflects the general principle that Member States are free to regulate activities on their territory if there is no harmonisation at Community level. This freedom is limited solely by the obligation not to discriminate against nationals of other Member States. UPBMO argues that those principles have not been overturned by the judgments cited by Grandvision, in particular the *Kraus* judgment, since the latter case is not of general relevance and does not apply to the field of public health and the practice of medicine.

29. Grandvision objects, by reference to the judgment in *De Castro Freitas and Escallier*, [10] that UPBMO has misinterpreted

8 — Case C-415/93 *Bosman* [1995] ECR I-4921; Case C-212/97 *Centros* [1999] ECR I-1459, and Case C-19/92 *Kraus* [1993] ECR I-1663.

9 — Case C-61/89 *Bouchoucha* [1990] ECR I-3551.

10 — Joined Cases C-193/97 and C-194/97 *De Castro Freitas and Escallier* [1998] ECR I-6747.

Bouchoucha in so far as, even if there is no harmonisation of national laws, a Member State may regulate the practice of a profession on its territory only if it respects the fundamental freedoms guaranteed by the Treaty. A State must now exercise its jurisdiction within the limits set by *Kraus*, by virtue of which *Bouchoucha* has become inoperative.

30. By way of alternative argument, UPBMO submits that the Belgian legislation does comply with the conditions referred to by the other party. The Belgian legislation, it contends, is justified by a general interest in the protection of health, which is a fundamental objective of the Treaty. By entrusting the eyesight tests in question to specialist doctors, the Belgian State succeeds in guaranteeing a high level of public health protection. The rules are proportionate and appropriate for achieving the intended purpose. The objective of preserving public health cannot be achieved by less restrictive means, such as entrusting such examinations to persons having only a less extensive training.

31. The Commission, referring to the judgment in the case of *Reisebüro Broede*,[11] points out that, in the absence of specific Community rules in the field, each Member State is free to regulate the practice of a profession on its territory. Recalling the *Bouchoucha* judgment, it explains that this freedom includes the power to determine which acts may only be carried out by doctors, since there is no Community definition of medical activities.

32. The Commission considers, however, that the Belgian legislation, by insisting that only specialist doctors may carry out ophthalmological examinations involving a diagnosis, may constitute a restriction for opticians from other Member States in which they are entitled to perform such examinations. Accordingly, although the Belgian rules are justified on the ground of public health protection, they will be compatible with Community law only if they fulfil the four conditions laid down in the *Gebhard* judgment, which in the Commission's view are satisfied in this case. The Commission again refers to the judgment in *Reisebüro Broede*, pointing out in particular that the fact that certain States impose less stringent rules does not automatically mean that the stricter rules applied in another State will be disproportionate. Like the UPBMO, the Commission therefore concludes that the rules in question are not disqualified by Article 52 of the Treaty.

(b) Assessment

33. The UPBMO and the Kingdom of Belgium are correct in referring to the judgment in *Bouchoucha*.

11 — Case C-3/95 *Reisebüro Broede* [1996] ECR I-6511.

34. The fact that in *Bouchoucha*, the person concerned was a national of the Member State in which he was seeking to practise the profession of osteopath, relying on a diploma obtained in another Member State, does not detract from the Court's finding of principle in its judgment, to the effect that:

'... in so far as there is no Community definition of medical acts, the definition of acts restricted to the medical profession is, in principle, a matter for the Member States. It follows that in the absence of Community legislation on the professional practice of osteopathy each Member State is free to regulate the exercise of that activity within its territory, without discriminating between its own nationals and those of the other Member States'.

35. The profession of optician is likewise not covered by Community legislation.

36. It should also be pointed out that in *Bouchoucha* the Court confined itself to the finding just mentioned and did not go on to consider whether the fact of reserving the practice of osteopathy to doctors was warranted by mandatory requirements based on the protection of public health, whether it was appropriate for securing its objectives and whether it went beyond what was necessary to achieve them.

37. From the freedom which each Member State retains to regulate the practice of the profession concerned, the Court drew the direct conclusion that 'Article 52 of the EEC Treaty does not preclude a Member State from restricting an activity ancillary to medicine such as, in particular, osteopathy exclusively to persons holding the qualification of doctor of medicine'.

38. I proposed that the Court should, in this case, primarily follow the same line of reasoning.

39. I further take the view that guidance to the same effect may be derived from the Court's judgment in *Peralta*. [12] As the Court found in respect of the Italian legislation which was in issue in that case, the Belgian rules now in question in the present case 'do not affect freedom of establishment within the meaning of Article 52 of the Treaty'. [13] If we paraphrase paragraph 34 of the *Peralta* judgment, we find that the restriction encountered by Grandvision in its activities was not in principle any different from the constraints 'which may originate in disparities between national laws governing, for example,

12 — Case C-379/92 *Peralta* [1994] ECR I-3453.
13 — *Peralta*, cited above.

labour costs, social security costs or the tax system'. [14]

40. Similarly, in the same way as a prohibition against opening shops on Sundays and public holidays, 'the legislation in question is applicable to all traders exercising their activity on national territory ... its purpose is not to regulate the conditions concerning the establishment of the undertakings concerned; ... any restrictive effects which it might have on freedom of establishment are too uncertain and indirect for the obligation laid down to be regarded as being capable of hindering that freedom'. [15]

41. While the practice of the profession of optician in Belgium is perhaps slightly 'less attractive' [16] than in the United Kingdom, Grandvision is not to any greater extent 'hindered' [17] by the restriction in question than are Belgian opticians.

42. The latter would undoubtedly prefer to be allowed to carry out the tests permitted by United Kingdom legislation, but they have to comply with the Belgian rules.

43. Finally, we note that it has not been argued that Grandvision and its non-Belgian employees have experienced difficulties in working as opticians in Belgium. As the Court ruled in the *Graf* [18] judgment in connection with the free movement of workers, in order to constitute hindrances to such freedom conditions which apply without distinction must affect access of workers to the labour market.

44. Where such access has been gained without difficulty, a self-employed person must, like a salaried worker, comply with the laws in the host country which govern the practice of the profession, even if those laws impose burdens or restrictions which do not exist in the country of origin of the undertaking or of the self-employed worker. This applies not only as regards direct or indirect taxation, the minimum wage to be paid to employees, maximum working time, holidays or the prohibition of Sunday trading, but also as regards the services which may be offered to clients.

45. As a subsidiary argument, in the event that the Court should take the view that national rules such as those here in issue must nevertheless be regarded as an obstacle to freedom of establishment, we must go on to examine whether those rules can

14 — Idem.

15 — Joined Cases C-418/93 to C-421/93, C-460/93 to C-462/93, C-464/93, C-9/94 to C-11/94, C-14/94, C-15/94, C-23/94, C-24/94 and C-332/94 *Semeraro Casa Uno and Others* [1996] ECR I-2975, paragraph 32.

16 — Within the meaning of *Gebhard*.

17 — Within the meaning of *Gebhard*.

18 — Case C-190/98 *Graf* [2000] ECR I-493.

be justified on the basis of the criteria formulated in the case-law of the Court.

46. The *Kraus* and *Gebhard* judgments relied upon by Grandvision stipulate that national measures which may hinder or render less attractive the exercise of the fundamental freedoms guaranteed by the Treaty can be justified under Community law if they fulfil four conditions: they must be applied in a non-discriminatory manner; they must be justified by overriding requirements in the general interest; they must be suitable for securing the attainment of the objective which they pursue; and they must not go beyond what is necessary in order to attain it. [19]

47. In the present case, neither the parties to the dispute nor the Commission deny that the rules in question apply without distinction to all opticians who practise on Belgian territory, regardless of any consideration of nationality or residence, that is to say, they apply in a non-discriminatory manner.

48. However, Grandvision contends that the disputed rules cannot be justified by considerations of public health protection, in particular because the prohibition imposed on opticians is not unanimously supported by the Belgian courts, and indeed its exact scope is uncertain.

49. Obviously, it is not for us to assess the case-law of the Belgian Cour de cassation or to rule on the differences in interpretation which may exist in Belgium as to the exact scope of the domestic legislation demarcating the respective fields of activity of doctors and opticians.

50. In the context of the allocation of jurisdiction between national courts and the Community judicature, the Court of Justice is required only to answer the question put by the national court in order to enable it to resolve the dispute before it in conformity with Community law.

51. The Court must therefore accept as a settled fact that in Belgium there is a binding legal rule of the kind described by the national court in its first question.

52. As for justifying the rules in question by overriding grounds of general interest, there is little doubt that a rule which reserves to ophthalmologists the right to carry out examinations on their patients using sophisticated instruments for determining eye pressure, determining the field of vision or analysing the condition of the retina, that is to say, examinations which

19 — *Gebhard*, paragraph 37, and *Kraus*, paragraph 32.

by their very nature are intended to reveal the existence of pathological conditions of the eye, is designed to protect public health. It is also appropriate for achieving that objective.

53. The Court does not have to make a detailed study of the exact nature of the examinations in question by seeking to ascertain whether they could be carried out by opticians with equivalent safeguards for patients; rather, it should note that the Belgian legislature has taken the view that the level of public health protection which it wished to secure made it necessary for these examinations to be reserved to ophthalmologists.

54. It is also important to take account of Article 152 EC, which deals with public health, although at the time when proceedings were brought against Grandvision it was the earlier version of that provision, Article 129 of the EC Treaty, which was in force.

55. According to Article 152(1) EC, a 'high level of human health protection shall be ensured in the definition and implementation of all Community policies and activities' and 'Community action ... shall complement national policies'.

56. Article 152(4) EC states: 'The Council ... shall contribute to the achievement of the objectives referred to in this Article through adopting:

...

(c) incentive measures designed to protect and improve human health, *excluding any harmonisation of the laws and regulations of the Member States*'. [20]

57. Article 152(5) EC states: 'Community action in the field of public health shall fully respect the responsibilities of the Member States for the organisation and delivery of health services and medical care'.

58. It is evident from these provisions that the main responsibility in the field of public health lies with the Member States.

59. Well before the Treaty of Amsterdam came into force, the Court had itself stated on numerous occasions that in the area of

20 — Emphasis added.

medicinal products, phytopharmaceutical products and pesticides, the Member States remain free to decide the degree of protection they will secure for human life and health. [21]

60. The same certainly applies with regard to medical treatment. The Court cannot, on the one hand, affirm that Member States alone can decide the level at which they intend to protect the health of their citizens and, on the other hand, refuse them that right once it appears that a number of other Member States (should this prove to be the case) are satisfied with a lower level of protection.

61. Likewise, it is not for the Court to effect a surreptitious harmonisation of national laws relating to the professions of medical doctors and opticians merely because it has found that a majority of Member States are applying less stringent rules, and that the Belgian rules are not therefore 'necessary' (within the meaning of *Gebhard*) to achieve the end in view, or that they infringe the principle of proportionality.

62. In paragraph 42 of its judgment in *Reisebüro Broede*, the Court stated that 'the fact that one Member State imposes less strict rules than another Member State does not mean that the latter's rules are disproportionate and hence incompatible with Community law (Case C-384/93 *Alpine Investments* v *Minister van Financiën* [1995] ECR I-1141, paragraph 51)'. In that case, the issue was whether debt recovery could be reserved to the legal profession.

63. I should also mention in passing that in the *Peralta* judgment the Court used the same argument in connection with a supposed infringement of the principle of non-discrimination.

64. So far as the proportionality of the Belgian provisions is concerned, they certainly have not had the effect of depriving Belgian or foreign opticians established in Belgium of their livelihood. In any case, it is difficult to see what less restrictive solutions would secure the aim pursued by the Belgian legislature.

65. In the light of the foregoing, I propose the following reply to the question put to the Court:

'Article 52 of the Treaty does not preclude a rule in a Member State which is interpreted or applied in such a way as to prohibit opticians who are established in

21 — See, for instance, Case C-293/94 *Brandsma* [1996] ECR I-3159.

that Member State from carrying out, for the correction of purely optical eyesight defects, objective eyesight examinations, that is to say, examinations which do not use a method by which the client alone determines his eyesight deficiencies and decides on the corrections to be made'.

III — The second question

1. *The arguments of the parties*

66. In its second question, the national court also refers to 'opticians established in other Member States'. In view of the facts of the case, and in order to enable the national court to resolve the legal problem facing it in conformity with Community law, the question should be understood as meaning that the national court is asking the Court to decide whether the ban on an optician who originates in one Member State and is established in another carrying out in the second Member State eyesight examinations of a medical nature relying on specialised equipment constitutes a quantitative restriction on the import of such equipment or a measure of equivalent effect which is prohibited as between Member States by Article 30 of the Treaty.

67. Grandvision contends that if opticians are prohibited from carrying out the examinations in question, they will be not only prevented from using the instruments required for that purpose, but also prevented from even possessing them, because for the national courts merely having such equipment would in itself be evidence of the unlawful practice of medicine.

68. It argues that by giving ophthalmologists a monopoly over the possession and use of the equipment, the Belgian legislation hinders the importation of such equipment.

69. That legislation, it argues, run counter to Article 30 of the Treaty, which prohibits all commercial rules in Member States which may obstruct directly or indirectly, actually or potentially, trade within the Community.

70. In support of its argument, Grandvision cites the judgment in the *Dassonville*[22] case, and also the judgments in the *Delattre*[23] and *Monteil and Samanni*[24] cases, concerning the monopoly enjoyed by phar-

22 — Case 8/74 *Dassonville* [1974] ECR 837.
23 — Case C-369/88 *Delattre* [1991] ECR I-1487.
24 — Case C-60/89 *Monteil and Samanni* [1991] ECR I-1547.

macists over the sale of medicinal products, which indicate that such a monopoly may constitute a barrier to imports.

71. In the opinion of Grandvision, it is irrelevant for present purposes that the main purpose of the impugned legislation is not to regulate trade in goods between Member States, since the prohibitions in that legislation constitute a barrier to imports, the effect of which is not merely potential and hypothetical, but concrete and actual.

72. Grandvision also argues that the restrictions resulting from the impugned legislation cannot be justified by an interest in public health protection and are manifestly disproportionate to the stated purpose.

73. UPBMO contends that the dispute in the main proceedings relates to a purely internal situation which has no impact on the common market. It contests generally the notion that the impugned legislation can create restrictions on the free circulation of the equipment concerned.

74. In any case, if the existence of a monopoly such as that of pharmacists is capable of affecting sales of imported products, it can nevertheless be justified, under Article 36 of the EC Treaty (now, after amendment, Article 30 EC) by the need to protect public health.

75. For its part, the Commission points out that according to the case-law of the Court, an importation of goods which is merely incidental to a supply of services is covered by the arrangements pertaining to the latter. The Court decided, in connection with the supply of spare parts for servicing motor vehicles, that 'such a supply is not an end in itself, but is incidental to the provision of services' and 'does not, as such, fall within the scope of Article 30 of the Treaty'. [25]

76. The situation described by the national court appears to fall within this category.

77. The Commission accordingly proposes that the Court should rule that in this case there is no incompatibility with Article 30 of the Treaty.

25 — Case C-55/93 *Van Schaik* [1994] ECR I-4837, paragraph 14. To the same effect, but in favour of the free movement of goods, see Case C-158/94 *Commission* v *Italy* ECR I-5789.

2. *Assessment*

78. In my view, this question should be answered along the lines proposed by the Commission.

79. From the judgment in *Van Schaik*, cited by the Commission, and that in *Schindler*, [26] it follows that the import and export of goods for the sole purpose of carrying out a 'service' activity, within the meaning of Article 60 of the EC Treaty (now Article 50 EC) cannot be regarded as being independent of the activity with which they are associated; thus they are outside the reach of the rules governing the free movement of goods.

80. This principle, which is derived from the provisions on the free supply of services in conjunction with those on the free movement of goods, remains fully valid in respect of freedom of establishment.

81. This principle was applied in the judgment in the *Pfeiffer* [27] case, in which it was held that a national rule will be contrary to Article 30 of the Treaty only 'if, and to the extent that, it restricted the free movement of goods between Member States other than indirectly through the restriction of freedom of establishment'.

82. There are no factors in the present case to indicate that the national rule which has been criticised, on the assumption that it produces restrictive effects on the free movement of goods between Member States, creates barriers other than those associated with restrictions on the freedom of establishment.

83. Consequently, the reply to the second question in the preliminary reference should be modelled on the reply to the first, and there is no need to examine the effects of the Belgian legislation on the free movement of goods in respect of the provisions relating to Article 30 et seq. of the Treaty.

I therefore propose the following reply to this second question:

'Article 30 of the Treaty should be interpreted as not precluding legislation such as that in issue in the main proceedings'.

26 — Case C-275/92 *Schindler* [1994] ECR I-1039, paragraphs 22 to 24, 37 and 62.

27 — Case C-255/97 *Pfeiffer* [1999] ECR I-2835, paragraph 26.

Conclusion

In the light of the foregoing, I propose that the Court should reply as follows to the questions referred by the Tribunal de première instance de Bruxelles:

(1) Article 52 of the EC Treaty (now, after amendment, Article 43 EC) does not preclude a rule in a Member State which is interpreted or applied in such a way as to prohibit opticians who are established in that Member State from carrying out, for the correction of purely optical eyesight defects, objective eyesight examinations, that is to say, examinations which do not use a method by which the client alone determines his eyesight deficiencies and decides on the corrections to be made.

(2) Article 30 of the EC Treaty (now, after amendment, Article 28 EC) should be interpreted as not precluding legislation such as that in issue in the main proceedings.